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 Denver Metro Fair Housing Center, Charging Party, v. Roger P. Loecher, Eileen F. Loecher, and Miriam Yehudah, Respondents.	HUD ALJ No. FHEO No. 08-14-0112-8 Date: September 24, 2015

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about March 25, 2014, the complainant, Denver Metro Fair Housing Center ("Complainant" or "DMFHC"), filed a verified complaint with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that respondents Roger P. Loecher ("Respondent R. Loecher"), Eileen F. Loecher ("Respondent E. Loecher"), and Miriam Yehudah ("Respondent Yehudah") (collectively "Respondents") violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the "Act"), by steering and segregating families with children in violation of 42 U.S.C. § 3604. On or about June 15, 2015, the HUD Complaint was amended to add Respondent Yehudah's last name.

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 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 HUD Complaint and Determination of Reasonable Cause, Respondents Roger Loecher, Eileen Loecher, and Miriam Yehudah are charged with discrimination based on familial status in violation of 42 U.S.C. § 3604 of the Act as follows:

A. Legal Authority

1. It is unlawful to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.

2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental, or in the provisions of services or facilities in connection therewith, because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a). Such unlawful conduct includes assigning any person to a particular section of a development or building because of familial status. 24 C.F.R. § 100.70(c)(4).

3. 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 familial status. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.

4. It is unlawful to represent to any person because of familial status that any dwelling is not available for inspection or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d); 24 C.F.R. § 100.80(b)(5).

5. It is unlawful to restrict, or attempt to restrict the choices of a person by word or conduct in connection with seeking or renting a dwelling, so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development because of familial status. 42 U.S.C. § 3604(a); 42 U.S.C. § 3604(b); 24 C.F.R. § 100.70.

B. Subject Property and Parties

6. The subject property is a two building, 28-unit apartment complex located at [redacted] Lakewood, Colorado ("Subject Property").

7. The Subject Property consists of two buildings, a front building and a rear building, and also includes a parking lot, driveway, and play area/picnic area. The Subject Property is connected to [redacted] by a two-lane driveway which provides the only vehicular access to and from the property.

8. The Subject Property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

9. The front building is closest in proximity to [redacted] and consists of two floors with six units on each floor: units #1 through #6 on the first floor and units #7 through #12 on the second floor. The rear building is located behind the parking lot, away from [redacted] The rear building consists of two floors with eight units on each floor: units #12A[1] through #20 on the first floor and units #21 through #28 on the second floor.

10. At all times relevant to this Charge, Respondents Roger Loecher and Eileen Loecher were the owners of the Subject Property. Respondent Miriam Yehudah lived at the Subject Property and managed the day-to-day operations of the Subject Property.

11. Complainant DMFHC is a Colorado non-profit corporation, whose organizational purposes are to promote equal housing opportunities and eliminate illegal housing discrimination throughout the Denver, Colorado metropolitan area. In furtherance of its mission, Complainant DMFHC engages in educational activities, assists persons who believe they have been the victims of housing discrimination, and identifies barriers to fair housing in order to help counteract and eliminate discriminatory practices.

12. Complainant DMFHC is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).

C. Factual Allegations

13. Respondents routinely utilized the internet website Craigslist.org to advertise available units at the Subject Property.

14. In or about September 2013, a staff member of Complainant DMFHC viewed an advertisement for the Subject Property on Craigslist.org that asserted it was a "quiet community."

15. In response to that Craigslist.org advertisement, Complainant DMFHC developed and conducted a paired test of the Subject Property to test whether or not Respondents discriminated against families with children.

16. The initial paired test included one tester whose household consisted of a husband, wife, and two children known as a Protected Tester 1, and one tester who did not have any children, known as a Control Tester 1. Other than the presence of children in the household composition, the profiles of Protected Tester 1 and Control Tester 1 were nearly identical.

[1] The Subject Property does not have a unit #13.

17. Complainant DMFHC instructed Protected Tester 1 to inquire about the availability of two-bedroom units at the Subject Property for him and his family.

18. Complainant DMFHC instructed Control Tester 1 to inquire about the availability of two-bedroom units at the Subject Property for just him and his wife.

19. On or about September 13, 2013, Protected Tester 1 was the first of the two testers to visit the Subject Property. At approximately 1:00 pm, Protected Tester 1 met with Respondent Yehudah at the Subject Property.

20. During that onsite visit, Respondent Yehudah informed Protected Tester 1 that there were only two units available at the Subject Property, Units #14 and #17, both in the rear building.

21. Respondent Yehudah also informed Protected Tester 1 about the amenities near the rear building at the Subject Property and about the danger that speeding cars posed to children near the front building.

22. On the same day, approximately one hour later, at 2:10 pm, Control Tester 1 visited the Subject Property and met with Respondent Yehudah.

