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COPY

MAR 16 2012



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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 THE STATE OF ARIZONA *ex rel.* THOMAS C.
15 HORNE, the Attorney General, and THE CIVIL
16 RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

18 Plaintiff,

19 v.

20 AMORITA HOLDINGS, LLC, d/b/a The
21 Scottsdale Belle Rive,

22 Defendant.

No. CV2012-005912

COMPLAINT

(Non-classified Civil)

23 Plaintiff, the State of Arizona *ex rel.* Thomas C. Horne, the Attorney General, and the
24 Civil Rights Division of the Arizona Department of Law (collectively "the State"), for its
25 Complaint, alleges as follows:

26 **INTRODUCTION**

The State brings this action pursuant to the Arizona Fair Housing Act ("AFHA"),
A.R.S. §§ 41-1491 to 41.1491.37, to correct a discriminatory and unlawful housing practice,
and provide appropriate relief to the complainant. Specifically, the State brings this matter to

1 redress the injury sustained by Darcy Davis (“Davis” or “Complainant”) and her daughter
2 Marlana Davis (“Marlana”), an aggrieved person, for the wrongful termination of Davis’ lease
3 and the subsequent requirement for Complainant and her daughter to vacate The Scottsdale
4 Belle Rive (“Belle Rive”) as a result of Marlana’s disability.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1491.34(A)
7 and § 41-1491.35(A)(2).

8 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

9 **PARTIES**

10 3. Plaintiff, the Civil Rights Division of the Arizona Department of Law (the
11 “Division”), is an administrative agency of the State of Arizona established by A.R.S. § 41-
12 1401 to enforce the provisions of the Arizona Civil Rights Act (“ACRA”), A.R.S. § 41-1401 to
13 41-1492.11, including the Arizona Fair Housing Act (“AFHA”).

14 4. The State brings this action pursuant to A.R.S § 41-1491.34 and § 41-1491.35, on
15 its own behalf and on behalf of the Complainant and Marlana, who is an aggrieved person
16 within the meaning of A.R.S. § 41-1491.19.

17 5. Davis and Marlana were, at all relevant times, tenants at Belle Rive, an apartment
18 complex located at 8550 East McDowell Road in Scottsdale, Arizona.

19 6. Upon information and belief, Amorita Holdings, LLC (“Defendant”), is an
20 Arizona limited liability company and operator of the Belle Rive.

21 7. Upon information and belief, the Defendant employed Tim French (“French”) to
22 act as Defendant’s onsite manager.

23 8. French was an employee and agent of the Defendant during all relevant times.

24 **GENERAL ALLEGATIONS**

25 9. Marlana suffers from bipolar disorder and is a disabled individual within the
26 meaning of A.R.S. § 41-1491(5) because she has a mental impairment that substantially limits
one or more major life activities including, but not limited to, working.

1 10. Davis is a proper Complainant pursuant to A.R.S. § 41-1491(2) and A.R.S. § 41-
2 1491.19(B)(2) because she resided with Marlana in their Belle Rive apartment.

3 11. On or about September 17, 2010, Davis and Marlana entered into a rental
4 agreement with Defendant for the Belle Rive unit #240.

5 12. The Rental Agreement was signed by French.

6 13. At the time of making the Rental Agreement, Marlana disclosed to the Defendant
7 that she was disabled and that her portion of the rent would be paid by Social Security disability
8 benefits.

9 14. Defendant's resident file for Davis contains documentation confirming that
10 Marlana is a disabled individual.

11 15. On March 28, 2011, Marlana began experiencing increased symptoms of her
12 disability.

13 16. Marlana stated that "she felt worthless and wanted to end her life."

14 17. Recognizing that she needed help, Marlana contacted the Magellan Behavioral
15 Health Services Crisis Line (the "Crisis Line") for assistance.

16 18. Marlana called the Crisis Line and said that she was going to harm herself by
17 overdosing on her medication.

18 19. Marlana also stated that there was a knife in the kitchen and she was going to use
19 it to harm herself.

20 20. According to standard procedure, the Crisis Line asked the Scottsdale Police
21 Department to assist Marlana until the Crisis Line mobile unit arrived.

