

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

Secretary, United States Department of)	
Housing and Urban Development, on behalf of)	
Complainants [REDACTED])	
[REDACTED])	
)	
Charging Party,)	
)	HUD ALJ No.
v.)	
)	FHEO Nos. 02-15-0477-8;
505 Central Avenue Corp.,)	02-15-0478-8
)	
Respondent.)	
_____)

CHARGE OF DISCRIMINATION

I. JURISDICTION

On June 3, 2015, [REDACTED] (“Complainants”) filed complaints with the U.S. Department of Housing and Urban Development (“HUD”) alleging that 505 Central Avenue Corp.¹ (“Respondent”) discriminated based on disability² in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601-19.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons 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 re-delegated the authority to the Regional Counsel. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director of HUD’s Office of Fair Housing and Equal Opportunity for Region I, 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).

¹ The June 3, 2015 complaints were amended on March 30 and 31, 2016 to revise Respondent’s name to “505 Central Avenue Corp.”

² This charge uses the term “disability” in place of the term “handicap,” which appears in the Fair Housing Act.

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and the Mixed Determination of Reasonable Cause and No Reasonable Cause, HUD hereby charges Respondent with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale, or otherwise make unavailable or deny, a dwelling to any buyer because of a disability of a person intending to reside in that dwelling after it is sold or made available. 42 U.S.C. § 3604(f)(1)(B); 24 C.F.R. § 100.202(a)(2). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
2. It is unlawful to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons because of a disability. 24 C.F.R. § 100.70(b). Prohibited activities include denying or delaying the processing of an application made by a purchaser or refusing to approve such a person for occupancy in a cooperative dwelling because of disability. 24 C.F.R. § 100.70(d)(3).
3. The Act defines "handicap" as a physical or mental impairment which substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.
4. HUD's regulations define "physical or mental impairment" to include "[a]ny mental or psychological disorder, such as . . . emotional or mental illness, and specific learning disabilities." 24 C.F.R. § 100.201. HUD's regulations also define "major life activities" to include "functions such as caring for one's self," "learning and working." 24 C.F.R. § 100.201.

B. Parties and Subject Property

5. Complainant [REDACTED] is a [REDACTED] year old individual with developmental and learning disabilities. He receives monthly assistance through the Social Security Disability Insurance ("SSDI") program. [REDACTED] is a person with disabilities as defined by the Act. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201 [REDACTED] [REDACTED] currently resides at [REDACTED] Port Chester, New York 10573.
6. Complainant [REDACTED] [REDACTED] is a trust that [REDACTED] parents, [REDACTED] created to provide for his care. [REDACTED] is the beneficiary of the [REDACTED] and his parents are the trustees.

7. Complainants are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
8. Respondent 505 Central Avenue Corp. (“505 Central Avenue” or “Respondent”) owns Thompkins Manor, a 155-unit cooperative located at 505 Central Avenue, White Plains, New York 10606 (“subject property”). The subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
9. 505 Central Avenue is a New York corporation. Its principal place of business is located at 119 East Hartsdale Avenue, Hartsdale, New York 10530.

C. Factual Allegations

10. From November 2008 to October 2014, [REDACTED] lived in a boarding house located at [REDACTED] White Plains, New York 10605. [REDACTED] had his own bedroom in the boarding house, but he shared bathroom and common spaces with others. He experienced difficulty climbing the stairs to reach his bedroom.
11. On July 20, 2012, Social Security Administration Administrative Law Judge Katherine Edgell determined that [REDACTED] has a disability and entitled to SSDI benefits for adults who have a disability that began before they became 22 years old.
12. In early 2013, frustrated with the poor living conditions at the boarding house [REDACTED] and his parents began looking for alternative housing. [REDACTED] hoped to find housing in close proximity to his mother’s house in White Plains, New York so she could assist him with daily activities, such as doctor’s appointments, laundry, and grocery shopping.
13. On May 3, 2013, [REDACTED] real estate broker, [REDACTED] located a number of cooperative units for sale for [REDACTED] and his parents to view, including three one-bedroom units at Thompkins Manor, the subject property located at 505 Central Avenue in White Plains, New York: Apts. [REDACTED]
14. During the next few weeks [REDACTED] and his parents viewed Thompkins Manor on multiple occasions.
15. On May 20, 2013, the [REDACTED] made an offer to purchase Apt. [REDACTED] a one-bedroom unit at Thompkins Manor. The offer was accepted by the seller [REDACTED]
16. [REDACTED] and his parents decided to purchase Apt. [REDACTED] via the [REDACTED]. It was necessary to purchase Apt. [REDACTED] via the [REDACTED] because [REDACTED] was unable to manage the responsibilities of cooperative ownership on his own due to his disabilities.

