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] and Disability Law Center,	)	
Charging Parties,	)	HUD ALJ No. FHEO No. 08-15-0060-8 FHEO No. 08-14-0156-8 FHEO No. 08-14-0157-8 FHEO No. 08-14-0158-8 FHEO No. 08-14-0159-8
v.	)	
NALS Apartment Homes, LLC, N/A Pinnacle Highland-80 L.P., NALS Utah, LLC, N/A Cobble Creek-36 L.P., Nevins/Adams Properties, Inc., Nevins-Adams 40 L.P., Thornhill-29, L.P., Nevins/Adams Properties of Utah, LLC	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

JURISDICTION

On or about January 22, 2015, [redacted], filed a verified complaint with the United States Department of Housing and Urban Development ("HUD") alleging that Respondents NALS Apartment Homes, LLC, N/A Pinnacle Highland-80 L.P., and Melissa Austin violated the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (the "Act"), based on disability[1] by refusing to grant a reasonable accommodation, thereby making housing unavailable to her family; subjecting her to different terms and conditions; and engaging in retaliation for her exercise of rights protected by the Act. On or about February 10, 2016, Complainant Edgeworth amended her complaint to include an allegation that Respondents

[1] The Fair Housing Act uses the terms "handicap," whereas this document uses the term "disability." Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1988).

NALS Apartment Homes, LLC, N/A Pinnacle Highland-80 L.P. and Melissa Austin made discriminatory statements, and added Respondent NALS Utah, LLC as a Respondent.

On or about May 9, 2014, Disability Law Center ("Complainant DLC") also filed four separate verified complaints with HUD alleging that Respondents violated the Fair Housing Act by engaging in discriminatory rental practices towards individuals with disabilities by refusing to grant reasonable accommodations, making housing unavailable, subjecting individuals with disabilities to different terms and conditions, and making discriminatory statements. Complainant DLC also amended its complaint on or about February 4, 2016, to add an allegation of discriminatory statements against Respondents N/A Cobble Creek-36 L.P., NALS Apartment Homes, LLC, and Nevins/Adams Properties, Inc.

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 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 or her designee. 24 C.F.R. §§ 103.400, 103.405; 54 Fed. Reg. 13121 (March 30, 1989); 76 Fed. Reg. 42462, 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.

LEGAL AUTHORITY IN SUPPORT OF CHARGE

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the 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). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.
   42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.

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

PARTIES

3. Complainant [redacted] and her minor son are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i). Complainant [redacted] son has been diagnosed with a medical condition that substantially impairs major life activities including, but not limited to, social interaction and communication. Complainant [redacted] son has a disability as defined by the Act. 42 U.S.C. § 3602(h).

4. Complainant Disability Law Center is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i). Complainant Disability Law Center ("DLC") is a non-profit, disability advocacy organization in Salt Lake City, Utah. Complainant DLC conducted fair housing tests at 3 rental complexes to investigate Respondents' housing practices. Complainant DLC also represents Complainant [redacted] and her son.

5. Respondent N/A Pinnacle Highland-80 L.P. is the owner of one of the four subject properties, Pinnacle Highland Apartments. Pinnacle Highland Apartments ("Pinnacle Highland") is a 522-unit, multi-family apartment complex, located at 7673 S. Highland Drive, Cottonwood Heights, Utah. This property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).

6. Respondent NALS Utah, LLC is the General Partner of Respondent N/A Pinnacle Highland-80 L.P., the owner of Pinnacle Highland.

7. Respondent N/A Cobble Creek-36 L.P. is the owner of one of the four subject properties, Cobble Creek Luxury Apartment Rentals ("Cobble Creek"), a 361-unit, multi-family apartment complex, located at 5251 Cobble Creek Road, Salt Lake City, Utah. This property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).

8. Respondent Nevins/Adams-40 L.P. is the owner of one of the four subject properties, Sky Harbor Apartment Homes ("Sky Harbor"), a 540-unit, multi-family apartment complex with 444 rental units and 96 hotel suites, located at 1876 North Temple, Salt Lake City, Utah. This property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).

