

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	)	
<b>Redacted</b> , and their	)	
five minor children,	)	
	)	
Charging Party,	)	HUD ALJ No.
	)	FHEO No. 05-16-4452-8
v.	)	
	)	
Chuck Hietpas; and	)	
Lynn Hietpas,	)	
	)	
Respondents	)	
	)	

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On March 21, 2016, Complainant **Redacted**<sup>1</sup> filed a verified complaint with the United States Department of Housing and Urban Development (“HUD” or the “Department”). On September 20, 2016, the complaint was amended, *inter alia*, to add Complainant **Redacted** and to add Complainants’ five minor children as aggrieved persons. Complainants allege that Respondents violated subsections 804(a), 804(b) and 804(c) of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (“Act”), by discriminating against them and their minor children because of familial status.

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 to the General Counsel, who has redelegated to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement, 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 and 103.405; 76 Fed. Reg. 42462, 42465 (July 18, 2011).

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<sup>1</sup> When the Complaint was filed, Complainant **Redacted** name was **Redacted**. She and Complainant **Redacted** were married on July 16, 2016, at which time she changed her name to **Redacted**.

By a Determination of Reasonable Cause and No Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Regional Director of the Office of Fair Housing and Equal Opportunity for Region V has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

## **II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE**

Based on HUD's investigation of the allegations contained in the aforementioned amended complaint and the Determination of Reasonable Cause and No Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

### **A. Legal Authority**

1. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(1), (3); 24 C.F.R. § 100.60(a).
2. 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 therewith, because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.50(b)(2); 24 C.F.R. § 100.65(a); 24 C.F.R. § 100.70(b).
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 sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or that indicates an intention to make such a distinction. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a), (b), (c)(1).
4. Under the Act, an occupancy policy may not be used to exclude families with children or to limit unreasonably the ability of families with children to obtain housing. An occupancy policy of two persons per bedroom is presumptively reasonable, but this presumption is rebuttable by considering the following factors: (1) the size of the bedrooms and the unit; (2) the age of the children; (3) the configuration of the unit; (4) any physical limitations of the housing; (5) state and local law; and (6) any other relevant factors. 63 Fed. Reg. 70,256, 70,256-57 (Dec. 18, 1998) ("Keating Memorandum"); *see also* Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999, Pub. L. No. 105-276, § 589(a), 112 Stat. 2461, 2651 (1998) (requiring that the Keating Memorandum "shall be the policy of the [Department] with respect to complaints of discrimination under the [Act] on the basis of familial status which involve an occupancy standard established by a housing provider").

### **B. Parties and Subject Property**

5. Complainants **Redacted** are married and have five children. At the time of the alleged discrimination, Complainants lived with their two-year-old daughter and twelve-year-old son. **Redacted** also had joint custody of three other children, who were six, twelve, and fourteen

years old respectively. Under the joint custody arrangement, the three children lived with Complainants every other week. Complainants and their minor children are aggrieved persons as defined by the Act. 42 U.S.C. § 3602(i).

6. The Subject Property is a three-bedroom, three-bathroom unit in a duplex located at **Redacted**, Kaukauna, WI 54130. The Subject Property is a “dwelling” within the meaning of the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

7. Respondents Chuck and Lynn Hietpas are the current owners and occupants of the Subject Property. At the time of the alleged violation, Respondents were in the process of purchasing the Subject Property and were permitted to negotiate rentals while the sale was pending.

### C. Factual Allegations

8. Respondents enforce an occupancy policy that allows for no more than two people per bedroom, thereby limiting the Subject Property to six residents (“Policy”). Respondents maintain the Policy at all their rental units and have done so since around 1993 when they purchased their first rental property.

9. The City of Kaukauna, Wisconsin maintains a different occupancy standard from that employed by Respondents. Section 19.15(9) of Kaukauna’s Housing and Property Maintenance Code requires each sleeping room to have a minimum of 70 square feet total and 50 square feet per occupant. In other words, a bedroom shared by two occupants must measure at least 100 square feet, and a bedroom shared by three occupants must measure at least 150 square feet. The code permits rooms other than bedrooms to be used as sleeping rooms provided they meet the applicable size and the following other requirements. Sections 19.16(1) and (2) require habitable rooms to have, at a minimum, window area equal to 10% of the room’s floor area and openable window area equal to 4.5% of the room’s floor area. Section 19.15(7) requires habitable rooms (other than attics) to have ceilings at least 7.3 feet high.

10. On June 16, 2015, Complainants saw a for-rent sign in front of a duplex located at **Redacted** Street in Kaukauna, Wisconsin, which is next door to the Subject Property. Later that evening, **Redacted** sent a text message to the advertised telephone number inquiring about the unit. Mr. Hietpas replied by text message, apologizing that the unit had been rented. **Redacted** then asked if Mr. Hietpas knew of any other available rentals, to which Mr. Hietpas replied by providing information about the neighboring Subject Property, referring to it as a three-bedroom, three-bathroom “executive” apartment that would be available on August 1, 2015 for \$1050 per month. **Redacted** then asked if the bedrooms were “good size,” to which Mr. Hietpas replied that all of the bedrooms were “good size,” and added that the basement is finished with a bar and recreation room. Mr. Hietpas also sent **Redacted** several photographs of the interior of the Subject Property and they scheduled a tour for the following evening.

