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, on behalf of [redacted] Charging Party,	)	
v.	)	FHEO No. 06-12-0342-8
Michael Croom, Respondent.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On December 19, 2011, [redacted] (Complainant) filed a verified complaint with the United States Department of Housing and Urban Development (HUD), alleging that Michael Croom (Respondent) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), by discriminating based on disability, in violation of 42 U.S.C. § 3604(f). Complainant alleged Respondent refused to continue his tenancy because of Complainant's disability, in violation of Section 3604(f)(1), and Respondent denied Complainant's requests to make reasonable modifications to the subject property, in violation of 42 U.S.C. § 3604(f)(3)(A). In addition, Complainant alleged Respondent took retaliatory actions against Complainant in response to Complainant's requests for modifications, in violation of 42 U.S.C. § 3617. The complaint was amended on July 10, 2012, to add Complainant's wife, [redacted] as a complainant, and to add attorney representatives for both parties. In addition, the complaint was amended to include both Section 3604(f)(2) and Section 3604(f)(3)(A) for the denial of reasonable modification. Then, on July 23, 2012, the complaint was amended to remove Aisle McGrath as a complainant.

The Act authorizes the Secretary of HUD to issue 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 that authority to the General Counsel. 24 C.F.R. §§ 103.400 and 103.405. The General Counsel has re-delegated that authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Office of Fair Housing and Equal Opportunity Region VI 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 and that HUD's investigation of the subject complaint supports the issuance of this Charge of Discrimination, which he has authorized and directed the Regional Counsel to issue pursuant to 24 C.F.R. § 103.405.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the aforementioned Determination of Reasonable Cause, Respondent Michael Croom is charged with discriminating against Complainant [redacted] based on disability in violation of 42 U.S.C. § 3604(f)(1), 42 U.S.C. § 3604(f)(2), 42 U.S.C. § 3604(f)(3)(A), and 42 U.S.C. § 3617 of the Act as follows:

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of the disability of a buyer or renter. 42 U.S.C. § 3604(f)(1).

2. It is unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of the disability of that person or a person residing in that dwelling after it is sold. 42 U.S.C. § 3604(f)(2). Discrimination includes refusal to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. 42 U.S.C. § 3604(f)(3)(A).

3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title. 42 U.S.C. § 3617.

4. Complainant [redacted] is an individual with a disability as defined by the Fair Housing Act. In January 2011, Complainant began experiencing severe medical problems that required hospitalization. Upon release from the hospital in January 2011, Complainant was unable to walk and required the use of a wheelchair. In September 2011, after further testing, Complainant was diagnosed with multiple sclerosis (MS).

5. Complainant is an aggrieved person as defined by the Act.

6. Respondent Michael Croom is the owner and landlord of three single-family rental houses and a four-plex in New Mexico. He also owns his personal residence, a single-family house located at [redacted] Albuquerque, New Mexico.

7. On October 1, 2008, Complainant signed an annual rental lease agreement with Respondent for the lease period of November 1, 2008, to October 31, 2009, for the subject property, a single-family house located at [redacted], Albuquerque, New Mexico, where Complainant and his wife and children resided.

8. Complainant and Respondent renewed the annual rental lease agreement for on October 1, 2009, with an expiration date of October 31, 2010. These two annual leases stipulated the tenant would pay the rent by the first of each month. If the rent was not paid in full on or before the sixth day of the month, an additional delinquent charge could be added to the payment.

9. On October 31, 2010, the annual lease for the subject property expired, and the lease reverted to a month-to-month tenancy.

10. As previously stated, in January 2011, Complainant was hospitalized for severe medical issues and upon release, he required the use of a wheelchair. On January 24, 2011, Complainant's wife sent a letter to Respondent requesting permission to install a ramp at the subject property for Complainant's wheelchair use. Respondent granted this request, and a ramp was installed.

11. In May 2011, because of Complainant's disability, his parents, [redacted] moved into a home across the street from the subject property, to assist and help Complainant with his physical and medical needs.