9. Respondent Nevins/Adams Properties, Inc. is the General Partner of Respondent N/A Cobble Creek-36 LP and Respondent Nevins/Adams-40 L.P.

10. Respondent Thornhill-29 L.P. is the owner of one of the four subject properties, Thornhill Park Apartments ("Thornhill Park"), a 232-unit, multi-family apartment complex with 201 rental units and 31 hotel suites, located at 1680 Thornhill Drive, Salt Lake City, Utah. This property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).

11. Respondent Nevins/Adams Properties of Utah LLC is the General Partner of Respondent Thornhill-29 L.P.

12. Respondent NALS Apartment Homes, LLC, is a Limited Liability Company that provides property management and asset management services to the four subject properties.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

13. Respondent NALS Apartments Homes, LLC created reasonable accommodation and pet policies and forms for the four subject properties. These forms are the NALS Service Animal and Emotional Support Animal Accommodation Policy ("NALS Accommodation Policy"); Request for Accommodation: Assistance/Emotional Support Animal ("Request for Accommodation Form"); Doctor's Prescription for Assistance/Emotional Support Animals ("Doctor's Prescription Form"); NALS Restricted Breeds List ("Restricted Breeds List"); Pet Interview Form; Pet or Assistive Animal Agreement; and Cobble Creek Apartments Pet Policy/Lease.

14. These forms, individually and in their totality, impose mandatory burdensome conditions on individuals with disabilities who request assistance animals.

15. In or around December 2013, Complainant [redacted] was seeking a three-bedroom apartment in the Salt Lake City area for herself, her child, [redacted] her son's live-in caregiver, and Complainant [redacted] boyfriend, [redacted] During that month, Complainant [redacted] and her roommates toured Pinnacle Highland with leasing agent Tiffany Parry ("Parry"). During the tour, Complainant [redacted] informed Parry of her child's status as an individual with a disability and discussed the process of requesting a reasonable accommodation for an assistance animal.

16. On December 27, 2013, Complainant [redacted] executed a lease agreement and moved into a three-bedroom Pinnacle Highland unit located at 2074 Pinnacle Terrace Way, [redacted] Cottonwood Heights, Utah. The lease ran from December 27, 2013 to December 30, 2014.

17. In or around early January 2014, Complainant [redacted] visited the Pinnacle Highland leasing office and spoke with Leasing Specialist Thanh Ha ("Ha") about obtaining the requisite paperwork to submit a reasonable accommodation request for her child's assistance animal.

18. Ha provided Complainant [redacted] with the NALS Accommodation Policy, the Request for Accommodation Form, the Doctor's Prescription Form, and the Restricted Breeds List. Ha instructed Complainant [redacted] to complete the forms and return them to the office.

19. On January 10, 2014, Complainant [redacted] son's doctor, Dr. [redacted] completed the Doctor's Prescription Form but refused to provide his

initials next to a clause that states: "I understand that NALS will rely on this prescription and this reliance may lead to property damage and/or put other residents and employees at risk of injury, in which event NALS may request information regarding my insurance carrier and coverage." Instead, Dr. [redacted] wrote a handwritten statement on the form stating, "I cannot be held responsible for damage or injury related to service animal" followed by his initials, [redacted]

20. Thereafter, Complainant [redacted] returned to the Pinnacle Highland leasing office and submitted the Request for Accommodation Form and the Doctor's Prescription Form. Complainant [redacted] was informed that the forms were incomplete due to Dr. [redacted] refusal to initial the Doctor's Prescription Form.

21. Around this time, Complainant [redacted] obtained a dog, a mixed-breed and part Pit Bull Terrier, for her child, and kept the dog in her unit prior to receiving approval for the accommodation request from Respondents.

22. On January 15, 2014, Respondents placed a notice on Complainant [redacted] unit door stating, in relevant part: "Pinnacle Highland Management has attempted to make you aware that your service animal paperwork is not completely filled. In order for Pinnacle Highland to accept the paperwork, the doctor has to take liability of the service animal. . ."

