

FAIR HOUSING DISCRIMINATION COMPLAINT

Pursuant to the Fair Housing Act, 42 U.S.C. § 3610, complainants Donata Banks and the Fair Housing Center of Central Indiana hereby file a complaint of housing discrimination as follows:

1. Complainants:

Donata Banks
[REDACTED]
[REDACTED]
[REDACTED]

Fair Housing Center of Central Indiana
Executive Director: Amy Nelson
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a. Representing Complainant:

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2. Other Aggrieved Persons.

[REDACTED]
[REDACTED]
[REDACTED]

3. The following discriminatory housing practices are alleged to have occurred:

Respondents injured complainants by committing the following discriminatory housing practices in violation of 42 U.S.C. §§ 3604 and 3617:

- a. Making housing unavailable because of race, color, or national origin;
- b. Discriminating against plaintiffs and others in the terms, conditions, and privileges of residency at Twin Creeks, and in the provision of services and facilities in connection therewith because of plaintiffs' race, color, or national origin;
- c. Creating and maintaining, and failing to take prompt remedial action to correct, a hostile environment based on race, color, or national origin at Twin Creeks;
- d. Making statements that indicate a preference, limitation, or discrimination based on race, color, or national origin in connection with a dwelling;
- e. Interfering with persons in their enjoyment of a dwelling because of the race, color, or national origin of such persons, or of associates of such persons.

4. The alleged violations occurred because of:

Race, color, or national origin.

5. Address and location of the property in question (or if no property is

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involved, the city and state where the discrimination occurred):

Discrimination took place in and around numerous residences within the Twin Creeks subdivision, including [REDACTED] Twin Creeks Drive, Indianapolis, Indiana 46268

6. Respondent:

Twin Creeks Homeowners Association, Inc.
Agent for service: Kirkpatrick Management Co. Inc.
5702 Kirkpatrick Way
Indianapolis, IN 46220

Kirkpatrick Management Co., Inc.
5702 Kirkpatrick Way
Indianapolis, IN 46220

Vicki New
3372 Roundlake Ln.
Whitestown, IN 46075-5504

7. The following is a brief and concise statement of the facts regarding the alleged violation:

Twin Creeks is a residential subdivision of single-family homes located in northwest Indianapolis. There are approximately 226 dwellings located in Twin Creeks. It is a planned community governed by a Declaration of Covenants, Conditions and Restrictions, recorded with the Pine Township Assessor on January 29, 1993, Document Number 930013680 ("CC&Rs). As set forth in the CC&Rs, the Twin Creeks Homeowners Association ("HOA") was incorporated as a non-profit corporation with the purpose of implementing and enforcing the terms contained in the CC&Rs.

Respondent Kirkpatrick Management Company, Inc. ("Kirkpatrick") was hired to serve as the manager of Twin Creeks in or around July 2009, and served as the manager at all times relevant to this complaint. Kirkpatrick advertises as a "full service" management company.

Respondents Vicki New and James New lived in a dwelling in Twin Creeks from approximately March 2016 to December 2018. During this time, the News engaged in a pattern and practice of harassing, taunting, and threatening African American and Latino residents and creating a racially hostile environment at Twin Creeks. Respondents HOA and Kirkpatrick knew about the News' discriminatory housing practices and failed to take action to correct or end the discriminatory conduct towards complainant, her family, and other non-white residents in Twin Creeks.

Complainant Donata Banks

In July 2016, Donata Banks, her husband, her mother, and her daughter moved into their rental house located at [REDACTED] across the street from Vicki and James New.

Shortly after they moved in, in or around August 2016, Mrs. New began to verbally harass the Banks family. New called Banks a "black n----- bitch" and made comments about the neighborhood being "better before all of you n----- moved in," or words to that effect.

On or about August 22, 2017, Banks witnessed Vicki New yelling at a Latino worker who was inspecting the roof of another Twin Creeks house. When Banks and her husband went over to find out what was happening, New told them that she "can't stand none of you n-----, f--s, and Mexicans." James New came outside and called Mr. Banks as a "n-----". Banks called the police.

Mrs. New frequently harassed the Banks and their family outside their home. When the Banks children sat on their front porch, New would yell "shut your stupid mouths up," and other words to that effect. During a Banks family reunion, New shouted at visitors to stay inside.

Donata Banks and her family also became aware of the News' discriminatory treatment of other neighbors based on their national origin and race, which contributed to the hostile environment.

As a renter, Ms. Banks did not believe that she had the right to complain to the HOA or the management company about the racial harassment. However, she had heard from other Twin Creeks' residents that they (homeowners) had complained to both the HOA and Kirkpatrick, to no avail.