23. During that onsite visit, Respondent Yehudah initially informed Control Tester 1 that there were two two-bedroom units available at the Subject Property. Respondent Yehuda then asked Control Tester 1 whether he had any children. After Control Tester 1 informed Respondent Yehudah he was looking to rent for just he and his wife and they did not have any children, Respondent Yehudah responded "no kids yet?", and informed him she actually had "several options" available, or words to that effect.

24. Respondent Yehuda told Control Tester 1, "I try to keep my kids in back and my adults in the front," or words to that effect.

25. Respondent Yehudah then led Control Tester 1 on a tour of the same two units in the rear building, Units #14 and #17 that she had previously shown to Protected Tester 1. Respondent Yehuda then however also showed Control Tester 1 an additional two-bedroom unit in the front building, Unit #7.

26. Respondent Yehudah also told Control Tester 1"[S]ince you are two individual adults I can put some people above my cleaning lady who are a little quiet.... I need some people up here who are just a couple with no children because my cleaning lady had a fit downstairs," or words to that effect.

27. Respondent Yehuda never showed Protected Tester 1 any units in the front building and never informed him of the availability of Unit #7, or any units in the front building.

28. In December 2013, Complainant DMFHC conducted another paired test of the Subject Property. The test was not designed to see if discrimination based on familial status was occurring, but rather was based upon national origin.

29. During this test, Protected Tester 2 asked Respondent Yehudah whether the Subject Property had many families, because he noticed many children's bicycles near the rear building. Respondent Yehudah replied that there were families residing at the Subject Property and described it as "family friendly." However, Respondent Yehudah also stated, "that is why I asked you if you had kids. We have families with kids here in the back because some of my patrons' guests peel out pretty fast and it's dangerous," or words to that effect.

30. In February 2014, Complainant DMFHC conducted a third paired test of the Subject Property. This test was conducted by telephone and was also designed to test for familial status discrimination.

31. On February 6, 2014, Protected Tester 3 spoke with Respondent Yehudah by telephone. Protected Tester 3 informed Respondent Yehudah she was calling about an advertised apartment for herself and her two daughters. Respondent Yehudah stated the advertised apartment was no longer available.

32. Also on February 6, 2014, Control Tester 3 called and spoke to Respondent Yehudah. Control Tester 3 stated that she was calling about a unit advertised on Craigslist. Respondent Yehudah stated that she would have a unit available at the end of the month. Control Tester 3 informed Respondent Yehudah that she and her boyfriend were interested in renting. Respondent Yehudah responded, "your boyfriend and you... just adults then?" or words to that effect. When Control Tester 3 confirmed there would just be adults, Respondent Yehudah told her she was off duty and asked Control Tester 3 to call her the next day when she could discuss more with the caller.

33. Respondents had a policy or practice of placing families with children in the rear building. Respondents believed the rear building was more appropriate for families with children and that it was safer for children to reside in the rear building.

34. Respondent Yehudah initially asserted that it was Respondents' policy to show prospective tenants with children the rear building vacancies first and fill vacancies in the rear building with families. Respondent R. Loecher also confirmed the existence of this placement policy and personally approved it.

35. After discovering Respondents' rental advertisement, Complainant DMFHC devoted substantial staff time to, among other tasks, investigate Respondents' housing practices, test the Subject Property, and review information and data derived from the tests.

36. Complainant DMFHC has also diverted resources to education and outreach activities in the Denver metro area in order to counteract the actions of Respondents.

37. As a result of Respondents' discriminatory conduct, Complainant has suffered actual damages, including the frustration of its mission and the diversion of its resources.

D. Legal Allegations

38. As described above, Respondents violated the Act by making units in the front building of the Subject Property unavailable to families with children. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.

39. As described above, Respondents violated the Act by offering different terms, conditions, and facilities at the Subject Property based upon familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).

40. As described above, Respondents violated the Act when Respondent Yehudha made statements regarding placing children and families with children in the rear building of the Subject Property. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.

41. As described above, Respondents violated the Act when Respondent Yehuda represented that there were no units available in the front building to Protected Tester 1, when in fact there was a unit available. 42 U.S.C. § 3604(d); 24 C.F.R. § 100.80(b)(5).

42. As described above, Respondents violated the Act by restricting the housing choices of families with children and perpetuating segregated housing patterns within the Subject Property by assigning families with children to the rear building. 42 U.S.C. § 3604(a); 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.70(a) and 100.70(c)(4).

III. CONCLUSION

THEREFORE, 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 Subsections 3604(a), 3604(b), 3604(c), and 3604(d) of the Act, and requests that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate subsections 804(a), 804(b), 804(c), and 804(d) of the Fair Housing Act. 42 U.S.C. § 3604 (a), 42 U.S.C. § 3604(b), 42 U.S.C. § 3064(c), and 42 U.S.C. § 3604(d);

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 familial status in any aspect of the rental, sale, use, or enjoyment of a dwelling;

3. Awards such damages as will fully compensate Complainant for its 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 they 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,

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