23. Following receipt of the notice, Complainant [redacted] contacted the leasing office by phone and in person to discuss the difficulties she experienced in obtaining a doctor to accept liability for the assistance animal.

24. On February 13, 2014, Respondents posted a second notice on Complainant [redacted] door, which stated, in relevant part: "Management wants to make you aware that in order for us to accept your service animal paperwork a doctor has to initial the section of the paperwork accepting responsibility for the animal. Please have this filled out or please see the office about paying the pet deposit for your dog. . ."

25. On February 14, 2014, Complainant submitted an email to another one of her child's physicians, Dr. [redacted] and requested that he review and complete a blank Doctor's Prescription Form.

26. On February 20, 2014, a secretary for Dr. [redacted] forwarded a response email to Complainant [redacted] that states, in pertinent part, "I cannot fill out this form as it specifically makes me and Valley Mental Health liable for any property damages that the support animal may cause. Sorry!!"

27. In or around February 2014, Complainant [redacted] contacted Complainant DLC following her failed efforts to obtain Respondents' approval of her reasonable accommodation request.

28. Respondents continued to rigidly adhere to their policy and made additional requests to Complainant [redacted] for a completed Doctor's Prescription Form. On March 2,

2014, Respondent Melissa Austin, who Respondents hired as the Pinnacle Highland leasing manager on March 1, 2014, sent an email to Ha instructing her to call Complainant [redacted] and "follow up."

29. On March 3, 2014 Ha stated in an email "I just talked to Melissa from 20-304. She said she had been going to 3 doctors and asked them to sign the 'responsibility clause' on our form."

30. Julie Koch, NALS District Manager replied "I highly doubt she has gone to three doctors. . . it seems to me based on all the other residents its [sic] not too hard to get a doctor to sign anything . . . ."

31. The remainder of the March 3, 2014 email states in relevant part: "She also researched into it and stated that it is illegal/discriminate [sic] against her son for asking such responsibility from the doctor, who is not the owner of the pet. Based on what our attorney has researched this is a bit gray. . . we do have a responsibility to all of [our] residents.

    She let us know that if we do not accept her paperwork without the doctor's signature for that clause, the Disability law firm will contact us. She needs to provide the doctor prescription and I and our attorney are more than happy to discuss it with the disability law firm."

32. On March 13, 2014, Austin sent an email to Koch informing her that Complainant DLC had not called her yet and asked Koch if she should call them. That same day, Koch instructed Respondent Austin not to call Complainant DLC.

33. On or about March 18, 2014, responding to a voicemail from Austin, Complainant [redacted] told Austin that the dog was no longer at the property. Complainant [redacted] oved the dog to a friend's home prior to April 2014.

34. Koch sent Austin four additional emails on March 22, March 25, April 18, and May 1 2014, inquiring about the status of Complainant [redacted] paperwork and possible contact by Complainant DLC. Koch's May 1, 2014 email to Respondent Austin specifically asked if Respondent Austin had issued Complainant [redacted] a three day notice.

35. Respondent Austin replied to Koch on May 4, 2014, stating: "The pet is not in the apartment. The pet is staying with a friend until the paperwork was approved because she does not want to pay the $600 fine. They are planning on move out and the roommate without the pet is going to transfer to [a] one bedroom. I talked with the roommate yesterday. "

36. Complainant [redacted] her child, and [redacted] vacated the apartment in or around April 2014. Respondents officially removed Complainant [redacted] from the lease in October 2014. [redacted] vacated the subject unit following the expiration of the lease in December 2014.

37. On April 3, 2014, a DLC tester visited Thornhill Park Apartments and inquired about a one-bedroom apartment. The tester informed Nikkol Peterson ("Ms. Peterson"), a Thornhill Park manager, that she had an assistance animal. Ms. Peterson informed the tester that Respondents allowed assistance animals at Thornhill Park, but the tester would need to get a prescription from her doctor, supply vaccination records, and fill out some forms. The tester told Ms. Peterson that she had a note from her therapist and Ms. Peterson told her that would work. Ms. Peterson then handed the tester the NALS Accommodation Policy, the Request for Accommodation Form, the Doctor's Prescription Form, the Pet or Assistive Animal Agreement, and the Restricted Breeds List. Ms. Peterson informed the tester that she could get a waiver for a restricted breed. Lastly, Ms. Peterson told the tester she would need to bring her dog into the office so management could ensure it was not aggressive and take its photo. Ms. Peterson informed the tester that management would waive the fees if the animal passed this process.

