

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

_____)	
DANIELLE DONOHUE and)	
LINCOLNSHOUSE, LLC)	
Plaintiffs,)	
)	
v.)	Civil Action No. 18CV10713-LTS
)	
CITY OF METHUEN and JOHN P. GIBNEY,)	
Defendants.)	
_____)	

FIRST AMENDED COMPLAINT AND JURY DEMAND

This Complaint is an action for a violation of and injunctive relief under the federal Fair Housing Act as Amended, M.G.L. c. 151B and 804 CMR Section 2.00 et seq., M.G.L. c 40A, intentional interference with contractual relations, intentional infliction of emotional distress, and M.G.L. c. 12, Sections 11H-11I.

PARTIES

1. The Plaintiff, Lincolnshouse, LLC, is a domestic corporation with an address of 10 Quincy Street, Methuen, MA (“Lincolnshouse”).
2. The Plaintiff, Danielle Donohue, is an individual with an address of 7 Quincy Street, Methuen, MA.
3. The Defendant, City of Methuen, is a municipality with the mayor’s office located at 41 Pleasant St # 305, Methuen, MA 01844 (the “City”).
4. The Defendant, John P. Gibney, is an individual and the acting Building Commissioner for the City of Methuen, with a business address of 41 Pleasant St # 313, Methuen, MA 01844

JURISDICTION

5. This Court has personal and subject matter jurisdiction as both the Plaintiffs and Defendants are residents and/or located in Massachusetts and this matter concerns claims under the federal Fair Housing Act as Amended.

FACTS

6. Lincolnshouse is in the business of property management, including managing and/or providing sober housing for disabled individuals who reside at 10 Quincy Street.

7. On or about October 20, 2017, Danielle Donohue purchased 10 Quincy Street.

8. During December 2017, Lincolnshouse began operating a sober house at 10 Quincy Street.

9. On or about February 1, 2018, Lincolnshouse received certification from the Massachusetts Alliance of Sober Houses ("MASH").

10. Prior to January 29, 2018, the City of Methuen received complaints from neighbors of Lincolnshouse that it was being occupied as a sober recovery home.

11. On January 29, 2018, the John P. Gibney, acting for the City, sent a letter to Danielle Donohue notifying her that the City had received some concerns and complaints from residents that a possible group home was being occupied at 10 Quincy Street.

12. On February 9, 2018, the City, through representatives of the police, fire department, inspectional services and public safety department visited 10 Quincy Street and verified that a sober recovery home had opened at the site and that MASH had certified the home.

13. On February 20, 2018, a public meeting before the City council was held and the following was discussed:

a. City Community Development Director, Bill Buckley indicated that the home was verified as a sober recovery home and that they were a protected class, but the home needed to comply with the building code and fire code, including the installation of sprinklers. He also indicated that a cease and desist order was prepared and ready to go under the signature of the Building Commissioner. He further stated that: "I know [the City council] has heard from concerned residents...just wanted you to be fully aware of the actions that we're taking and the work that we've done to try and address the matter."

b. Resident Tom Firth stated, "if [Danielle Donohue bought [10 Quincy Street] as a residential property and insured as a residential property, it's mortgage and insurance fraud, which is a problem. . . So we're probably going to do a little investigation of our own and let the Mayor and his people know. . . I feel bad for the residents because I watched my wife's family, grandmother, grandfather, all of them

grew up there. . . I think if they put it where there's more commercial businesses and stuff away from residential neighborhoods. . . the taxpayers and voters, are behind you and the Mayor. . . If you need us, we'll be out there in force to help you get laws passed to protect - - you know, get spots for these people but not in a residential area."

c. Resident Joe Zingales stated, "Upon hearing the news about the sober home, many of our neighbors, including myself, were extremely concerned and started conducting our research and found that these sober homes and the occupants are a protected class. . . We contacted many of you Council members, spoke to various department heads including building, police and fire. We also communicated with the Mayor via various outlets and contacted some of our state delegation. What we learned was that the Commonwealth of Massachusetts via General Laws Chapter 40A as well as the Fair Housing Act and Americans with Disabilities Act can supersede any town - - any type of town laws governing these types of homes. . . Industry experts say that an addict will do whatever it takes to get their next fix, whether it be robbing a store or stealing from homes, our homes, our homes where our children live and play, our homes where we help each other, our homes where we paid a premium to live because of the area. Councilors, Madam Chair, officials, Mr. Mayor, we need to send a message to the people that are throwing this down our throat, the Commonwealth. That message must be no more. The residents of Methuen are counting on all of you to address this issue. Please don't let us down. If these homes are allowed to continue to operate in Methuen without some sort of regulation, some sort of license, some sort of oversight, then I fear you will be setting a precedence for more to pop up."

