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,	)	FHEO No. 01-14-0195-8
v.	)	
Avatar Properties, Inc., et al Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On March 7, 2014, [redacted] ("Complainants") filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging Avatar Properties, Inc. ("Respondent Avatar"), Richard Morway ("Respondent Morway"), Stacey Diodati ("Respondent Diodati"), Midridge Condominium Association ("Respondent Association"), Jacqueline McDonough ("Respondent McDonough"), James Duffield ("Respondent Duffield"), Amy Costello ("Respondent Costello"), Donna Gyorda ("Respondent Gyorda"), and Christopher Reynolds ("Respondent Reynolds")(collectively "Respondents") discriminated against them in violation of the Fair Housing Act ("the Act"). 42 U.S.C. Sections 3601-3619. Complainants amended the complaint on June 24, 2014, in order to add [redacted] minor son and [redacted] son, [redacted], as aggrieved parties, and to add an allegation of discrimination that Complainants claim occurred on December 9, 2013.

The Act authorizes the Secretary of HUD to issue 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)-(2). The Secretary has delegated to the General Counsel, who has redelegated to the Regional Counsel, 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 designee. 24 C.F.R. §§ 103.400 and 103.405; 76 Fed.Reg. 42,463, 42,465 (July 18, 2011).

By Determination of Reasonable Cause dated September 24, 2014, the Director of the Fair Housing Hub, Office of Fair Housing and Equal Opportunity for New England, 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 by the Regional Counsel. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the findings contained in the attached Determination of Reasonable Cause, the Secretary charges Respondents with violating the Act as follows:

A. LEGAL AUTHORITY

1. 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 dwelling, because of a disability of that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b)(1).

2. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

3. Pursuant to the Act, the definition of "handicap" [1] includes "a physical or mental impairment which substantially limits one or more . . . major life activities." 42 U.S.C. § 3602(h)(1); 24 C.F.R. § 100.201.

4. HUD's regulations define "major life activities" to include "functions such as . . . walking." 24 C.F.R. § 100.201(b).

5. Pursuant to the Act, an "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

6. Pursuant to the Act, "dwelling" means any building, structure, or portion thereof which is occupied as, or designated or intended for occupancy as a residence by one or more families. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

B. PARTIES AND SUBJECT PROPERTY

7. The property at which the discriminatory housing practices occurred is [redacted] of the Midridge Condominium Complex located at Midridge Circle in Londonderry, New Hampshire ("subject property").

8. The subject property constitutes a dwelling within the meaning of 42 U.S.C. § 3602(b) and does not qualify for any exemptions under the Act.

9. [redacted] are husband and wife. [redacted] owned the subject property between 2001 and April of 2014 and has resided there during that time except

[1] Although the Act uses the obsolete term "handicap," this charge will use the term "disability" in its place.

for a brief period in 2013. [redacted] and his minor son, [redacted], resided at the subject property between 2011 and April 2014, except for a brief period in 2013.

10. [redacted] are "aggrieved persons" as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

11. Respondent Association is the association of owners at the condominium complex in which the subject property is located.

12. Respondent Avatar is the management company hired by Respondent Association to manage the day to day functions of the complex in which the subject property is located.

13. Respondent Morway is an employee of Respondent Avatar and is the on-site property manager at the Midridge Condominium complex.

14. Respondent Diodati is Respondent Avatar's liaison for the Midridge Condominium complex.

15. Respondent McDonough is Respondent Association's President, Respondent Duffield is Respondent Association's Treasurer, Respondents Costello, Gyorda, and Reynolds are members of Respondent Association's board of directors who were elected by the Respondent Association's membership to serve as the Respondent Association's board of directors.

C. FACTUAL ALLEGATIONS

16. The Midridge Condominium complex is comprised of five buildings.

17. Respondent Association assigns residents of each building a designated parking area in which residents may park one vehicle under a carport and one vehicle in an uncovered space.

18. Complainants' assigned parking area was located behind their unit and can only be accessed via a staircase with nine steps.

19. Respondent Association designated the area in front of Complainants' unit as a visitors parking area and has prohibited any residents from parking there.

20. [redacted] is disabled within the meaning of the Act. Mr. [redacted] is limited in the major life activity of walking as the result of a spinal cord injury he suffered in 1994. He is unable to traverse distances in excess of 50 feet without risk of falling and experiences considerable difficulty climbing stairs.