Other Evidence of discrimination based on race and national origin at Twin Creeks

Other residents of Twin Creeks corroborate that Vicki and James New created a hostile environment and engaged in discrimination on the basis of residents' race, color, and national origin.

Witness LQ

In August 2016, LQ purchased and moved into the house located at 6303 Twin Creeks Drive, three houses away from Vicki and James New. LQ identifies as Latina or Hispanic. LQ and her mother, who also identifies as Latina or Hispanic, run a family daycare out of their Twin Creeks house. The daycare is licensed and permitted pursuant to Indiana law.

The first evening after LQ moved in, on or around August 2016, Vicki New came to LQ's house and asked her what she was doing in the house at night. Mrs. New introduced herself as a representative of the Twin Creeks HOA.

Shortly after being questioned by New, LQ contacted Vincent White, the property manager from Kirkpatrick, and asked if New was truly a representative of the HOA. White said that New was not, but that New was "a problem for the community," or words to that effect. He suggested that LQ call the police if she felt harassed by New.

On or about September 5, 2016, New came to LQ's door around the time that many children were being picked up from LQ's in-home daycare. New yelled through the closed door, asking if there were children in the house, and screaming that it was illegal to operate a business in the neighborhood. New told LQ to open the door or she would "regret it," or words to that effect. New did not move away from the door, and LQ feared that she, her clients, and the children of her clients would be trapped inside. Mrs. New yelled that LQ's clients were "a piece of shit

and do not belong here,” or words to that effect. LQ called the police out of fear for their safety. When LQ told New through the door that she was calling the police, New left.

On or around September 6, 2016, LQ contacted Kirkpatrick Management a second time to find out if the HOA could in fact close down the daycare business, as New had suggested. Kirkpatrick told her to continue calling the police if New bothered her.

New repeatedly attempted to interfere with LQ’s daycare business. LQ believes that New called the police and claimed that LQ was running an illegal business. New also called the local daycare licensing agency and asked them to rescind LQ’s license, because, she alleged, the children were being mistreated. In response, the manager of the licensing agency made a surprise visit to the daycare and found New’s accusations to be false. New then contacted the Better Business Bureau (“BBB”) and falsely reported that the daycare was an illegal business. The BBB sent an inspector who reviewed LQ’s licenses and found that the daycare was operating legally. On information and belief, New also called the Indiana Department of Children’s Services (“DCS”) and made a false complaint with the purpose of harassing LQ. A DCS agent visited to investigate allegations that LQ was mistreating the children. When the daycare remained open, New again called the police, falsely reporting that children had been left alone outside. When the police came, they found LQ’s mother supervising the children in the backyard and told her about the call they received from New. Each of these inspections interfered with the day-to-day operation and mission of LQ’s day care and harmed LQ’s professional reputation.

New’s harassment continued. When LQ went outside to pick up the mail or care for the lawn, New was frequently nearby. She repeatedly told LQ to “go back to your country,” and “you don’t belong here,” or words to that effect. New also regularly harassed and intimidated LQ’s clients. When clients arrived to pick up their children, New sometimes photographed them and told them that DCS was going to come take their children away because the daycare was an “illegal business.” New used racial slurs toward a biracial couple with a child in LQ’s daycare, including calling the mother “a piece of shit” in front of her children. New then contacted the children’s father’s employer to falsely claim that he did not take proper care of his children. Due to the attacks by New, the couple decided to move

their children to a different daycare. Within the next two weeks, two other families left the daycare out of fear of New. Ultimately, LQ made the difficult decision to close down the daycare as a direct result of the harassment, discrimination, and defamatory statements made by Vicki New.

Though the harassment decreased after the closure of the daycare, New still regularly yelled at LQ to “go back to your country,” and other words to that effect.

LQ contacted Kirkpatrick Management Company a third time to ask for action to be taken against New for her discriminatory conduct. A woman who identified herself as Vincent White’s secretary stated that Kirkpatrick Management could not do anything to help. She added that Mr. White (Kirkpatrick’s property manager for Twin Creeks) was very busy.

Witness LR

In March 2017, LR and her family purchased and moved into their home at Twin Creeks, next door to defendants James and Vicki New. Starting almost immediately, Vicki New began harassing, threatening, and intimidating LR and her family based on their national origin. LR and her family identify as Latino or Hispanic.

Within the first month of LR’s residency at Twin Creeks, New called the police numerous times with false allegations about LR and her family.

