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,	HUD ALJ No. FHEO No. 08-14-0170-8
v.	
Calvin L. Salem and Alice B. Salem Family Trust and Calvin L. Salem, Individually and as Trustee of the Calvin L. Salem and Alice B. Salem Family Trust,	
Respondents.	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 3, 2014, [redacted] ("Complainant" or [redacted] filed a verified complaint with the United States Department of Housing and Urban Development alleging that Respondents Calvin L. Salem and Alice B. Salem Family Trust ("Respondent Trust") and Calvin L. Salem ("Respondent Salem" or "Salem"), individually and as trustee of Respondent Trust (collectively "Respondents"), violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the "Act"), by making statements indicating discrimination based on disability, by making housing unavailable because of a disability, and by imposing different terms and conditions on a tenant with a disability in violation of 42 U.S.C. § 3604. On or about March 15, 2015, the Complaint was amended to add a claim of retaliation for exercising a protected right in violation of 42 U.S.C. § 3617.

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 that authority to the General Counsel, who has redelegated authority to the Regional Counsel. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42463, 42465 (July 18, 2011).

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 and has authorized and directed the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents Calvin L. Salem and Alice B. Salem Family Trust and Calvin L. Salem, individually and as trustee of the Calvin L. Salem and Alice B. Salem Family Trust, are charged with discriminating against Complainant [redacted] an aggrieved person as defined by 42 U.S.C. § 3602(i), based on disability in violation of 42 U.S.C. §§ 3604 and 3617 of the Act as follows:

A. Legal Authority

1. It is unlawful to make, print, or publish any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on disability. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

2. It is unlawful to refuse to rent or to otherwise make unavailable or deny a dwelling to any renter because of disability of that renter, a person residing in that dwelling after it is rented, or any person associated with that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

3. 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 a disability of that person or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

4. 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, any right protected by 42 U.S.C. § 3604. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

5. The Act defines a "handicap[1]" as 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.

[1] This charge uses "disability" in place of "handicap," the term which appears in the Fair Housing Act. The terms have the same legal meaning.

B. Subject Property and Parties

6. The subject property is [redacted] an eight-unit apartment complex located at [redacted] Sioux Falls, South Dakota ("Subject Property").

7. At times relevant to this Charge, Respondents Calvin L. Salem and Alice B. Salem Family Trust and Calvin L. Salem were the owners of the Subject Property. Respondent Calvin Salem managed the day-to-day operations of the Subject Property and is the trustee of the Salem Family Trust.

8. Complainant [redacted] has a physical impairment; he has partial quadriplegia and uses a walker to assist with mobility. [redacted] mobility was further limited by an injury occurring in January 2014. Complainant [redacted] is an individual with a disability as defined by the Act. 42 U.S.C. § 3602(h).

9. Complainant [redacted] is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).

C. Factual Allegations

10. Complainant [redacted] signed a lease for a one bedroom apartment at [redacted] with Respondent Calvin Salem and moved into the Subject Property on or about August 22, 2013.

11. On or about January 15, 2014, Complainant [redacted] fractured his left tibia. Because of his disability and the injury to his left leg, Complainant [redacted] was admitted to and rehabilitated at [redacted] a skilled nursing facility in Sioux Falls, South Dakota, from approximately January 18, 2014 until April 29, 2014.

12. During his rehabilitation, Complainant [redacted] used a wheelchair. The duration of his need for a wheelchair was unclear at the time.

13. Sometime in mid-February 2014, Respondent Salem wrote a letter to the nursing facility's staff, which stated in part that Complainant [redacted] was not capable of living independently, he should be in a nursing home, and he should not return to the Subject Property.

14. The mid-February 2014 letter written by Respondent Salem also stated that Complainant [redacted] could not return to the Subject Property while using a wheelchair as a wheelchair would cause damage to the Subject Property's carpet.

15. In a telephone conversation with Complainant [redacted] in March 2014, Respondent Salem again stated that [redacted] could not return to the Subject Property while using a wheelchair.

16. In telephone conversations with [redacted] in February and March 2014, Respondent Salem also stated that Complainant [redacted] could not return to the Subject Property in his wheelchair.

17. In his answer to the fair housing complaint, Respondent Salem admits he was concerned about "damage to [the] carpets...because of [redacted] wheelchair."

18. Complainant [redacted] rent for the Subject Property was paid for in January, February, and March 2014.

19. On or about March 11, 2014, Complainant [redacted] permitted a friend to temporarily stay at the Subject Property. The friend was in need of a temporary place to stay while he recovered from a minor out-patient surgery, and was a guest, not an occupant at the Subject Property.

20. Respondent Salem initiated eviction proceedings against [redacted] by having him served with a Notice to Quit and Vacate on or about March 19, 2014. The Notice to Quit and Vacate stated that [redacted]'s right to possess the Subject Property was terminated because he "allow[ed] unauthorized occupants to reside in the leased premises."