17. On August 14, 2013, the [REDACTED] and [REDACTED] entered into a Contract of Sale in which the trust agreed to pay \$76,000 for Apt. [REDACTED] parents [REDACTED] signed the contract as trustees of the [REDACTED]
18. On August 20, 2013, in accordance with 505 Central Avenue's requirements of prospective purchasers of cooperative stock, the [REDACTED] Trust submitted an application to West-Ex Associates, Inc. ("West-Ex") seeking occupancy approval from the 505 Central Avenue Board of Directors.
19. West-Ex manages the subject property for 505 Central Avenue. As property manager, West-Ex's duties include conducting an initial review of prospective purchaser applications for occupancy before forwarding the applications to the 505 Central Avenue Board of Directors for approval or denial.
20. The application package included a completed written Application for Occupancy, a copy of the executed Contract of Sale for Apt. [REDACTED] proof of liquid assets, and a \$500 damage deposit check. The written application listed [REDACTED] as the applicant for occupancy. The proof of liquid assets included copies of [REDACTED] Social Security benefits statement [REDACTED] bank statements, and the [REDACTED] Trust's bank statements.
21. [REDACTED] father, [REDACTED] enclosed a cover letter with the August 20 application for occupancy, which stated in relevant part:

As you will see from the submitted application, all of the financial obligations required to maintain the apartment at 505 Central Ave [REDACTED], White Plains, NY can be paid by [REDACTED]. However, if the Cooperative feels that it is necessary, I am willing to personally serve as a guarantor for those obligations. I am enclosing financial documentation which shows my ability to serve in that capacity.
22. On August 27, 2013, Elizabeth Meneghin of West-Ex sent a letter to the [REDACTED] Trust rejecting the trust's application for occupancy regarding Apt. [REDACTED]. The letter stated: "Please be advised that the Cooperative does not permit ownership by Trust. In addition, the Application could not be processed due to the fact that the package has not been submitted in accordance with the Board of Directors' qualifications for purchase at this property." A copy of the letter was sent to the 505 Central Avenue Board of Directors.
23. 505 Central Avenue's policy prohibiting trusts from owning units at Thompkins Manor is contained in the cooperative's Proprietary Lease, which applies to all lessees who own shares in the cooperative. Paragraph 14 (Use of Premises) of the Proprietary Lease states in relevant part:

The Lessee shall not, without the written consent of the Lessor (on such conditions as Lessor may prescribe) occupy or use the Apartment or permit the

same or any part thereof to be occupied or used for any purpose other than as a private dwelling for the Lessee in occupancy and Lessee's spouse, children, grandchildren, parents, grandparents, brothers, sisters and/or domestic employees, but in no event shall more than two adults or one family occupy the apartment at one time without the written consent of the Lessor.

24. On January 14, 2014, [REDACTED] contacted West-Ex to discuss whether 505 Central Avenue would make an exception to its owner-occupied policy to permit the [REDACTED] to purchase a unit at the subject property for [REDACTED] occupancy. The person who answered the phone refused to speak with him about the issue.
25. On February 12, 2014, [REDACTED] and his parents consulted with Westchester Residential Opportunities, Inc. ("WRO"), a local fair housing organization, about the application rejection. WRO recommended that [REDACTED] draft a letter to 505 Central Avenue requesting a reasonable accommodation and assisted [REDACTED] in preparing the letter.
26. On approximately February 27, 2014, [REDACTED] sent a letter to 505 Central Avenue and West-Ex requesting a reasonable accommodation to allow the [REDACTED] to purchase a unit for his use at Thompkins Manor. The letter explained that because of [REDACTED] disabilities he needed to purchase a unit through his trust. The letter offered to provide additional information from someone with knowledge of [REDACTED] disabilities to confirm his disability-related need for the accommodation.
27. Furthermore, the letter explained that [REDACTED] was still interested in living at Thompkins Manor, but he would like to refrain from submitting another offer for a particular unit until he knew whether his trust would be considered as a purchaser.
28. [REDACTED] did not receive a response to his February 2014 letter.
29. On June 7, 2014, [REDACTED] mother [REDACTED] sent another letter to 505 Central Avenue and West-Ex requesting a reasonable accommodation to allow the [REDACTED] to purchase a unit at Thompkins Manor. The letter reiterated [REDACTED] request for an exception to the cooperative's policy prohibiting ownership via trust. It enclosed a copy of [REDACTED] February 2014 letter, as well as a copy of the Joint Statement of HUD and the Department of Justice on Reasonable Accommodations Under the Fair Housing Act.
30. According to the Multiple Listing Service, at the time of [REDACTED] June 7 letter requesting a reasonable accommodation, at least two one-bedroom units at Thompkins Manor were available for sale: Apt. [REDACTED] and Apt. [REDACTED]. These units were listed for sale on March 27, 2014 and May 16, 2014 respectively.
31. On June 11, 2014, Ms. Meneghin of West-Ex sent an email to 505 Central Avenue's attorney, Steven Accinelli, informing him of [REDACTED] June 7 letter. The email attached a copy of [REDACTED] recent letter including attachments, as well as a

