UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, Charging Party, v. Windsor Gardens Association Respondent.	)	HUD ALJ No. FHEO No. 08-07-0229-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about July 19, 2007, the complainant, Kim Kendrick, the then Assistant Secretary for Fair Housing and Equal Opportunity of the U.S. Department of Housing and Urban Development ("Complainant") filed verified complaints with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondent Windsor Gardens Association ("Respondent") violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the "Act"), by discriminating against the public because of familial status and making discriminatory statements in violation of 42 U.S.C. §3604.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has redelegated to the Regional Counsel (71 Fed.Reg. 62802), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Office of Fair Housing and Equal Opportunity Region VIII Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on familial status and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondent Windsor Gardens Association is charged with discrimination based on familial status in violation of 42 U.S.C. §§3604(a) and (c) of the Act as follows:

1. It shall be unlawful to refuse to sell or rent after making a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604(a); *see also* 24 C.F.R. §100.60.

2. It shall be unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling unit that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. §3604(c); *see also* 24 C.F.R. §100.75.

3. Complainant Kim Kendrick was the Assistant Secretary for Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development. Pursuant to the authority granted to the Assistant Secretary under 42 U.S.C. §3610, Complainant Kendrick, on behalf of the Secretary of the U.S. Department of Housing and Urban Development, filed a HUD complainant alleging discrimination based on familial status.

4. The Complaint alleges Windsor Gardens Association ("Respondent" or "Respondent WGA") was responsible for discriminatory advertising, statements and notices, and otherwise denying or making housing unavailable based on familial status.

5. The subject property, Windsor Gardens, is a "Common Interest Community" located at 595 South Clinton Street, Denver, Colorado 80247. The subject property consists of 84 buildings with approximately 2,690 condominium units and more than 3,000 residents.

6. Respondent WGA is a Colorado nonprofit corporation established to operate and manage the subject property. At all times relevant to this Charge, Respondent WGA was responsible for the operation, maintenance, and management of the subject property, including responsibility for the subject property's rules, bylaws, restrictions, and policies.

7. At all times relevant to this charge, Respondent WGA's operational and governing documents and policies prohibited residency of children under the age of 17 at the subject property.

8. The original 1962 condominium declarations for the subject property were amended, restated, and consolidated into a certain "Amended and Restated Condominium Declaration for Windsor Gardens" ("Amended and Restated Declaration") recorded in the real estate records of the City and County of Denver, Colorado, on March 27, 2002.

9. Article 5.3 of the Amended and Restated Declarations, "Age, Use, and Occupancy Restriction," stated: "Windsor Gardens is an independent living community for active adults. Each Unit shall at all times be occupied and used by a person not less than fifty (50) years of age; provided, however, that any resident children occupying the Unit shall not be below the age of seventeen (17)."

10. Between March 27, 2002 and December 27, 2009, Respondent WGA twice amended its "Amended and Restated Declarations," but failed to amend Article 5.3 "Age, Use, and Occupancy Restrictions."

11. On or about December 28, 2009, but subsequent to the filing of the HUD Complaint, Respondent WGA amended Article 5.3 of its Amended and Restated Condominium Declaration to read:

> Windsor Gardens is an age restricted independent living community for active adults primarily 55 years of age or older. The Condominium shall be operated in compliance with all applicable Federal and State laws regarding housing for older persons. No person under 17 years of age may occupy a unit. The Board may establish policies and procedures from time to time as necessary to maintain Windsor Gardens status as an age restricted community under Federal and State laws and such policies and procedures as may be desirable to further address occupancy of units.

12. From at least March 27, 2002, through December 27, 2009, Article 5.3 of Respondent WGA's Amended and Restated Condominium Declaration, "Age, Use, and Occupancy Restriction" stated: "Windsor Gardens is an independent living community for active adults. Each Unit shall at all times be occupied and used by a person not less than fifty (50) years of age; provided, however, that any resident children occupying the Unit shall not be below the age of seventeen (17)."

13. From at least December 2006 until December 2009 Respondent WGA's Community Rental Policy restricted rental occupancy to heads of household at least 50 years of age and over without resident children under the age of 17. The rental policy stated in part: "Age and Occupancy restriction. No apartment shall be rented to another unless the head of household regularly residing in the unit is 50 years of age or over and no children under the age of 17 will be living in the unit."

14. Prior to the filing of the HUD Complaint, Respondent WGA actively marketed the subject property for persons over the age of 50. Respondent WGA's marketing portfolio and print literature consistently contained language that indicated a

preference, limitation, or discrimination based upon familial status, which included, but was not limited to, the following statements:

- "Over 50? Dreaming of a Country Club lifestyle?"

- "Windsor Gardens, Denver's premier in Town 50+ Community."

- "[n]eslted on 143 acres of lawns and gardens amid ancient elms and towering pines. Windsor Gardens, an adult 50+ golf course community."

- "a carefree, fun-filled lifestyle is the primary reason that active adults, aged 50 and older, move to Windsor Gardens"

- "head of household must be 50 years of age; children under the age of 17 are not permitted."

- "Windsor Gardens Association: protecting, preserving, and enhancing the property as an active, independent adult community."

15. From at least March 27, 2002 until at least December 27, 2009, the subject property did not meet the criteria necessary to qualify as housing for older persons. *See* 42 U.S.C. §3607(b)(2); *see also* 24 C.F.R. Part 100, Subpart E.

16. By implementing, promoting, and utilizing an age restriction of 50 years and older, Respondent WGA did not intend to be operate Windsor Gardens as housing for persons 55 years of age or older.

17. Respondent WGA failed to implement and adhere to adequate policies and procedures to verify occupancy by at least one person 55 years of age or older in each of its units. *See* 24 C.F.R. § 100.307.

18. By maintaining restrictions prohibiting children under the age of 17 from residing at the subject property Respondent WGA violated 42 U.S.C. §3604(a).

19. Respondent WGA has discriminated in the sale and rental of housing based on familial status and made housing unavailable to families with children in violation of 42 U.S.C. §3604(a).

20. Respondent WGA made, printed, or published, or caused to be made, printed, or published statements that indicated a limitation, preference, or discrimination based on familial status in violation of 42 U.S.C. §3604(c).

21. Respondent WGA's discriminatory conduct denied rental and housing ownership opportunities to families with children and deprived citizens of Denver, Colorado, the opportunity to live in non-segregated communities.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C.§ 3610(g)(2)(A) (2004) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of Section 3604(a) and (c) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondent, as set forth above, violate the Fair Housing Act, as amended 42 U.S.C. § 3601 *et seq.*;

2. Requires WGA to develop and submit to the Department for approval, procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. These procedures must contain provisions to ensure that reliable documentation sufficient under 24 C.F.R § 100.307 is used to verify the age and occupants of units at the subject property. Such verification must take place at least every two years and reported to the Department within 30 days of compilation.

3. Assesses a civil penalty against Respondent for each violation of the Act that the Respondent has committed pursuant to 42 U.S.C. §3612(g)(3): and

4. Awards additional appropriate relief under 42 U.S.C. §3612(g)(3), including, but not limited to, the funding and establishment of a victim identification and compensation fund.

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. §3612(g)(3).

Respectfully submitted,

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