22 21. When the police arrived at the Belle Rive, Marlana was in her apartment.
23 According to the report of the incident created by the Scottsdale Police Department, Marlana
24 came to the door without a weapon and with a phone to her ear.

25 22. When the Scottsdale Police Department asked Marlana where the knife was,
26 Marlana told them it was in the kitchen drawer.

1 23. Marlena cooperated with the police and was detained without incident until the
2 Crisis Line mobile unit arrived.

3 24. The Crisis team transported Marlena to Banner Behavioral Health where she was
4 admitted to the hospital.

5 25. On March 28, 2011, French left a notice for Davis to come to his office.

6 26. Because the office was closed, Davis did not speak to French until the morning of
7 March 29, 2011.

8 27. On March 29, 2011, Davis went to Defendant's office where French told Davis
9 that she must move out because they cannot have "that type of activity around here,"
10 referencing the incident on March 28, 2011.

11 28. Davis returned to her apartment and was served with a Notice of Irreparable
12 Breach/Immediate Termination of Tenancy (the "Notice").

13 29. The Notice stated that the material and irreparable breach to the rental agreement
14 was for "(1) Reckless endangerment – conduct necessitating police intervention on the premises
15 (2) Endangering the health, safety and welfare of fellow residents (3) a breach of the lease
16 agreement that jeopardizes the health and safety of the landlord and/or other residents"
17 (capitalization omitted).

18 30. The Notice stated that Davis' "rental agreement has been terminated as of legal
19 receipt of this notice," and that she was to vacate immediately.

20 31. The Notice threatened Davis with the filing of a "complaint in special detainer" if
21 she did not immediately vacate the premises.

22 32. Defendant has asserted that the termination of the lease was an authorized
23 enforcement of the Crime Free Rental Agreement Addendum that Davis had signed.

24 33. The Crime Free Rental Agreement Addendum provides that a tenant "shall not
25 engage in . . . any breach of the Rental Agreement that otherwise jeopardizes the health, safety
26 and welfare of the Community and/or Management, its authorized agents or other residents or
involving imminent or actual serious property damage, as defined in A.R.S. 13-1368" (sic).

1 34. Marlena's call for assistance did not jeopardize the health, safety and welfare of
2 the Defendant or the Defendant's agent.

3 35. Marlena's call for assistance did not jeopardize the health, safety and welfare of
4 any other tenant.

5 36. Marlena's call for assistance did not result in a breach of the lease agreement as
6 defined by A.R.S. § 33-1368.

7 37. The Notice was served because French considered Marlena's threat to commit
8 suicide to be a crime, the Scottsdale Police Department responded to Marlena's call for
9 assistance with heavily-armed officers, and he, French, was not aware of why Marlena was
10 detained.

11 38. Threatening to commit suicide is not a crime.

12 39. The reason the Notice was served was because Marlena called the Crisis Line for
13 assistance.

14 40. The Notice neither included information on how to dispute the reason for
15 immediate termination of the Rental Agreement nor indicated that an accommodation was
16 available.

17 41. Based on the wording of the Notice, Davis reasonably believed that she was
18 evicted.

19 42. Based on French's comments and conduct, Davis reasonably believed that the
20 Notice would not be rescinded.

21 43. On March 29, 2011, Davis sought emergency housing.

22 44. Because emergency housing was not available, Davis again informed French of
23 Marlena's disability and asked if he would allow Davis a week to move.

24 45. French again told Davis he wanted her out.

25 46. Davis only requested to be allowed to move on April 5, 2011 because she
26 received the Notice.

1 47. French refused to provide an extension unless Davis could prove that Marlana
2 was confined to the hospital and was not at the Belle Rive.

3 48. Davis provided documents confirming that Marlana was admitted to the hospital.

4 49. French allowed Davis until April 5, 2011 to move out.

5 50. Due to the limited amount of time to vacate the apartment at the Belle Rive,
6 Davis was forced to accept an efficiency apartment which was inadequate to house both Davis
7 and Marlana.