11. On June 17, 2015, Complainants arrived at the Subject Property and were greeted by the occupants at the time, who began giving Complainants a tour of the unit. Mr. Hietpas arrived towards the end of the tour and gave each Complainant an application to complete.

12. On June 18, 2015, Complainants dropped off their applications in Respondents' mailbox, along with a \$100 application fee, as instructed. **Redacted** application lists under "other residents" her twelve-year-old son and two-year-old daughter with their names, ages and the notation "100% placement." **Redacted** application lists under "other residents" his fourteen-year-old son, twelve-year-old daughter, and six-year-old son with their names, ages and the notation "50% placement."

13. On June 22, 2015, Mr. Hietpas and **Redacted** spoke on the telephone about the status of the applications. During this conversation, Mr. Hietpas said "my wife isn't comfortable with having five children living in the duplex. She thinks this is too many kids and having three boys sharing a bedroom would be too many for one room even if two of the boys are only there part-time." Mr. Hietpas also informed **Redacted** that "we just don't feel that the house would be cleaned properly and are concerned things would get stained and damaged," explaining that he and his wife "intend to live in the duplex ourselves within a year or two time." In response, **Redacted** assured Mr. Hietpas that she is a stickler for cleanliness and invited Mr. Hietpas to come to her current residence to see for himself.

14. During the same phone call, Mr. Hietpas and **Redacted** also discussed the issue of vaping because **Redacted** vapes. Mr. Hietpas informed **Redacted** that no smoking was allowed in the unit, whereupon **Redacted** explained that vaping and smoking are different in that vaping does not generate smoke. **Redacted** also offered that Respondents accepted Complainants' application, **Redacted** would agree not to vape in the unit and to vape only outside.

15. Upon **Redacted** request that he reconsider, Mr. Hietpas agreed to discuss the matter with his wife.

16. On June 28, 2015, **Redacted** sent a text message to Mr. Hietpas asking about the status of Complainants' application. Mr. Hietpas replied "I thought about it quite a bit, but I still think it would be best if you found a 4br there was one that looked pretty good on Craig's list you should check that one out. I am sorry as you seem like nice people but we just wouldn't feel comfortable." **Redacted** replied, accusing Mr. Hietpas of discrimination, which he then denied.

17. By mail postmarked July 6, 2015, Mr. Hietpas returned Complainants' application fee with a note that said "[a]s discussed, I have decided to go in a different direction for this rental unit so I have enclosed your deposit check for your disposition."

18. The Subject Property includes a main floor with over 1,175 square feet and a basement with over 1,000 square feet. The three bedrooms and living room are on the main floor, along with a dining room, kitchen, and two bathrooms. The three bedrooms measure 126 square feet, 145 square feet, and 146 square feet respectively. The living room measures 224 square feet and complies with all of the requirements in the City code applicable to sleeping rooms.

19. Under the City of Kaukauna's occupancy code, sufficient space existed for Complainants' family to reside at the Subject Property.

20. Respondents' Policy limits the ability of families with children to obtain housing. In Outagamie County and the surrounding area, 2.6% of income-qualified renter households with

children have seven or more persons. By comparison, in the same area none of the income-qualified renter households without children have seven or more persons. This difference is statistically significant at the 99% confidence level. Based on this data, Respondents' Policy excludes only households with children to from the Subject Property. As used in this paragraph, "income-qualified" refers to households with an income of \$40,000 or more, which would enable them to afford the rent for the Subject Property with 30% of their income allotted to housing, and "Outagamie County and the surrounding area" refers to Public Use Microdata Areas that include or are adjacent to Outagamie County, the county containing the Subject Property.

21. Respondents' Policy is unreasonable as applied to Complainants. The unit is large enough for Complainants' family because, for example, one of the children who resides with Complainants every other week could sleep in the living room. The City code is less stringent than Respondents' Policy, such that the local code permits Complainants' family to occupy the Subject Property.

22. As a result of Respondents' discriminatory conduct, Complainants and their children suffered actual damages, including lost housing opportunity, emotional distress and out of pocket expenses.

#### **D. Legal Allegations**

23. As described above, Respondents discriminated against Complainants by refusing to negotiate for the rental of a dwelling and otherwise making a dwelling unavailable because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(1), (3); 24 C.F.R. § 100.60(a).

24. As described above, Respondents discriminated against Complainants in the terms, conditions, or privileges of the rental of a dwelling because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.50(b)(2); 24 C.F.R. § 100.65(a); 24 C.F.R. § 100.70(b).

25. As described above, Respondents made statements with respect to the rental of a dwelling that indicate a preference, limitation and discrimination based on familial status. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a), (b), (c)(1).

### **III. CONCLUSION**

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a), (b) and (c), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19;
2. Enjoins Respondents and their agents, employees, successors, and all other persons in active concert or participation with them, from discriminating because of familial status in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);

3. Requires Respondents and their agents and employees to attend, at Respondents' cost, training that addresses the Fair Housing Act's prohibitions against familial status discrimination;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainants and their five minor children for damages caused by Respondents' discriminatory conduct;
5. Awards the maximum civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 27th day of September, 2018.

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Enforcement

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing “Important Notice,” “Charge of Discrimination,” and “Determination of Reasonable Cause and No Reasonable Cause” were served on the following via UPS Next Day Air – Signature Required on this 27th day of September 2018:

Complainants

**Redacted**  
Green Bay, WI 54303

Respondents

Lynn and Chuck Hietpas  
102 W. 11th Street  
Kaukauna, WI 54130

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