21. Immediately after receiving the Notice to Quit and Vacate, Complainant [redacted] cured any potential minor lease violations and told [redacted] he could no longer stay at the Subject Property.

22. Based upon the Notice to Quit and Vacate, Complainant [redacted] moved out of the Subject Property on March 29, 2014.

23. On multiple occasions, Complainant [redacted] asked Respondent Salem to allow him to remain in the Subject Property either with, or without the use of a wheelchair.

24. In a handwritten letter dated April 10, 2014, Respondent Salem informed [redacted] that he would not return [redacted] $350 security deposit because the entry doors of the Subject Property had to be rekeyed.

25. Respondent Salem did not rekey the entry doors of the Subject Property.

26. Respondent Salem admitted to HUD that he did not return Complainant [redacted]'s security deposit because [redacted] had not provided him with a forwarding address.

27. In a telephone conversation, Complainant [redacted] provided Respondent Salem with a forwarding address at [redacted]

28. Respondent Salem has never returned Complainant [redacted]'s $350 security deposit.

29. Upon moving out of the Subject Property, Complainant [redacted] moved into a spare bedroom his friend, [redacted] apartment. Shortly thereafter, Ms. [redacted]

tried to formally add Complainant [redacted] as a co-tenant to her lease so he could reside permanently in the unit.

30. On or about August 25, 2014, Respondent Calvin Salem provided a negative reference of Complainant [redacted] to the potential landlord, [redacted]

31. Based solely upon Respondent Salem's negative landlord reference regarding Complainant [redacted] declined to add Complainant [redacted] to the lease and he was forced to move out.

32. Since leaving [redacted]' apartment, Complainant [redacted] has resided at motels and various other temporary housing arrangements.

D. Legal Allegations

33. Respondents violated the Act by making discriminatory statements based on disability when Respondent Salem wrote a letter to the [redacted] staff stating that Complainant [redacted] was incapable of independent living, would be better off at a nursing home, and that he could not return to the Subject Property while using a wheelchair. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

34. Respondents violated the Act by making discriminatory statements based on disability when Respondent Salem wrote a letter to the [redacted] staff stating that Complainant [redacted] could not return to the Subject Property while using a wheelchair. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

35. Respondents violated the Act by making discriminatory statements based upon disability when Respondent Salem told [redacted] and his Mother [redacted] that Complainant [redacted] could not reside at the subject property while using a wheelchair. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

36. Respondents violated the Act by making discriminatory statements based upon disability when Respondent Salem told [redacted] that Complainant [redacted] could not reside at the subject property while using a wheelchair. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

37. Respondents violated the Act by otherwise making a dwelling unavailable based upon disability when Respondent Salem refused to allow Complainant [redacted] to return to the Subject Property with a wheelchair. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

38. Respondents violated the Act by otherwise making a dwelling unavailable based upon disability when Respondent Salem sent a Notice to Vacate to Complainant [redacted] 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

39. Respondents violated the Act by imposing different terms and conditions based upon disability in the rental of a dwelling by communicating with Complainant [redacted]'s health care providers. 42 U.S.C. § 3604(f)(2); 24 C.F.R. §100.202(b).

40. Respondents violated the Act by imposing different terms and conditions based upon disability in the rental of a dwelling by, refusing to allow him to return to the Subject Property using a wheelchair. 42 U.S.C. § 3604(f)(2); 24 C.F.R. §100.202(b).

41. Respondents violated the Act by imposing different terms and conditions based upon disability in the rental of a dwelling by refusing to return his security deposit. 42 U.S.C. § 3604(f)(2); 24 C.F.R. §100.202(b).

42. Respondents violated the Act by retaliating against Complainant [redacted] for engaging in protected activity by providing a negative reference to a potential landlord. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

43. As a result of Respondents' discriminatory conduct, Complainant [redacted] has suffered actual damages including economic losses and emotional distress.

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) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(c), 3604(f), and 3617 of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate Subsections 804(c), 804(f)(1), 804(f)(2), and Section 818 of the Act. 42 U.S.C. § 3604(c), 42 U.S.C. § 3604(f)(1)-(2) and 42 U.S.C. § 3617;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of disability in any aspect of the rental, sale, use, or enjoyment of a dwelling;

3. Awards such damages as will fully compensate the Complainant for the damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and

4. Assesses a $16,000 civil penalty against each Respondent for each violation of the Act that Respondents have committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

5. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

Ellen Dole

Ellen Dole
Regional Counsel, Region VIII

Matt Mussetter
Trial Attorney
U.S. Department of Housing
and Urban Development
Office of Regional Counsel,
Region VIII
1670 Broadway, 25th Floor
Denver, CO 80202-4801
Telephone: (303) 672-5409
Fax: (303) 672-5027

Greg Walters
Trial Attorney
U.S. Department of Housing
and Urban Development
Office of Regional Counsel,
Region VIII
1670 Broadway, 25th Floor
Denver, CO 80202-4801
Telephone: (303) 672-5377
Fax: (303) 672-5027

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