8 51. Because of the limited amount of time to move, Davis was forced to donate much
9 of her personal property, including furniture, in order to vacate the apartment in the time frame
10 provided.

11 52. Davis was forced to find a new home and move while Marlana was admitted at
12 Banner Behavioral Health.

13 53. Based on French's conduct and statements, Marlana believed that she was not
14 permitted back at the Belle Rive.

15 54. The Defendant discriminated against Marlana by not allowing Marlana to retain
16 her housing while she was undergoing treatment for her mental disability.

17 55. While hospitalized, Marlana was unable to find suitable housing.

18 56. Defendant's actions rendered Marlana homeless.

19 57. The only family that could provide a home for Marlana on such short notice was
20 Davis' brother (Marlana's uncle) who resides in Minnesota.

21 58. Marlana reasonably believed she had no choice but to leave the State of Arizona
22 after being released from the hospital.

23 59. Defendant knew that Marlana had a disability at all relevant times.

24 60. Defendant did not take any steps to determine whether there was any health or
25 safety risk posed by Marlana prior to issuing the Notice.

26 61. Defendant did not initiate an interactive process to consider possible
accommodations in lieu of evicting Davis and Marlana from the Belle Rive.

1 be necessary to afford the person equal opportunity to use and enjoy a dwelling.” A.R.S. § 41-
2 1491.19.

3 71. A landlord must demonstrate that no reasonable accommodation will eliminate or
4 acceptably minimize the risk a tenant poses to other tenants because of disability before
5 resorting to eviction.

6 72. Complainant’s daughter, Marlana, has a disability, as defined by A.R.S. §
7 4101491(5).

8 73. Defendant had notice of Marlana’s disability.

9 74. The Belle Rive is a “dwelling” within the meaning of A.R.S. § 41-1491(7)(a).

10 75. Marlana’s request for emergency assistance resulted from her disability and was
11 not a violation of Defendant’s crime-free policy that warranted terminating Complainant’s
12 tenancy.

13 76. Defendant moved to evict Davis and Marlana without evaluating whether
14 Marlana’s tenancy posed a safety risk, including the requirement to consider reasonable
15 accommodations to eliminate any actual, unacceptable risk to safety because of disability.

16 77. As a result of Defendant’s discrimination, upon information and belief, Davis and
17 Marlana have suffered actual and monetary damages, including damages for mental anguish,
18 pain, suffering, emotional distress, humiliation, embarrassment, inconvenience, loss of the right
19 to equal opportunity to enjoy their dwelling, and loss of their rights under the AFHA.

20 78. Punitive damages are appropriate because Defendant intentionally discriminated
21 against Davis and Marlana because of Marlana’s disability and Defendant acted with callous
22 disregard of or reckless indifference to Davis’ and Marlana’s civil rights.

23 79. The State has reasonable cause to believe that Defendant denied Davis and
24 Marlana the right, under A.R.S. § 41-1491.19 of the AFHA, to rent an apartment without
25 discrimination because of Marlana’s disability.
26

1 G. Order Defendant to make Davis and Marlena whole for any damages suffered
2 and award actual and punitive damages in an amount to be determined at trial pursuant to
3 A.R.S. § 41-1491.34(C);

4 H. Order the State to monitor Defendant's future compliance with AFHA pursuant
5 to A.R.S. § 41-1491.34(C);

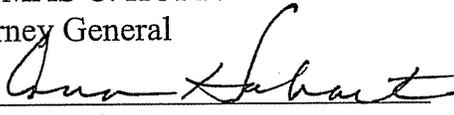
6 I. Award the State its costs incurred in bringing this action, and its costs in
7 monitoring Defendant's future compliance with the AFHA, as allowed by A.R.S. §§ 41-
8 1491.34(C) and 1491.35(B)(2);

9 J. Award the State its reasonable attorneys fees, as allowed by A.R.S. §
10 1491.35(B)(2); and

11 K. Grant such other and further relief as this Court may deem just and proper in the
12 public interest.

13 DATED this 16th day of March, 2012.

14 THOMAS C. HORNE
15 Attorney General

16 By 

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