12. On August 8, 2011, Respondent visited Complainant's home because Respondent had not yet received the rent for the month of August. On August 18, 2011, Respondent received and accepted the payment for August rent from Complainant.

13. On September 8, 2011, Respondent had not received September rent from Complainant. Respondent issued a Notice of Default and Termination of Tenancy for non-payment of rent, instructing Complainant to pay the rent and a late fee.

14. On September 9, 2011, Respondent received the payment for September rent, including a payment of the late fee. Respondent accepted the rent payment and returned the late fee to Complainant.

15. On October 6, 2011, Complainant's father, on behalf of Complainant, faxed a letter to Respondent requesting permission to modify the subject property to make it fully accessible for Complainant. The letter stated Complainant was diagnosed with MS and would be using a wheelchair for quite some time. The letter also stated a [redacted] Occupational Therapist had made recommendations for changes at the subject property, and therefore, [redacted] was seeking permission from Respondent to make some structural changes, including shortening and/or partially removing the wall in the master bathroom that separates the commode and shower area, removing a shower door, installing a

higher toilet, removing the area under the sink, moving an electrical switch, retiling the shower and putting in a new floor (all in the master bathroom), and installing an overhead light fan in the master bedroom. The letter also requested permission to lower the kitchen sink by installing a sink designed to be shifted up and down, install sliders in the cabinets and a new stove, install shelves in the garage, install a fan with lighting in the front living room, replace the sliding back door, install a ramp to the back door, and landscape the back yard.

16. The letter advised Respondent that all of the changes would be made at Complainant's expense and that the individuals doing the work would be "friends that are in the contracting business and are licensed experts in their field." [redacted] lso assured Respondent that if permission was granted and Respondent wished for the property to be returned to its original condition, Complainant would comply.

17. On October 7, 2011, Respondent faxed [redacted] a letter giving permission for a ramp to be placed at the back door, but denying the rest of the reasonable modification request. Respondent's response letter stated, in part,

> My rental properties are my business and primary source of income in a market that is at best, uncertain. It is my business judgment that the structural alterations you propose would not enhance the property, but rather would limit the marketability. That is the answer to your inquiry and I would ask that you not attempt to debate my decision.

18. On October 8, 2011, Respondent hand-delivered a "Notice of Default and Termination of Tenancy" to Complainant due to non-payment of the October rent. The notice stated that if the rent and late fee were not paid within three days of the notice, the lease would terminate.

19. In addition to the language that was on previous "Notice of Default and Termination of Tenancy" documents provided to Complainant and Respondent's other tenants, this document had an additional paragraph entitled "Termination of Tenancy". This additional paragraph stated, "Effective November 31, 2011 at 12 am your month to month tenancy is terminated. If you wish to renew the lease, please sign the enclosed one-month lease agreement. Please note the rent is increased to $975.00 per month and the grace period for payment is four days."

20. On October 11, 2011, Respondent received and accepted the October rent and late fee payment.

21. On October 27, 2011, Respondent received another request for reasonable modification from Complainant's neighbor and advocate, [redacted] This letter requested permission for Complainant to modify the subject property, focusing on the modifications to the master bathroom previously requested by Complainant's father, and again assuring that the modifications would be made at

Complainant's expense using licensed contractors.

22. On October 28, 2011, Respondent sent a letter to Complaint informing him the offer to renew the lease was withdrawn, the tenancy was terminated, and Complainant must vacate no later than November 30, 2011.

23. On November 1, 2011, Respondent received the November rent payment including the $25 rent increase stated in the October 8th letter.

24. On November 1, 2011, Respondent mailed Complainant a refund of the $25 rent increase and a $5 refund for overpayment of the October late fee. The letter instructed the Complainant to vacate the property no later than November 30, 2011.