d. Resident John Saba said, "... three weeks ago when I went down to the Building Department and complained about this house. I pointed out . . . It's a lodging house defined. . . What I was told was 'yeah, that's true, but you have to read Chapter 40, Section 3, Paragraph 4 which basically says that if you're disabled, you're exempt from all zoning'. . . This does not give people with disabilities exemption from zoning. All it says is the law has to be fair. If you say that three people who are unrelated can live in a single-family home, you can't say three people who are disabled can't live in a single-family home. . . My issue is simple. Why are we issuing a cease and desist and telling them to put in sprinkler systems and all this stuff because what if they actually do comply with that? Now we have a home in our single-family area that could have up to 20 beds or whatever we decide when what we should be doing is giving them a cease and desist based on our zoning laws, period. . . We have the right to shut that house down based on zoning period. And if they want to bring the fight to the city, then let them bring the fight to the city because I think we have a choice here. You either get the fight from us, a group of people who are angry at this, or you get the fight from the one, the lady who's trying to circumvent the law. If I was you, I would side with us. You know, in addition to this, she's running another house across the street, Number 7, that I've asked the Building Department to look into. . . I think it's very important not to give a cease and desist based upon putting in sprinkler systems, doing certain things

because now it gives her the opportunity to comply with that. That's not what we want. We want a single-family neighborhood to be a single-family neighborhood. . . So tomorrow I would hope we go ahead with the plan and we shut them down, but I'd like to know what is the recourse when she doesn't shut it down? . . . I hope she is going to get fine every day. I hope we are going to make it difficult on her. . . she is getting more and more money which will give her the opportunity to bring that house into some sort of compliance if that's what we choose to do, and I think that's wrong.

e. Resident Don Sestini stated, "I talk to her on a regular basis . . . Never once did [Danielle Donohue] mention to me that they were going to put a sober house in there . . . The town didn't know about it until somebody complained."

f. Resident Mark Manzi stated, "The Zoning Board needs to enforce these laws and make our children the protected class, and that's what's important to us."

g. Resident David Sigillo stated, "But I think if [the sober house] does stand legally that it is operating outside of zoning and we can fight that, then I encourage we should do that, and that's what I would go for on the cease and desist. . . I guess in closing, I can just say that I'm really disturbed by this. . . I'm very concerned for the abutters on the left and right side of this house. So I respectfully request that you shut down this illegal operating business entity in a R01 zone."

h. Resident Susanne Vecci stated, ". . . please consider everything we're saying. . . This is an incredible neighborhood, and to have 20 recovering addicts, men especially, on our street, it scares the hell out of me and I'm not afraid to say that."

i. Resident Lajja Lantigua stated, "I am all for sober house. I am all for people in recovery, but there is a place, there's a time, and there's a proper housing properties for them, and I do not believe Quincy Street is the proper place for a sober house."

j. Councilor Saba stated, ". . . it's amazing how many people from one block of our community have come out to fight for this. . . I'm getting a little tired of being told by the state that - - you now, they jam 40B up our throats here. They're jamming 40A up our throats. This is our city, and I know that other cities fight. . . we've got to stop just saying there's nothing we can do. We've got about this many lawsuits that we deal with on a regular basis. This is one that I'm not afraid. I think we should be looking for a way to get control over our own city. . . And again, to the Mayor, I'm just asking. We've got to be aggressive. . . We need to fight for Methuen and to protect the integrity of our residents, of our neighborhoods."

k. Chairwoman Kannan stated, "I know there was some comments regarding instead of just doing safety, see if we could throw zoning in there, so I believe that maybe the Mayor, the Solicitor and Mr. Buckley can get together and make sure that"

l. Councilor Campagnone stated, "I'd like to see [the sober home], you know, shut down as quick as possible."

m. Vice-Chairwoman Vidler stated, "... if we have a cease and desist letter that is targeting code violations ... so we could then impose the monetary fines associated with the codes that we are citing in the cease and desist?"

14. On or about February 21, 2018, John P. Gibney for the City sent an Order to Cease & Desist imposing onerous and illegal requirements upon the Plaintiffs in order effectuate closure of the property as a sober house, as discussed at the February 20th public meeting before the City council. A true and accurate copy of that February 21, 2018 letter is attached hereto as Exhibit A.

15. On or about February 22, 2018, Plaintiffs provided notice of and requested compliance by the City with M.G.L. c. 40A and a reasonable accommodation under the Fair Housing Act. A true and accurate copy of that February 22, 2018 letter is attached hereto as Exhibit B.

16. On or about March 23, 2018, John P. Gibney for the City reiterated compliance with the onerous requirements of his February 21st letter, ignored the Plaintiffs' rights under M.G.L. c. 40A and a reasonable accommodation under the Fair Housing Act and indicated that fines were being imposed at \$300 per day. A true and accurate copy of that March 23, 2018 letter is attached hereto as Exhibit C.