copy of West-Ex's August 27, 2013 letter rejecting the [REDACTED] Trust for occupancy at Thompkins Manor.

32. On June 14, 2014, according to the Multiple Listing Service, another one-bedroom unit was listed for sale at Thompkins Manor: Apt. [REDACTED]
33. On July 8, 2014, Ms. Meneghin made a handwritten note on a printed copy of her June 11 email to Mr. Accinelli. The note stated: "7/8/14 Barb spoke to Steve – he is going to call them. We are not obligated to do either." The note referred to a conversation between the Thompkins Manor property manager, Barbara Groden, who is employed by West-Ex, and 505 Central Avenue's attorney, Steven Accinelli.
34. On July 9, 2014, over a month after [REDACTED] June 7 letter, Mr. Accinelli called [REDACTED] to deny [REDACTED] reasonable accommodation request.
35. Later on July 9, 2014, Mr. Accinelli sent an email to [REDACTED] to follow up on their earlier conversation. The email unequivocally declined to make an exception to 505 Central Avenue's owner-occupied policy: "It was a pleasure speaking with you this morning regarding your written requests to WestEx and 505 Central Avenue Corp. As we discussed, 505 Central Avenue Corp. does not permit ownership in the name of a trust for the reasons I explained."
36. Mr. Accinelli's email went on to suggest that [REDACTED] contact other cooperatives in the Westchester County area that may allow ownership via trust. It included a list of nine management companies that manage a large volume of cooperatives.
37. As a result of 505 Central Avenue's denial of [REDACTED] reasonable accommodation request, the [REDACTED] Trust chose not make an offer to purchase any of the units listed for sale at Thompkins Manor because 505 Central Avenue would have rejected its Application for Occupancy as it had previously in August 2013.
38. Following these events, [REDACTED] was compelled to seek housing elsewhere. On October 2, 2014, the [REDACTED] Trust purchased a unit in a cooperative located at [REDACTED] Port Chester, New York 10573. [REDACTED] moved into this unit on October 11, 2014 and has lived there since.
39. As a result of 505 Central Avenue's discriminatory conduct, Complainants suffered actual damages, including out-of-pocket expenses, loss of housing opportunity and emotional distress.

D. Legal Allegations

40. As described above, Respondent 505 Central Avenue Corp. violated Section 804(f)(1) of the Act by making housing unavailable to Complainant [REDACTED] based on disability by refusing to grant a reasonable accommodation request to permit Complainant [REDACTED] Trust to own a unit at the subject property when such accommodation was necessary to afford

Complainant [REDACTED] an equal opportunity to use and enjoy the dwelling. 42 U.S.C. §§ 3604(f)(1), 3604(f)(3)(B); 24 C.F.R. §§ 100.70(d)(3), 100.202(a)(2), 100.204(a).

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of the Act, and requests that an Order be issued that:

1. Declares that Respondent's discriminatory housing practices, as set forth above, violate Section 804(f)(1) of the Act, 42 U.S.C. § 3604(f)(1);
2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, from further violations of the Act, pursuant to 42 U.S.C. § 3612(g)(3);
3. Awards such monetary damages as will fully compensate Complainants, pursuant to 42 U.S.C. § 3612(g)(3);
4. Assesses a civil penalty against Respondent for its violation of the Act, 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 on this 26th day of April, 2016.

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