

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], | : | |
| individually, and on behalf of | : | |
| [REDACTED], as parents | : | |
| and guardians of [REDACTED] | : | |
| [REDACTED], minor | : | |
| aggrieved children, | : | |
| | : | |
| Charging Party, | : | |
| | : | HUDALJ No. |
| v. | : | FHEO No. 03-12-0399-8 |
| | : | |
| The Whitacres, LLC, | : | |
| James Whitacre, | : | |
| | : | |
| Respondents | : | |
| | : | |

CHARGE OF DISCRIMINATION

I. JURISDICTION

On April 22, 2013, [REDACTED] filed a verified complaint with the United States Department of Housing and Urban Development (HUD) alleging that Respondents discriminated against him, based on disability, in violation of the Fair Housing Act (Act), 42 U.S.C. §§ 3601-19. The complaint was amended on July 29, 2013 to remove [REDACTED] as an aggrieved person and to add her as a Complainant. Respondents are The Whitacres, LLC, which was incorporated to operate Whitacre’s Mobile Home Community (WHMC) and James Whitacre, a manager of WMHC.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and 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), who has redelegated this authority to the Regional Counsel (76 Fed. Reg. 42463, 42465 (July 18, 2011)).

The Fair Housing and Equal Opportunity Director for Region III, 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 has authorized and directed the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

A. Statutory and Regulatory Provisions

1. It is unlawful to refuse to rent or negotiate for rental or sale or otherwise make unavailable or deny a dwelling to any person because of a disability. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a)(1) (2012).
2. Discrimination under 42 U.S.C. § 3604(f)(1) includes denying a person with a disability a reasonable accommodation when such accommodation may be necessary to afford such person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).
3. A reasonable accommodation is a change in a rule, policy, practice or service when such change may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).
4. It is unlawful to discriminate against a 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 dwelling, because of a person's disability. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.65 (2012).
5. It is unlawful to make statements with respect to the rental of a dwelling that indicate any preference, limitation or discrimination based on disability, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a) (2012).
6. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or

encouraged any other person in the exercise or enjoyment of, any right granted or protected under sections 803, 804, 805 or 806 of this title. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b), (c)(1) and (c)(2) (2012).

7. The Act defines “handicap” as a physical or mental impairment which substantially limits one or more of a person’s major life activities, a record of having such an impairment, or being regarded as having such an impairment. Although the term “handicap” appears in the Fair Housing Act and its implementing regulations, the Charge and Determination of Reasonable Cause use the terms “disability” and “handicap” interchangeably. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201 (2012).

B. Parties and Subject Property

1. The Whitacres, LLC is a member-managed corporation that was formed to operate Whitacre’s Mobile Home Community (WMHC), also known as Whitacre’s Mobile Home Court. The members/managers of The Whitacres, LLC include the following: James Whitacre, Debbie Smeltzer, Cynthia Bonfili, and Patricia Snyder. According to the Articles of Organization, the designated office is located at 51 Ambassador Circle, Martinsburg, West Virginia 25405. The Articles of Organization also state that Notice of Process should be sent to James Whitacre at the following address: 3829 Winchester Avenue, Martinsburg, West Virginia 25405.
2. WMHC is located in Inwood, West Virginia and is comprised of 95 lots. The subject property is a dwelling as defined by 42 U.S.C. § 3602(b).
3. [REDACTED] is a person with a psychiatric disability as defined in the Act at 42 U.S.C. § 3602(h) and 24 C.F.R. § 100.201 (2012). [REDACTED] disability limits his major life activities, including his ability to sleep, interact with others, work and perform self-care tasks.
4. [REDACTED] has a disability-related need for his emotional-assistance dog, which at times is identified by the parties as an “emotional-support animal” or “emotional-assistance animal.”
5. At all times relevant to this Charge, [REDACTED] were married and resided at the subject property with their three children.

C. Factual Allegations

1. In 2004, [REDACTED] and his wife, [REDACTED], signed a lease that would allow them to move their mobile home onto a lot at the Whitacre’s

Mobile Home Community. The lease states that pets are not permitted in the mobile home community: "No dogs or outside pets permitted, except for the handicap impaired."