17. Separately, the City has acted upon complaints of neighbors concerning 7 Quincy Street, made in an effort to put pressure on Danielle Donohue to effectuate removal of the sober house at 10 Quincy Street.

18. Danielle Donohue has received anonymous written threats as a result of her association with a sober home and housing for the disabled.

19. Plaintiffs seek judicial relief for actual injury as a result of the Defendants' discriminatory actions, failure to comply with applicable law and failing to provide a reasonable accommodation, as a result of Plaintiffs' association with the disabled and for the impact upon its prospective tenants.

20. The Defendants intentional, wrongful actions are directed towards the Plaintiffs and its tenants because of the fact that the tenants are disabled individuals in recovery from alcohol and/or drug abuse.

21. The interests the Plaintiffs seek to protect are germane to their purpose and neither the claim asserted, nor the relief requested herein, requires the participation of individual occupants of the sober house, who would otherwise have standing to sue in their own right.

COUNT I
(Discrimination – Fair Housing Act)

22. Plaintiffs incorporate and restates herein paragraphs 1-21 supra.

23. The federal Fair Housing Act and the Fair Housing Amendments Act forbid discrimination towards individuals because of their disability or a person associated with them.

24. Federal law declares that discrimination is prohibited in failing to provide a reasonable accommodation or in effectuating discriminatory goals of others, or those of a municipality, through the use of or imposition of rules, laws or zoning, whether legal or otherwise, if done with discriminatory animus or without animus if done in a way that effectuates the discriminatory goals of others.

25. Plaintiff is associated with and/or provided housing to disabled/handicapped individuals, to reside at the 10 Quincy Street.

26. The tenants and prospective tenants of Plaintiff at 10 Quincy Street are a protected class.

27. Defendants, through their actions and inaction, *supra*, and intentional conduct and/or willful ignorance of applicable laws that require that disabled/handicapped individuals be treated fairly and provided equal access to housing have violated Federal law by refusing to provide a reasonable accommodation and/or in discriminating against the Plaintiffs.

28. Defendants violated the Plaintiffs' rights under the Fair Housing Act by:

- a. denying and otherwise making housing unavailable to the Plaintiffs because of their association with and provision of housing to the disabled;
- b. enforcing discriminatory rules and internal policies on the Plaintiffs because of their association with the disabled;
- c. interfering the rights of the occupants of the 10 Quincy Street to live in the dwelling of their choice;
- d. failing to make reasonable accommodations in its enforcement of its rules, regulations and laws so as to afford an equal opportunity to the disabled to use and enjoy the aforementioned dwelling; and
- e. targeting the Plaintiffs because of their association with the disabled and the exercise of their fair housing rights.

29. The Defendants' conduct in trying to exclude disabled individuals from residential neighborhoods is discriminatory towards and has damaged the Plaintiffs by causing them to: incur legal fees; injuring the occupants; interfering with the quiet enjoyment and occupancy of 10 Quincy Street; and causing business losses and damages.

30. In sending the attached letters and in using the code/zoning for a discriminatory goal and in ignoring c. 40A and the Fair Housing Act, Defendant John P. Gibney has knowingly and/or intentionally ignored the rights of the Plaintiffs under applicable law to effectuate discriminatory goals of the City and/or certain residents of and/or agents of the City, to the detriment and harm of the Plaintiffs.

WHEREFORE, Plaintiffs pray for a temporary and/or preliminary injunction against the Defendants, and its agents and employees from imposing requirements and/or refusing to allow housing for the disabled and by those providing housing to the disabled, including the Plaintiffs, because of its association with the disabled and the Plaintiffs seeks damages to be proven at trial against the Defendants for discrimination, for direct and indirect damages, consequential damages, punitive damages, attorney fees, costs and losses.

COUNT II
(M.G.L. c. 151B, and 804 CMR Section 2.00 et seq.)

31. Plaintiffs incorporate and restate herein paragraphs 1-30 supra.

32. Defendants violated the Plaintiffs' rights under State law, including M.G.L. 151B and 804 CMR Section 2.00 et seq. by:

- a. denying and otherwise making housing unavailable to the Plaintiffs because of their association with and provision of housing to the disabled/handicapped;
- b. enforcing discriminatory rules and internal policies on the Plaintiffs because of their association with the disabled;
- c. interfering the rights of the occupants of 10 Quincy Street to live in the dwelling of their choice;
- d. failing to make reasonable accommodations in its enforcement of its rules, regulations and laws so as to afford an equal opportunity to the disabled to use and enjoy the aforementioned dwelling; and
- e. targeting the Plaintiffs because of their association with the disabled and the exercise of their fair housing rights.