25. Sometime late in November 2011, Complainant received a letter from Respondent informing him that, after Respondent's interaction with a local newspaper reporter, Respondent would allow Complainant to continue living in the rental home through the end of January 31, 2012, if Complainant would agree to vacate by that date. The letter began by reiterating that Respondent was terminating Complainant's tenancy because of his history of late payments, but went on to state, in part, "I have tried to be supportive and cooperative, but I have been receiving demands that I modify my rental house to comply with your needs. The simple truth is that my rental house no longer meets your needs. I'm sorry. You need to find living quarters that meet your requirements for daily living."

26. On or about December 1, 2011, Respondent sent Complainant another letter, wherein he clarified the month-to-month tenancy was terminated effective November 30, 2011, and that Complainant had no right of possession in the property. He then stated that after speaking with Complainant's attorney and due to the upcoming holidays, he did not plan to file for eviction provided Complainant vacated the premises no later than December 31, 2011.

27. Complainant moved out of the subject property on December 19, 2011.

28. Rental payment history records dating from November 1, 2008, to December 30, 2011, revealed that prior to Complainant becoming disabled, he was late paying the rent several times - once in 2008, in 2009, and in 2010. In 2011, after the onset of his disability in January 2011, Complainant's rental payment was late in August, September, and October 2011. Respondent consistently accepted Complainant's late rental payments.

29. Rental payment history for other prior and current tenants showed other renters were late with the rental payment on multiple occasions. Five other tenants on a month-to-month tenancy had also been issued "Notices of Default and Termination of Tenancy" for late payment of rent, but none were evicted, despite late payments.

30. To Respondent's knowledge, none of these tenants were disabled.

31. Rental payment history showed one set of tenants, who resided in one of Respondent's four-plex units, was late in paying their rent and received a default notice in December 2009, and then again in four consecutive months in 2010: March, April, May, and June. Those tenants were never evicted by Respondent.

32. By withdrawing his offer to renew Complainant's lease and refusing to continue Complainant's tenancy because of Complainant's disability, Respondent discriminated in the rental of a dwelling and otherwise made housing unavailable in violation of 42 U.S.C. § 3604 (f)(1).

33. By refusing to permit, at Complainant's expense, reasonable modifications of the subject property which were necessary to afford Complainant equal opportunity to use and enjoy his dwelling, Respondent violated 42 U.S.C. § 3604(f)(2) and § 3604(f)(3)(A).

34. By withdrawing his offer to renew the lease and terminating Complainant's tenancy because of Complainant's requests for permission to make reasonable modifications to the subject property, Respondent retaliated against Complainant in violation of 42 U.S.C. § 3617.

35. Because of Respondent Michael Croom's discriminatory conduct, Complainant suffered damages, including emotional and physical distress and inconvenience. Complainant had to relocate himself and his family, lost the convenience and support of his parents being across the street to help him with his medical and physical needs. Complainant became angry, started feeling anxiety, fear, and hopelessness. He experienced sleeplessness, nightmares and loss of appetite. He became afraid to talk to his current landlord to ask for anything in fear of losing his home, becoming homeless or breaking up his family.

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent Michael Croom with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(1), 42 U.S.C. § 3604 (f)(2), 42 U.S.C. § 3604 (f)(3)(A), and 42 U.S.C. § 3617, and prays that an Order be issued that:

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

2. Enjoins Respondent Michael Croom from discriminating because of disability against any person in any aspect of the purchase or rental of a dwelling;

3. Enjoins Respondent Michael Croom from retaliating against any person in any aspect of the purchase or rental of a dwelling;

4. Directs Respondent Michael Croom to attend Fair Housing training;

5. Directs Respondent Michael Croom to maintain and follow a written policy at his properties regarding consideration of requests for reasonable modification;

6. Awards such damages as will fully compensate Complainant for his damages, including compensation for emotional and physical distress and inconvenience, caused by Respondent's discriminatory conduct;

7. Awards a civil penalty against Respondent Michael Croom for each violation of the Act committed, pursuant to 42 U.S.C. § 3612(g)(3); and

8. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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Date: September 20, 2012