

**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**

Charging Party,

v.

Hubbard Properties, Inc., Bethany Petz,  
and Hunter’s Pointe, LLC

Respondents.

ALJ No. \_\_\_\_\_

FHEO No. 04-17-9613-8

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On September 8, 2017, Complainant, **Redacted** filed a timely complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Respondents Hubbard Properties, Inc., Bethany Petz, and Hunter’s Pointe, LLC (collectively, “Respondents”) discriminated against him based on disability,<sup>1</sup> in violation of the Fair Housing Act (“Act”), as amended, 42 U.S.C. §§ 3601-3619. The complaint was last amended on February 14, 2018.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (the “Charge”) 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)-(2). The Secretary has delegated that authority to the General Counsel, who has redelegated the authority to the Regional Counsel, to issue such a Charge following a determination of reasonable cause by the Assistant Secretary of Fair Housing and Equal Opportunity or his or her designee. 24 C.F.R. §§ 103.400 and 103.405; 76 Fed. Reg. 42463 and 42465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that

---

<sup>1</sup> The Fair Housing Act and its implementing regulations use the term “handicap,” whereas this document uses the term “disability,” which is more generally accepted. Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1988).

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 FINDINGS IN SUPPORT OF THIS CHARGE**

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in its Determination of Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

### ***A. Legal Authority***

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that person. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(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 with such dwelling because of a disability of that person. 42 U.S.C. § 3604(f)(2)(B); 24 C.F.R. § 100.202(b).
3. For the purposes of Section 3604(f), 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(a).
4. A person has a disability under the Fair Housing Act if he has a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

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

5. **Redacted** ("Complainant") is an individual with a disability, as defined under the Act, 42 U.S.C. § 3602(h). Complainant has cardiac/heart disease, which substantially limits one or more of his major life activities, including his ability to walk more than fifty (50) feet without stopping and also including his ability to climb stairs. Complainant became disabled in or around March 2017.
6. Complainant is an aggrieved person within the meaning of 42 U.S.C. § 3602(i).
7. Respondent Hunter's Pointe, L.L.C. ("Hunter's Pointe") is a limited liability company organized under the laws of Alabama. At all times relevant to this Charge, Respondent Hunter's Pointe owned Hunter's Pointe Apartments located at 3205 Lloyds Lane, Mobile, Alabama 36693 (the "Subject Property").

8. The Subject Property is a 201-unit multifamily complex that is comprised of “dwellings” within the meaning of 42 U.S.C. § 3602(b).
9. At all times relevant to this Charge, Respondent Hubbard Properties, Inc. (“Hubbard”), managed the Subject Property. Respondent Hubbard is a domestic corporation under the laws of Alabama.
10. At all times relevant to this Charge, Respondent Bethany Petz (“Petz”) was the on-site property manager at the Subject Property and was acting on behalf of Respondent Hunter’s Pointe and Respondent Hubbard.

**C. Factual Allegations**

11. For approximately six (6) years, Complainant rented and lived alone in unit #S8, a one-bedroom apartment on the second floor at the Subject Property.
12. At Building S, there are approximately six (6) stairs to get to a first/ground floor apartment and a full flight of stairs, approximately sixteen (16), to get to Complainant’s unit on the second floor.
13. Complainant’s rental payment at the Subject Property was \$510.00 during the lease period, which began on July 1, 2016 and ended on June 30, 2017 (“lease period”).
14. Sometime in March 2017, Complainant noticed changes in his health and began having trouble climbing stairs. On or about March 13, 2017, Complainant was hospitalized for six (6) days. After a series of medical tests, Complainant was diagnosed with congestive heart failure.
15. During and immediately following Complainant’s hospitalization, his rental payments were submitted after the grace period (i.e. 5<sup>th</sup> day of the month) in March, April, and June 2017. Complainant was late one other time during the lease period, which was in August 2016.
16. Complainant told Respondent Petz about his medical issues after he was hospitalized in March 2017. Respondent Petz admitted that she and Complainant discussed Complainant’s medical condition and she also noticed in the months following Complainant’s hospitalization that he didn’t check his mail as often as he used to, that he appeared to move slower than he used to, and that he looked thinner than he did when he first moved to the Subject Property.
17. On or about July 1, 2017, Complainant’s lease for his second-floor unit (#S8) automatically renewed in accordance with the Automatic Renewal Lease between Respondent Hunter’s Pointe and Complainant.