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COUNT III
(Injunctive Relief – M.G.L. c. 40A, Section 3)

34. Plaintiffs incorporate and restate herein paragraphs 1-33 supra.

35. As stated in the reasonable accommodation sought by letter dated February 22, 2018, Plaintiffs sought relief from the City accordance with M.G.L. c. 40A, Section 3, to be treated the same as “families” that could reside at the Property.

36. The City has failed to explain why they must not follow applicable law and are in continuing violation of said law that is *per se* discrimination.

37. Plaintiffs have been damaged by said discrimination by, *inter alia*, incurring costs, legal fees and deferring funds to handle this lawsuit that are necessary to provide affordable housing to the disabled. Further, Plaintiffs are harmed by monetary fines being imposed upon them for alleged violation of building/zoning/safety laws – that are not applicable to single-family occupancies.

WHEREFORE, Plaintiffs pray for an injunction in accordance with M.G.L. c. 40A, Section 3 to require the City to comply with said law and an award of attorney fees, costs and losses incurred as a result of said non-compliance.

COUNT IV
(Intentional Interference with Contractual Relations)

38. Plaintiffs incorporate and restate herein paragraphs 1-37 supra.

39. Lincolnshouse had a contractual relationship with its tenants.

40. John P. Gibney knew of Lincolnshouse’s relationship with its tenants.

41. John P. Gibney did intend to induce and/or did interfere with Lincolnshouse’s relationships with its current and/or prospective tenants causing a breach of current and/or failure to enter into prospective relationships.

42. Certain tenants relapsed and/or left Lincolnshouse due to the stress created by the letters sent by John P. Gibney requiring the closure of the tenants’ home and forced expulsion.

43. John P. Gibney was aware of applicable law requiring that the home be treated the same as a single family for purposes of code enforcement prior to

sending one or both of his letters and he had no privilege to take said action as it was discriminatory.

44. The Plaintiffs have been damaged by losing current and prospective tenants due to the unlawful actions of John P. Gibney.

WHEREFORE, Plaintiffs pray for damages against John P. Gibney in an amount to be proven at trial.

COUNT V
(Intentional Infliction of Emotional Distress)

45. Plaintiffs incorporate and restate herein paragraphs 1-44 supra.

46. John P. Gibney intended to inflict emotional distress or knew, or should have known, that emotional distress was the likely result of his conduct, as he has intentionally placed onerous requirements and imposed fines upon the Plaintiffs that are not legally justified nor allowable in order to cause the closure of Lincolnshouse and financial harm to the Plaintiffs.

47. The Defendants' conduct was extreme and outrageous, beyond all possible bounds of decency, and was utterly intolerable in a civilized community, because the actions are based upon or designed to carry out a discriminatory goal that is illegal.

48. The actions of the Defendants have caused the Plaintiff Donohue financial, physical and emotional distress, that has manifested itself through insomnia, lack of appetite, stomach discomfort, and inability to focus on daily tasks.

49. The emotional distress sustained by the Plaintiff is severe and of a nature that no reasonable person could be expected to endure it.

50. In sending the attached letters and in using the code/zoning for a discriminatory goal and in ignoring known legal rights under G.L. c. 40A and the Fair Housing Act, John P. Gibney has caused said emotional distress, to the detriment and harm of the Plaintiff Donohue.

WHEREFORE, Plaintiff Donohue prays for damages against the Defendant Gibney in an amount to be proven at trial.

COUNT VI
(Violation of the Massachusetts Civil Rights Act, M.G.L. c. 12, Sections 11H-11I)

51. Plaintiffs incorporate and restate herein paragraphs 1-50 supra.

52. By engaging in conduct described above, which includes intimidation and/or coercion, discrimination, intentionally ignoring applicable law and in coordinating the use of code enforcement provisions and tactics to force the Plaintiffs to close or cease to provide housing to a protected class, John P. Gibney has interfered with or attempted to interfere with and deprive the Plaintiffs of their use and enjoyment of their real property which is secured under the United States and Massachusetts Constitutions, and interfered with or attempted to interfere with and deprive Plaintiffs and the actual and prospective residents of 10 Quincy Street of their rights under M.G.L. c. 40A, the Fair Housing Act as Amended, substantive due process, and the equal protection and takings clause of the US Constitution.

53. The interference or attempted interference with these rights constitute corresponding violations of the civil rights of Plaintiffs and current and prospective residents of 10 Quincy Street pursuant to M.G.L. c. 12, Sections 11H-11I.

54. As a direct and proximate result of John P. Gibney's violation of M.G.L. c. 12, Sections 11H-11I, Plaintiffs have suffered substantial damages.

WHEREFORE, Plaintiffs pray for damages against John P. Gibney in an amount to be proven at trial, plus interest, costs, and attorney fees.

Plaintiffs request a trial by jury.

Dated this 8th day of May 2018.

For the Plaintiff,
By their Attorney,

/s/Andrew J. Tine

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