38. On April 8, 2014, a tester visited Cobble Creek Luxury Apartment Rentals ("Cobble Creek") and inquired about a one-bedroom apartment. The tester spoke to a leasing consultant named Emily Fairbanks ("Ms. Fairbanks"). When Ms. Fairbanks asked the tester if she had any pets, the tester replied "[y]es, actually I have an emotional support animal. Is that a problem?" Ms. Fairbanks replied, "No, not at all." The tester asked if there was any special paperwork to fill out for the emotional support animal. Ms. Fairbanks replied "yes" and informed the tester that management waives pet fees for support animals. When the tester asked for the forms, Ms. Fairbanks told her that only the manager could give her the forms. Despite Ms. Fairbank's failure to provide the forms to the tester, the NALS Accommodation Policy, Request for Accommodation Form, Doctor's Prescription Form, and Restricted Breed List are used at Cobble Creek. In lieu of a Pet/Assistive Animal Agreement, Cobble Creek uses a different form, Cobble Creek Pet Policy/Lease, which is substantially similar to the Pet/Assistive Animal Agreement.

39. On April 9, 2014, a tester visited Sky Harbor Apartment Homes and inquired about a one-bedroom apartment. The tester asked a representative named "Oscar" about Sky Harbor's pet policy and stance on assistance animals. Oscar stated that there was a no-pet policy, but management allowed assistance animals. Oscar further stated that "lots of people have service animals [at Sky Harbor]." Oscar informed the tester that it was a simple process and the tester would just need to submit an application for accommodation and then she and the animal would need to be "interviewed." Oscar then confirmed with another individual in the office that management would waive the pet deposit. Sky Harbor staff provided the tester with the Request for Accommodation Form, the Doctor's Prescription Form, the Restricted Breeds list, the Pet Interview form, and the Pet or Assistive Animal Agreement.

40. Respondents used these discriminatory policies and forms across the four subject properties, to the detriment of tenants and applicants seeking an assistance animal as a reasonable accommodation.

41. As a result of Respondents' discriminatory conduct, Complainant [redacted] and her son have suffered damages including but not limited to emotional distress, anxiety, and inconvenience.

42. As a result of Respondents' discriminatory conduct, Complainant DLC has suffered damages including, but not limed to, economic loss through diversion of its resources and frustration of its mission to achieve equal housing opportunities.

43. As a result of Respondents' discriminatory conduct, Complainant DLC incurred damages including but not limited to, testing costs, administrative costs, and other miscellaneous costs.

FAIR HOUSING ACT VIOLATIONS

44. Respondents violated subsection 804(f)(2) of the Act by discriminating against Complainant Edgeworth and her son on the basis of disability in the terms, conditions, or privileges of the rental of her dwelling, by continuously denying her request for a reasonable accommodation. 42 U.S.C. § 3604(f)(2) and (f)(3)(B); 24 C.F.R. § 100.202(b)(3) and §100.204.

45. Respondents also violated subsection 804(f)(2) of the Act by discriminating against Complainants on the basis of disability in the terms, conditions, or privileges of the rental of a dwelling, by applying their discriminatory assistance animal accommodation policies and requiring the submission of burdensome forms at the four subject properties. 42 U.S.C. § 3604(f)(2) and (f)(3)(B); 24 C.F.R. § 100.202(b)(3) and §100.204.

46. Respondents violated subsection 804(c) of the Act by using forms that indicate a preference, limitation, or discrimination based on disability. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a).

CONCLUSIONS

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) and 3604(f) 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) and 804(f)(2) of the Act. 42 U.S.C. §§ 3604(c) and (f)(2)-(3);

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 Complainants for their damages, including inconvenience, emotional distress, and out-of-pocket losses 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,

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