18. In July 2017, Complainant verbally requested to Respondent Petz to move to a downstairs/ground floor unit due to medical reasons. He identified unit #S1 as being vacant.
19. The investigation revealed that downstairs unit #S1 was vacant at the time of Complainant's request.
20. The investigation also revealed that downstairs unit #S1 was similar to Complainant's apartment in that it was a one-bedroom apartment and cost \$510.00 to lease.
21. In July 2017, Respondent informed Complainant that to be considered for an accommodation, Complainant had to provide her with a doctor's note concerning his disability.
22. Complainant obtained a written statement from his physician, Dr. Redacted in support of his request for a downstairs unit. The statement, written on Cardiology Associates letterhead and dated August 2, 2017, read:

I am writing today in regard to Redacted. He is a 58-year-old gentleman whom I follow at Cardiology Associates of Mobile. He has a significant cardiac history that is notable for cardiomyopathy and systolic congestive heart failure. Due to his significant cardiac disease and history, it may be more beneficial for Redacted overall health to have an apartment downstairs. Even though it is important for Redacted to have regular exercise, climbing stairs every day may put some stress on his heart. I hope you find this information helpful and please let us know if we can help further. /s/ Redacted M.D.
23. Complainant gave the medical statement dated August 2, 2017, to Respondent Petz on or about August 4, 2017.
24. On or about August 10, 2017, Respondent Petz informed Complainant, a current tenant, that he would need to apply for the ground floor unit, and she provided him with a new lease application. She also stated that he needed to also provide identification and proof of income with his application.
25. On or about August 11, 2017, Complainant submitted to Respondent Petz a new lease application, identification, and proof of disability income.
26. On or about August 11, 2017, Respondents rented unit #S1 to a non-disabled applicant for \$510.00. The non-disabled applicant moved into unit #S1 on or about August 31, 2017.
27. On or about August 17, 2017, Complainant received a letter denying his reasonable accommodation request for a downstairs unit. The letter was written on Hunter's Pointe Apartments letterhead, dated August 16, 2017, and signed by Respondent Petz.

- Respondents' letter instead referred to the transfer policy and stated that in addition to the application, identification, and proof of disability income Complainant submitted earlier, Complainant would also need to pay a \$35 application fee and meet the following qualifications: monthly gross income must meet or exceed three (3) times the rent; criminal background check must be passed; and a transfer fee of \$200 and a new Security Deposit of \$200 must be paid.
28. Upon receiving the denial letter, Complainant met with Respondent Petz in person at the leasing office and asked that Respondents reconsider their decision to deny his reasonable accommodation request. Specifically, Complainant asked that Respondents waive the transfer and deposit fees, waive the alleged income requirement since he was a current tenant in an active lease for over five (5) years, and allow him to transfer to unit #S1. Respondent Petz verbally denied Complainant's request for reconsideration.
  29. On September 8, 2017, Complainant contacted HUD's Office of Fair Housing and Equal Opportunity ("FHEO") to file a complaint; on September 18, 2017, the instant complaint was filed.
  30. In early September 2017, Complainant saw a heart surgeon. On or about September 19, 2017, Complainant underwent heart surgery. The heart surgeon installed a defibrillator, which would help to restore Complainant's heart beat if his heart suddenly stopped.
  31. In response to the Complainant's Complaint, Respondents asserted that they were unable to approve Complainant's reasonable accommodation request because he did not meet the income requirement and also because he was late with his rent four (4) times in the previous twelve (12) months. Respondent Hubbard further asserted that the information they received was not sufficient to merit a reasonable accommodation because the doctor's letter stopped short of saying a downstairs unit was mandatory. Later in the investigation, Respondent Hubbard also asserted that Complainant's "disability was not obvious and did not change since the last time he rented an upstairs apartment." Respondent Petz admits no employee of Respondent Hunter's Pointe or of Respondent Hubbard made efforts to follow up with Complainant and/or Complainant's physician for additional information.
  32. Complainant obtained a second statement from physician Dr. Redacted in support of his request for a downstairs unit. The statement, written on Cardiology Associates letterhead and dated December 15, 2017, read:

