

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL AND TINA CARPENTER,

Plaintiffs,

09-CV-6552

v.

**DECISION
and ORDER**

CHURCHVILLE GREENE HOMEOWNER'S
ASSOCIATION, INC., BETH BIECK, TOM
BIONDOLILLO, HOPE JOHNSON, GARY HUTCHERSON,
BARB KOEPKE, PAMELA HILL, CHARLES HAWKINS,
PAT CIPOLLA, RICK WALDO, AND REALTY
PERFORMANCE GROUP, INC.

Defendants.

Plaintiffs, Michael and Tina Carpenter ("Plaintiffs"), bring this action against the Defendants the Churchville Greene Homeowner's Association, Inc., Beth Bieck, Tom Biondolillo, Hope Johnson, Gary Hutcherson, Barb Koepke, Pamela Hill, Charles Hawkins, Pat Cipolla, and Rick Waldo, and Realty Performance Group, Inc., (collectively, "Defendants") alleging various violations of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* Plaintiffs' initial complaint was filed on November 2, 2009. The case was referred to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636 on December 22, 2009.

On May 4, 2010, Plaintiffs amended the complaint to include additional allegations, including a claim for retaliation. Then, on January 28, 2011, Defendants filed a motion to amend the answer to

include an affirmative defense relating to the retaliation claim and to clarify the second and third affirmative defenses. Magistrate Judge Payson considered the motion and issued a Report and Recommendation on September 29, 2011, recommending that this Court deny Defendants' motion to amend the answer to include the additional affirmative defense, but grant the motion to clarify the second and third affirmative defenses. No objections have been filed to Judge Payson's Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1), after the filing of a Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations. After such filing,

[a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Having reviewed the Report and Recommendation and no objections having been filed, it is hereby

ORDERED, that the Report and Recommendation is adopted in its entirety and Defendants' motion to amend the answer to include a fifth affirmative defense is denied and their motion to clarify the second and third affirmative defenses is granted.

ALL OF THE ABOVE IS SO ORDERED.

s/ Michael A. Telesca
MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
December 1, 2011