2. On or about June 15, 2009, [REDACTED] and his family were victims of a home invasion in which he was shot in the stomach. The incident exacerbated [REDACTED] psychiatric disability and resulted in difficulty sleeping at night because he is unable to relax. Instead of sleeping, [REDACTED] checks and re-checks doors and windows.
3. In December 2011, [REDACTED] got a dog that served as an emotional-assistance animal. The emotional-assistance animal allowed [REDACTED] to relax and he was better able to sleep due to the security provided by the emotional-assistance animal.
4. In or around December 2011 or January 2012, Debbie Smeltzer, a member/manager of The Whitacres, LLC, spoke with [REDACTED] and informed him that he would need to get rid of the dog. After [REDACTED] explained that the dog was an emotional-assistance animal, she requested that [REDACTED] submit paperwork supporting the need for an emotional-assistance animal.
5. While he was gathering supporting documentation, [REDACTED] sent the emotional-assistance animal to live with his mother-in-law.
6. Several days after [REDACTED] spoke with Debbie Smeltzer, Pat Whitacre came to [REDACTED] home to confirm that the emotional-assistance dog was no longer living in his home. [REDACTED] wife explained why the emotional-assistance animal was needed and Mr. Whitacre said that the "doctors information" should be placed in the lot box.
7. In January 2012, per the instructions provided to him by Respondents, [REDACTED]. [REDACTED] submitted a formal request for a reasonable accommodation asking that the existing pet rules be modified so that he would be permitted to keep an emotional assistance animal in his home, as recommended by his doctor. Attached to the letter was a note from [REDACTED] doctor, dated January 4, 2012. [REDACTED] request asked for a response within ten days.
8. Respondents never responded to [REDACTED] reasonable accommodation request and did not contact him to ask for additional information. Accordingly, [REDACTED] brought the emotional-assistance animal back into his home.
9. In or around June 30, 2012, Respondent James Whitacre, upon seeing [REDACTED] carrying his emotional-assistance animal into his home, loudly

threatened to evict him because of the emotional-assistance animal. Mr. Whitacre yelled and cursed at [REDACTED] and referred to him as a “worthless punk.” During this interaction, [REDACTED] explained that the dog was an emotional-support animal. In response, Mr. Whitacre continued to yell at [REDACTED] and threw the dog tags that [REDACTED] had handed to him that stated that the dog was an emotional-support animal. [REDACTED] feared that Mr. Whitacre was going to hit him during this interaction. As a result of the incident, [REDACTED] experienced increased anxiety and he felt humiliated. A neighbor witnessed the incident and confirmed [REDACTED] statements regarding the incident.

10. In or around July 3, 2012, Respondent filed a Complaint in the Magistrate Court for Summary Relief: Wrongful Occupation of Residential Property or Factory-Built Home Site. Respondents were seeking to evict [REDACTED]. [REDACTED] for allegedly breaching the lease provision that states that dogs and outside pets are not permitted “except for the handicapped impaired.” Respondents sought eviction, removal of Complainants’ factory-built home, and court costs.
11. On July 17, 2012, a hearing was held on the eviction complaint. During course of the hearing, [REDACTED] presented a note from his doctor stating that he had a disability and a need for an emotional-assistance animal. Accordingly, the eviction action was dismissed.
12. The [REDACTED] rental payment for July 2012 was paid with a check that was returned for insufficient funds. Respondent sent a letter to [REDACTED] notifying him about the “bounced” check and requesting that the July 2012 rental payment be paid by July 18, 2012.
13. On July 17, 2012, [REDACTED] provided a check to Respondents that covered the rent for July 2012. Respondent James Whitacre refused to deposit the check.
14. On July 25, 2012, Respondent filed a Complaint in the Magistrate Court for Summary Relief: Wrongful Occupation of Residential Property or Factory-built Home Site seeking to evict Complaint for unpaid rent. Respondents sought possession of the property, past due rent and court costs.
15. In or around August 2, 2012, [REDACTED] spoke with Respondent James Whitacre. Respondent refused to accept their offer to pay the full amount of the rent and a \$175.00 late fee to dismiss the eviction proceeding.
16. On August 4, 2012, a hearing was held on the eviction complaint. After [REDACTED] presented the rental payment, the case was dismissed. At the conclusion of the hearing, Respondent James Whitacre stated something to

the effect that he was “not done with the dog situation” and that [REDACTED] [REDACTED] would be hearing from him again.