I am writing today in regard to Mr. Redacted. He is a 59-year-old gentleman with nonischemic cardiomyopathy and chronic systolic heart failure. He has severely reduced left ventricular systolic function. Due to Mr. Redacted's cardiac condition, his physical exertion is severely limited. He is unable to climb more than one flight of stairs at a time. Additionally, he is unable to walk more than 50 to 100 feet at once. The provision of a ground-level apartment would greatly facilitate his health care and it is

unlikely that he will be able to consistently climb more than one flight of stairs at a time. /s/ [Redacted] M.D.

33. Complainant gave the medical statement dated December 15, 2017, to Respondent Petz on or about December 15, 2017. He identified a downstairs/ground floor unit in Building S as being vacant.
34. On or about December 15, 2017, Respondent Petz again verbally denied Complainant's reasonable accommodation request. Complainant asserts that Respondent Petz told him they had been through that before and he did not qualify for a reasonable accommodation to transfer.
35. Complainant obtained a third statement from his physician, Dr. [Redacted], in support of his request for a downstairs unit. The investigation revealed that Complainant believed his health was declining and he did not leave his apartment for fear of overexerting himself from climbing the stairs to his apartment. The investigation also revealed that Complainant wanted an updated doctor's letter in the event he found a ground floor unit to rent elsewhere. The statement, written on Cardiology Associates letterhead and dated January 10, 2018, read:

I am writing today in regard to Mr. [Redacted]. He is a 59-year-old gentleman with nonischemic cardiomyopathy and chronic systolic heart failure. Additionally, he has severely reduced left ventricular systolic function. Due to Mr. [Redacted] cardiac condition, physical exertion is severely limited. He is unable to climb one flight of stairs and unable to walk more than 50 feet without stopping. The provision of a ground-level apartment would greatly facilitate his healthcare as it is unlikely that he will be able to consistently climb even one flight of stairs at a time. /s/ [Redacted], M.D.

36. Complainant gave the medical statement dated January 10, 2018, to Respondent Petz on or about January 11, 2018.
37. On or about January 11, 2018, Respondent Petz once more verbally denied Complainant's reasonable accommodation request and refused to accept his medical statement. Complainant asserts Respondent Petz said, "I'm sorry we've been over this. You just don't qualify."
38. On or about June 1, 2018, Complainant moved to a ground floor unit at a new property located approximately four (4) miles from Subject Property at his own expense. At no time prior to Complainant vacating the Subject Property was his accommodation request granted.
39. Respondents' transfer policy for current residents of Hunter's Pointe Apartments requires the following from a requesting resident:

- 1) Have been in their current apartment at least one year.
  - 2) Has a good payment record (late no more than 3 times in the last twelve months and no more than 1 NSF in the last 12 months).
  - 3) Pays a new deposit.
  - 4) Pays a non-refundable \$200 transfer fee.
  - 5) Current apartment must be inspected for damages.
40. The transfer policy further requires that residents requesting a transfer to an apartment with the same or lower monthly rent must complete a new rental application; however, they are not to be charged a new application fee or required to pass a background and credit check.
41. Respondents' transfer policy also states, "If a resident has not been able to pay their current rent in a timely manner, do not transfer them to an apartment with a higher rental rate." However, Respondents allowed three (3) non-disabled residents to transfer to apartments with a higher rental rate even though they were late more than 3 times in the previous twelve (12) months:
- 1) On or about November 1, 2016, [Redacted], Sr., a non-disabled tenant residing in unit #E4 (one-bedroom apartment) of Subject Property, requested to transfer to a two-bedroom apartment. Respondents granted Mr. [Redacted] request although he did not meet all of the transfer policy requirements—Mr. [Redacted] was late with his rental payment twelve (12) times in the previous twelve (12) months.
  - 2) On or about November 18, 2016, [Redacted], a non-disabled tenant residing in unit #V3 (one-bedroom apartment) of Subject Property, requested to transfer to a two-bedroom apartment. Respondents granted Ms. [Redacted] request although she did not meet all of the transfer policy requirements—Ms. [Redacted] [Redacted] late with her rental payment eleven (11) times in the previous twelve (12) months.
  - 3) On or about April 14, 2017, [Redacted], a non-disabled tenant residing in unit #V4 (one-bedroom apartment) of Subject Property, requested to transfer to a two-bedroom apartment. Respondents granted Mr. [Redacted] request although he did not meet all of the transfer policy requirements—Mr. [Redacted] was late with his rental payment eight (8) times in the previous twelve (12) months.
42. Respondents admitted that from March 1, 2016 through August 9, 2017, seven (7) non-disabled tenants applied and were approved to transfer to other units. No non-disabled residents who requested transfers during this period were denied, even where the terms of the transfer policy were not fully met.

43. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages, including but not limited to emotional distress, inconvenience, loss of equal opportunity to use and enjoy a dwelling, and relocation expenses.

***D. Fair Housing Act Violations***

44. Respondents Hunter's Pointe, Hubbard, and Petz violated the Act by denying Complainant's request to move a downstairs/ground floor unit because of his disability, which made housing unavailable to the Complainant. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

45. Respondents Hunter's Pointe, Hubbard, and Petz violated the Act by discriminating against Complainant in the terms, conditions, or privileges of the rental of a dwelling, and in the provision of services or facilities in connection with such dwelling because of Complainant's disability. 42 U.S.C. § 3604(f)(2)(B); 24 C.F.R. § 100.202(b).

46. Respondents' acts and omissions, including Respondents' response on August 16, 2017, as well as their failure to respond to and to accept and consider inquiries before and after that date, constitute a refusal to make reasonable accommodations in rules, policies, practices, or services necessary to afford Complainant equal opportunity to use and enjoy a dwelling in violation of the Fair Housing Act. 42 U.S.C. §3604(f)(3)(B); 24 C.F.R. §100.204(a).

**III. CONCLUSION**

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel for the Atlanta Regional Office, 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(f)(1), 3604(f)(2)(B), and 3604(f)(3)(B), and requests that an Order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate Sections 3604(f)(1), 3604(f)(2)(B), and 3604(f)(3)(B) of the Fair Housing Act, 42 U.S.C. §§ 3601-19;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability against any person in any aspect of the sale or rental of a dwelling;
3. Mandates Respondents, their agents, employees, successors, and all other persons in active concert or participation with any of them, to attend training that addresses the Act's prohibitions against disability discrimination;
4. Awards such monetary damages as will fully compensate Complainant for the actual damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3)(i);

5. Awards a 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(b)(3)(iii); and
6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3).

Respectfully submitted,

---

SHARON M. SWAIN  
Regional Counsel  
U.S. Depart. of Housing and Urban Development  
Office of General Counsel – Region IV  
40 Marietta Street, Suite 300  
Atlanta, Georgia 30303  
(678) 732-2646  
[Sharon.M.Swain@hud.gov](mailto:Sharon.M.Swain@hud.gov)

---

ROBERT A. ZAYAC, JR.  
Associate Regional Counsel  
U.S. Depart. of Housing and Urban Development  
Office of General Counsel – Region IV  
40 Marietta Street, Suite 300  
Atlanta, Georgia 30303  
(678) 732-2887  
[Robert.A.Zayac@hud.gov](mailto:Robert.A.Zayac@hud.gov)

---

JUSTIN J. BABINO  
Trial Attorney  
U.S. Depart. of Housing and Urban Development  
Office of General Counsel – Region IV  
40 Marietta Street, Suite 300  
Atlanta, Georgia 30303  
(678) 732-2322  
[Justin.Babino@hud.gov](mailto:Justin.Babino@hud.gov)

Date: May 8<sup>th</sup>, 2019