

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 Party,

v.

Amy Sloan and BJJ Enterprises, LLC,

Respondents.

HUD ALJ No.
FHEO No. 08-15-0190-8
FHEO No. 08-15-0178-8

Date: November 16, 2016

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On August 17, 2015, Complainant [REDACTED] (“Complainant [REDACTED]”), filed a verified complaint with the United States Department of Housing and Urban Development (HUD) alleging that Respondents Amy Sloan and BJJ Enterprises, LLC violated the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (the “Act”), based on disability¹ by failing to grant her a reasonable accommodation. On February 17, 2016, Complainant [REDACTED] amended her complaint to correct the name of a named respondent.

On July 27, 2015, Complainant Disability Law Center (“Complainant DLC”), a nonprofit, advocacy organization, filed a verified complaint with HUD alleging that Respondents Amy Sloan and BJJ Enterprises, LLC violated the Act based on disability by refusing to provide services to persons with disabilities, refusing to make reasonable accommodations for persons with disabilities, and by making housing unavailable to persons with disabilities. On February 17, 2016, Complainant DLC amended its complaint to correct the name of a named respondent.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of an aggrieved person or 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)-(2). The Secretary has delegated that authority to the General Counsel,

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).

who has redelegated it 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 these cases based on disability 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 above-mentioned complaints and the Determination of Reasonable Cause, Respondents Amy Sloan and BJJ Enterprises, LLC, (collectively, "Respondents") are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to refuse to rent or to otherwise make unavailable or deny a dwelling to any renter because of a disability of that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. §§ 100.50(b)(1), 100.60(a), 100.202(a). 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 discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of the disability of that person. 42 U.S.C. § 3604(f)(2)(A) and (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.
3. It is unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, 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. §§ 100.50(b)(4), 100.75(a).
4. The Act defines a "handicap" 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.

B. Subject Property and Parties

5. Complainant [REDACTED] is an individual with a disability within the meaning of the Act, as she has functional limitations which substantially limit one or more major life activities as defined by 42 U.S.C. § 3602(h).
6. The subject property, Pine Cove Apartments, is a 48-unit multifamily apartment building located at 1243 E. Alameda Avenue, Salt Lake City, Utah ("Subject Property"). Respondent BJJ Enterprises, LLC owned Pine Cove Apartments at all times relevant to these allegations. The Subject Property and its units are dwellings, as defined by the Act. 42 U.S.C. § 3602(b).
7. Respondent Sloan has been the property manager of the Subject Property since 2005 and was the property manager at all times relevant to these allegations.
8. Complainant DLC is a non-profit, disability advocacy organization that provides a variety of legal services and programs, including its Fair Housing Program. In support of its efforts to promote equal access and opportunity in housing, Complainant DLC conducts fair housing tests at various rental complexes to gather information regarding whether housing providers are in compliance with the Act. Complainant DLC's services include promoting equal access to housing for individuals with disabilities in the state of Utah where the Subject Property is located.
9. Complainant DLC is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).

C. Factual Allegations

10. On or about April 4, 2015, Complainant [REDACTED] attempted to secure housing at the Subject Property for herself and her husband. On or about that date, Complainant [REDACTED] made a telephone call to Respondent Sloan, during which she requested a reasonable accommodation to the Subject Property's no-pet policy in order to reside with her assistance animal.
11. During this call, Respondent Sloan informed Complainant [REDACTED] that animals are never accepted at the Subject Property because some tenants are allergic to dogs and other longtime residents simply do not want animals at the property.
12. During this call, Complainant [REDACTED] informed Respondent Sloan that she had paperwork from her doctor prescribing the animal as an emotional support animal, and that the animal was a small dog of about ten pounds.
13. At all times relevant to this complaint, Complainant [REDACTED] had a disability-related need for an assistance animal and the requested accommodation was necessary to allow her the equal opportunity to use and enjoy a dwelling at the Subject Property.