17. The [REDACTED] had long-standing plans to go with [REDACTED] parents to a resort in Florida but were unable to go because of the court date and Respondents’ refusal to accept their rental payment and dismiss the eviction complaint. As a result of Respondents’ actions, the [REDACTED] family was forced to cancel their vacation plans so they could attend the eviction hearing.
18. Since 2004, the late rent payment in July 2012 was the first time that [REDACTED]. [REDACTED] had ever been late in paying rent.
19. Respondents have not attempted to evict similarly-situated tenants who have been in arrears for several months.
20. Despite being told of [REDACTED] disability-related need for his emotional-assistance animal, Respondents refused to engage in the interactive process and refused to approve the requested reasonable accommodation that would have allowed [REDACTED] to keep the emotional-assistance animal in his home.
21. Respondents attempted to evict [REDACTED] because he exercised his right to request a reasonable accommodation.
22. Despite being told of [REDACTED] disability-related need for his emotional-assistance animal, Respondent refused to grant a reasonable accommodation to [REDACTED] of their “no pet” policy.
23. According to [REDACTED], her husband has benefitted from having the emotional-assistance animal. Due to the presence of the emotional-assistance animal, [REDACTED] sleeps all night, his anxiety has decreased and he no longer has panic attacks.

D. Fair Housing Act Violations

1. As described above, by failing to comply with Section 804(f)(3)(B) of the Act, Respondents violated Section 804(f)(1) of the Act when they refused to make a reasonable accommodation to their no pet policy and discriminated on the basis of disability in violation of the Act. 42 U.S.C. § 3604(f)(1) and 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).
2. As described above, Respondents violated Section 804(f)(2) of the Act when they sought to evict [REDACTED] for a late rental payment but had allowed other lessees to be in arrears for several months before

commencing the eviction process. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.65 (2012).

3. As described above, Respondent James Whitacre violated Section 804(c) of the Act by making statements indicating a preference or limitation upon the approval of emotional-assistance animals, thereby discriminating against Complainants on the basis of disability. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(c)(1) (2012).

8. As described above, Respondents violated Section 817 of the Act by attempting to evict Complainants because [REDACTED] exercised his right to seek a reasonable accommodation. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b), (c)(1) and (c)(2) (2012).

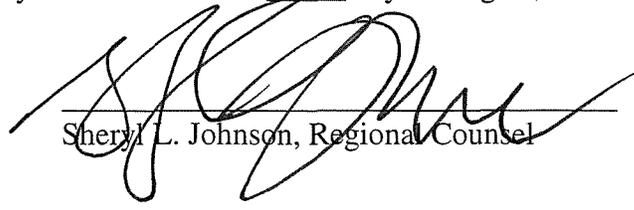
III. CONCLUSION

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

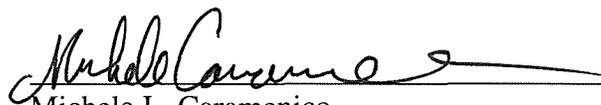
1. Declares that Respondents' discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
2. Pursuant to 42 U.S.C. § 3612(g)(3), enjoins Respondents and all other persons in active concert or in participation, from discriminating against any person based on disability in any aspect of sale, rental, use, or enjoyment of a dwelling;
3. Pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1) (2012), assesses a civil penalty against Respondents for each violation of the Act;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate [REDACTED] and [REDACTED] and their minor aggrieved children for the emotional distress and financial costs associated with Respondents' discriminatory conduct.
5. Requires Respondents to establish a non-discriminatory reasonable accommodation policy and practice that allows persons with a disability who need assistance animals to have them in any of their rental properties.

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

Respectfully submitted on this 23rd day of August, 2013.



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