On or about June 17, 2018, LR received a letter from the Indiana Department of Child Services (“DCS”) informing her that they received complaints of “suspected abuse and/or neglect” of her child. On information and belief, New lodged the unfounded complaint with the purpose of harassing LR based on her national origin.

In August of 2018, New’s harassment and insults towards LR and her family escalated to threats. LR began video recording New’s harassment on her cell phone. On or about August 3, 2018, LR recorded New threatening to call DCS to take LR’s daughter away. New called LR a “dead Mexican” and described her African-American neighbor as a “n-----”.

Four days later, on or about August 7, 2018, Mrs. New threatened to kill LR's family. New called LR a "fat bitch" and a "piece of shit." New told LR that "you don't deserve to be a mother to a child," or words to that effect. In the same incident, all of which was recorded on LR's cell phone, New told LR that she wouldn't be alive if New's grandfather were still alive. In reference to LR, New stated, "[t]hat fucking Mexican is going to be dead." Mrs. New threatened to "wrap a hose around" LR's neck.

Two days later, on or around August 9, 2018, New shouted at LR, "fucking Mexican trash. Go back to Mexico." Again, LR video recorded the harassment on her cell phone.

On or around August 26, 2018, New harassed LR and her husband while they were working in their yard. New pulled the "No Trespassing" signs out of LR's yard, broke them, and threw them at LR and her husband.

LR repeatedly complained about New's harassment to Defendants Twin Creeks HOA and Kirkpatrick Management Company. LR contacted them for the first time on or around March 2017. An HOA representative told her that the HOA could not do anything about the situation and that she could contact the police.

On or about August 9, 2017, LR met Christopher Young, the Vice President of the HOA, at a neighborhood social event. She told Mr. Young about her experiences with Vicki New. Mr. Young told her that he would call her to set up an appointment to discuss the situation. Neither he nor anyone else from the HOA ever followed up.

On or about August 26, 2018, LR sent an email to Vincent White at Kirkpatrick Management detailing her frustrations with the News' behavior towards her and her family. White responded in an email stating, "I am powerless to make Vicki stop harassing her neighbors."

Witnesses PB and KB

Vicki New repeatedly called PB, an African American renter at Twin Creeks, a "black bitch" and referred to PB and her husband KB as "n-----s". During one incident during the Spring of 2016, James New stood close by while Vicki New

berated the couple with racial slurs. Mr. New was openly carrying a gun in a holster on his hip at the time.

Baker contacted Kirkpatrick about New's behavior via email and phone. She never received a response from Kirkpatrick Management or anyone else.

Witness DC

Vicki New taunted, intimidated and trespassed on the property of DC, another African American homeowner at Twin Creeks. One morning in August or September 2016, DC entered his open garage to find Vicki New standing inside it. She told him, "you n----- don't belong here," or words to that effect.

DC also witnessed Vicki New verbally harassing prospective homebuyers who visited a house for sale next door to the New residence. The prospective homebuyers were non-white.

When DC hired a Latino contractor to inspect his roof, Vicki New stood in the middle of the street and shouted that "all Mexicans should go back to their country," or words to that effect.

The same day, upon seeing DC's daughter pull out of the driveway in her car, New yelled at DC to "control that n----- bitch."

In or around April 2018, DC was cutting his neighbor's grass when New came over to the yard and told DC that he had no right to be cutting their grass. She told him that he should "take [his] black ass home" and called him a n-----."

In or around May 2018, DC called the HOA and spoke with Vincent White about New's behavior. White told DC that the HOA and Kirkpatrick received "constant complaints" about New, or words to that effect. White indicated that there was nothing he could do about New's conduct.

In or around August 2018, DC called Kirkpatrick Management to again complain about New's discriminatory harassment. The woman who answered the phone told DC that they were "tired of New as well," or words to that effect. She indicated that there was nothing that she could do to help DC.

Witness LHD

LHD, an African American woman, rented a dwelling located in Twin Creeks from April 2011 to April 2016. For approximately the last year of her tenancy, LHD lived across the street from Vicki and James New. Throughout that year-long period, New subjected LHD and her family to discrimination based on race, including threats, harassment, and derogatory slurs, almost daily. On more than one occasion, Vicki New referred to LHD, her wife, and her teenage daughters as “whores” and “black bitches.” New called LHD’s sons “drug lords.” She threatened to kill LHD and her family.

New repeatedly contacted animal control to make false accusations about LHD’s two small dogs. When animal control did not take away the dogs or otherwise intervene, New said that she would kill LHD’s dogs. Specifically, New told her that she would let her big dog eat LHD’s small dogs.