14. Respondent Sloan denied Complainant [REDACTED] reasonable accommodation request and instead referred her to a different apartment complex.
15. After Complainant [REDACTED] reasonable accommodation request was denied and she was forced to look for alternative housing, Respondent [REDACTED] sought out the assistance of Complainant DLC.
16. Upon receiving notice of the Respondents' discriminatory practices, Complainant DLC conducted three separate telephone tests at the Subject Property. These tests were conducted on or about the dates of June 27, 2014, September 18, 2014, and April 30, 2015.
17. The results of the three tests revealed discrimination against individuals with disabilities evidenced by the statements of Respondent Sloan. Specifically, Complainant DLC's testing revealed that Respondent Sloan consistently refused to grant reasonable accommodation requests made by the testers and otherwise refused to deal with testers asserting their right to live with an assistance animal.
18. The Subject Property has a longstanding no-pet policy to which it adheres even when a reasonable accommodation is requested.
19. The residential agreement for the Subject Property ("Rental Agreement") states, in part:

Tenant will not keep any animal(s) of any kind on the premises, unless permitted in writing by the landlord. Any such consent, if given, shall be revocable by the Landlord at any time. Tenant agrees (Tenant initial _____) to pay a \$500-non-refundable fee IN FULL within seven (7) days if a pet is in the residence, or on the premises, or for feeding stray animals.
20. The Rental Agreement does not contain exceptions to the "no-pet" policy for assistance animals and does not outline any procedures for requesting a reasonable accommodation to the no-pet policy for individuals with disabilities.
21. The Subject Property does not have a written reasonable accommodation policy.
22. As a result of Respondents' discriminatory acts, Complainant DLC has suffered harm including, but not limited to, the diversion of its resources to investigate the alleged discriminatory practices and the frustration of its mission.
23. As a result of Respondents' discriminatory acts, Complainant [REDACTED] has suffered harm including, but not limited to, emotional distress, inconvenience, and monetary costs associated with securing alternative housing.

D. Legal Allegations

24. Respondents violated Subsection 804(f)(1) of the Act by discriminating against both Complainant [REDACTED] and Complainant DLC on the basis of disability by refusing to deal with Complainants because they inquired about residing with assistance animals at the Subject Property. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.204.
25. Respondents violated Subsection 804(f)(2) of the Act by discriminating against both Complainant [REDACTED] and Complainant DLC on the basis of disability in negotiating the terms, conditions, or privileges of the rental of a dwelling, by subjecting Complainants to discriminatory terms and conditions because Complainants requested to reside with an assistance animal at the Subject Property. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b)(1).
26. Respondents violated Subsection 804(f)(1) of the Act by making housing unavailable to both Complainant [REDACTED] and Complainant DLC on the basis of disability by refusing to grant Complainants' requests for a reasonable accommodation to allow Complainants to have an assistance animal at the Subject Property, when such an accommodation was necessary to afford an equal opportunity to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(1) and (f)(3)(B); 24 C.F.R. § 100.204.
27. Respondents violated Subsection 804(f)(2) of the Act by discriminating against both Complainant [REDACTED] and Complainant DLC on the basis of disability in the terms, conditions, or privileges of the rental of a dwelling, by refusing to grant Complainants' requests for a reasonable accommodation to allow Complainants to keep an assistance animal at the Subject Property, when such an accommodation was necessary to afford an equal opportunity to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(2) and (f)(3)(B); 24 C.F.R. § 100.204.
28. Respondents violated Subsection 804(c) of the Act when Respondent Sloan made statements to Complainant DLC that indicated a preference, limitation, or discrimination based on disability. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of Regional Counsel, Region VIII, 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 the Act and requests that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate subsections 3604(c) and 3604(f) of the Act, 42 U.S.C. § 3601 *et seq*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of disability against any person in any aspect of the sale or rental of a dwelling;

3. Mandates Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
4. Awards such monetary damages as will fully compensate Complainants for their damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
5. Assesses a civil penalty against each Respondent for each violation of the Act that each Respondent has committed, pursuant to 42 U.S.C. § 3612(g)(3), 24 C.F.R. § 180.671(a)(1); and,
6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

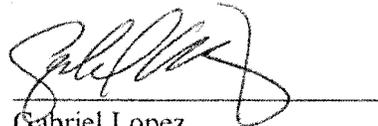
Respectfully submitted,



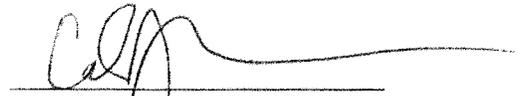
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