21. On December 2, 2013, [redacted] submitted a reasonable accommodation request to Respondent Diodati via email, stating: "[redacted] will need to use the visitor parking for the vehicle he is driving. He has a handicap placard & it is too painful for him to use the

steps in the back of our building to get to his vehicle. If there is some paper work we need to fill out to do this without penalty please let us know so we can comply."

22. Ms. Diodati forwarded the request to the Association's board of directors via email. The board discussed the request via email and informed Ms. Diodati that they would not grant Complainants' reasonable accommodation request.

23. On December 9, 2013, Ms. Diodati emailed [redacted], writing that "I am sorry to inform you that this request was denied. The Board asked that you review the designated parking maps for the Association which is in the Rules and Regulation book and that the circle is for visitors only." Respondents did not offer any alternative accommodation.

24. Later in December 2013, Respondent Morway called [redacted]. On December 19, 2013, Mr. Morway sent an email to the Association's board of directors stating "I have spoken to [redacted] . . . recently. We spoke about [Complainant [redacted]]. His physical condition continues to worsen. She would like the Board to reconsider their position on allowing him to park in visitor parking on a permanent basis . . . I told her if he did park in the visitor parking on a regular basis she would be fined $25.00 per month."

25. On January 16, 2014, [redacted] sent an email to Respondents Morway and Diodati in which she made a second request for a parking accommodation. The email stated that [redacted] needed a "handicap accessible parking spot no further than 50 feet from unit 5."

26. Attached to the January 16, 2014 email was a letter from [redacted] doctor explaining that Mr. [redacted] "suffered from a spinal cord injury leading to weakness and atrophy of his lower extremities . . . his injuries affect his gait and make him unable to get up and down the stairs. He is at risk of falling with stairs and more than 50 feet of walking."

27. According to the minutes of the Association's February 17, 2014 board meeting, Respondents McDonough, Duffield, Costello, Gyorda, and Reynolds unanimously voted to deny Complainants' January 16, 2014 reasonable accommodation request.

28. On February 21, 2014, Mr. Morway emailed [redacted] notifying her that the second accommodation request had been denied because the board has "spent a lot of money to update and clarify the parking. They do not want to start making changes at this point." Once again, Respondents offered no alternative accommodation.

29. Nearly four months after Complainants' initial reasonable accommodation request and three weeks after Complainants filed a complaint with HUD, Respondent Association's board of directors voted to grant [redacted] a designated parking space in the visitors parking area.

30. [redacted] sold the subject property and moved elsewhere with [redacted] and his son [redacted] in April 2014.

31. As a result of Respondents' actions, [redacted] has suffered damages including but not limited to physical and emotional distress, inconvenience, and frustration.

32. As a result of Respondents' actions, [redacted] have suffered damages including but not limited to emotional distress, inconvenience, and frustration.

D. FAIR HOUSING ACT VIOLATIONS

33. Respondents Association, Avatar, and Diodati violated the Act by discriminating against Complainants on the basis of disability in the terms and conditions of rental by denying Complainants' December 2, 2013 reasonable accommodation request to be able to park in the visitors parking area when such accommodation was necessary to afford Complainants an equal opportunity to use and enjoy their dwelling. 42 U.S.C. §§ 3604(f)(2)(A-C), and (f)(3)(B); 24 C.F.R. §§ 100.202(b)(1-3) and 100.204.

34. Respondents Association, McDonough, Duffield, Costello, Gyorda, Reynolds, Avatar, and Morway violated the Act by discriminating against Complainants on the basis of disability in the terms and conditions of rental by denying Complainants' January 16, 2014 reasonable accommodation request to park within 50 feet of the subject property when such accommodation was necessary to afford Complainants an equal opportunity to use and enjoy their dwelling. 42 U.S.C. §§ 3604(f)(2)(A-C), and (f)(3)(B); 24 C.F.R. §§ 100.202(b)(1-3) and 100.204.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the Regional Counsel for New England, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(2) and prays that an order be issued that:

A. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. Sections 3601-3619;

B. Enjoins Respondents from further violations of 42 U.S.C. § 3604(f)(2);

C. Awards such damages as will fully compensate Complainants for their physical and emotional distress, inconvenience, and frustration caused by Respondents' actions in violation of 42 U.S.C. § 3604(f)(2);

D. Awards a $16,000 civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. §3612(g)(3); and

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

Respectfully submitted,

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