LHD contacted the police many times to report New’s behavior out of fear for the safety of herself, her family, and her property.

Sometime in 2016, LHD called the HOA to complain about New’s discriminatory harassment. She spoke with a man who identified himself as the president of the HOA. He stated that the HOA could not take her complaints because she was a renter.

In April 2016, LHD moved out of her house in Twin Creeks because of the constant exposure to derogatory slurs, concerns about the safety of her family, and the HOA’s refusal to take any action to stop New’s discriminatory conduct.

Respondents refused to take any action against the News

Despite their knowledge of Vicki New’s pattern of discriminatory conduct and the effect of her conduct on the complainants and other people of color living in Twin Creeks, respondents refused to take any action to curb New’s conduct and protect the rights and safety of other residents until after news media reports surfaced in 2018.

At a Twin Creeks HOA meeting in 2017, Kirkpatrick property manager, Vincent White, stated that he was “tired of receiving phone calls regarding incidents with New,” or words to that effect, and that he was going to start “charging” for each phone call that he received.

The HOA Board of Directors also sent letters to all Twin Creeks homeowners, admitting that “it has come to our attention that a homeowner in our community has been verbally confronting other Twin Creeks residents and owners, as well as the community’s grounds contractors, on a regular basis. Some of these conversations, we are told, have been confrontational in nature.” The letter; however, did nothing more than disavow any connection between the HOA Board of Directors and Vicki New.

The Twin Creeks HOA was obligated and empowered to take action against Vicki New, but refused or failed to do so. The HOA has CC&Rs that prohibit the type of conduct that Vicki New and James New engaged in. For example, Article IX, Section 13, of the CC&Rs states:

“...Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.... No noxious, destructive or offensive activity shall be allowed in any Homes, on any Lots or in the Common Area or in any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other owner or to any other person at any time lawfully residing on the Property.”

The CC&Rs specifically grant the HOA the right to enforce rules contained in the CC&Rs, such as the provision quoted above. Under Section 2A of Article IV, entitled Property Rights, the CC&Rs affirm “[t]he right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same.”

Although representatives of the HOA repeatedly asserted to residents that they could do nothing to stop the News’ discriminatory behavior, the HOA initiated legal proceedings against the News based on non-payment of HOA dues. On or around March 30, 2017, the HOA filed a complaint in the Marion Circuit/Superior

Court against James and Vicki New in order to collect on the News' unpaid HOA dues. (Case Number 49D121703CC012935)

On August 28, 2018, two local news stations -- TheIndyChannel.com and WISH-TV -- published stories about neighbor harassment at Twin Creeks, including a video of Vicki New threatening and attacking a neighbor based on her national origin. Vicki New was subsequently charged with two misdemeanor offenses -- trespassing and battery -- based on the incident shown in the news reports.

One week after the news stories were released, on September 4, 2018, an attorney, who purported to represent the HOA, issued a cease and desist letter to Vicki New, laying out some of the incidents reported to the Association and affirming that the News' actions constituted a nuisance, a severe and pervasive hostile environment, and a violation of the of the HOA's binding covenants. The respondents asserted in their letter that this was a "zero tolerance" demand, meaning a single incident in violation of the demand would trigger legal action against the News.

At around the same time, the News placed their house on the market. Shortly thereafter, they moved out of Twin Creeks.

Complainant Fair Housing Center of Central Indiana

Respondents' unlawful and discriminatory conduct injured the Fair Housing Center of Central Indiana (FHCCI), causing it to divert its scarce resources and frustrating its mission. The FHCCI has diverted staff time from other projects in order to counsel complainants, locate witnesses and victims, and determine the existence and extent of respondents' discriminatory housing practices. Respondents' discriminatory housing practices have frustrated the FHCCI's mission. The FHCCI must continue to take action to counteract the effects of respondents' discrimination, including educating the residents of Indiana about housing discrimination.

8. The most recent date on which the alleged discrimination occurred:

August 28, 2018.

9. Types of federal Funds identified:

Unknown.

10. The acts alleged in this complaint, if proven, may constitute a violation:

- of the Fair Housing Act, 42 U.S.C. §§ 3604, 3617; and,
- of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982, and 1985(3).

11. Representation Authorization.

Complainants hereby designate Brancart & Brancart and Macey Swanson LLP, as their representatives in connection with this fair housing complaint.

* * *

Dated: April 3, 2019



Liza Cristol-Deman
Attorney for Complainants, Donata
Banks and Fair Housing Center of
Central Indiana