

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

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The Secretary, United States )  
Department of Housing and Urban )  
Development, on behalf of )  
**NAME REDACTED** and her children, )

) )  
Charging Party, )

) )  
v. )

Tim Dally and Linda Dally, )  
Respondents. )  
\_\_\_\_\_ )

HUDALJ No.:  
FHEO No.: 05-18-0105-8

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On December 13, 2017, Complainant **NAME REDACTED** (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“Department” or “HUD”), alleging that Respondents Tim Dally and Linda Dally (“Respondents”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601, *et seq.* (the “Act”), by denying her reasonable accommodation request for an assistance animal and revoking her lease to rent a three-bedroom unit located at **ADDRESS REDACTED**. On June 27, 2018, Complainant amended her complaint to remove an allegation, revise Complainant **NAME REDACTED** last name (formerly **NAME REDACTED**), revise the statement of facts, and modify the most recent date on which a discriminatory act occurred.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) 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 retained and re-delegated 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 and 103.405; 76 Fed. Reg. 42462-42465.

The Office of Fair Housing and Equal Opportunity, Director for Region V, 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

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 aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents are charged with discriminating against Complainant, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability, in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(3) as follows:

### **A. LEGAL AUTHORITY**

1. It is unlawful to make unavailable or deny a dwelling to any buyer or renter because of a disability of that buyer or renter, or a person residing, or intending to reside, with that buyer or renter. 42 U.S.C. § 3604(f)(1).
2. For the purposes of § 3604(f), "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).
3. Pursuant to the Act, an "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. §3602(i).
4. "Handicap" means, with respect to a person – "(1) a physical or mental impairment, which substantially limits one or more of such person's major life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment..." 42 U.S.C. §3602(h).

### **B. PARTIES AND SUBJECT PROPERTY**

5. Complainant **NAME REDACTED**, formerly **NAME REDACTED**, is a mother of three children. Her eldest daughter, **NAME REDACTED**, has mental and emotional disabilities. Her daughter's disabilities substantially limit her daughter's major life activities, including, but not limited to, sleeping, taking care of herself and her surroundings, focusing, and engaging in social interactions. Due to those limitations, Complainant's daughter is disabled, as defined under the Act.<sup>1</sup> 42 U.S.C. § 3602(h).
6. Complainant, her eldest daughter, and her other minor children have been injured by Respondents' actions and are "aggrieved persons" as defined by the Act. 42 U.S.C. § 3602(i).

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<sup>1</sup> The Act uses the term "handicap" or "handicapped," which are considered antiquated terms. In this Charge, the terms "disability" or "disabled" will be used, instead. Those terms have the same legal meaning as the term "handicap" or "handicapped," as defined in the Act.

7. Respondents Tim and Linda Dally own and manage several residential rental properties, including four residential units located at **ADDRESS REDACTED** (“subject property”).

### **C. FACTUAL ALLEGATIONS**

8. Complainant’s daughter has received treatment for a mental-health condition since at least November of 2015.
9. Complainant performed a search for housing in May of 2017.
10. On May 19, 2017, Complainant completed a rental application for the subject property and sent the application by postal mail to the Respondents.
11. In or around May or June of 2017, Respondents informed Complainant that her rental application was approved. Respondents informed Complainant that she would need to complete the lease agreement and return it to the Respondents.
12. In or around June of 2017, Respondents sent Complainant a lease to execute. The lease agreement was the contract to rent Unit 5, a three-bedroom, two-bathroom townhouse, at the subject property. The lease term was to begin on September 1, 2017.
13. In or around June 27, 2017, Complainant executed and returned the lease agreement to Respondents. Complainant included a damages deposit (a security deposit) with the lease agreement that she returned to Respondents.
14. The damages deposit check in the amount of \$1,100, was signed by Complainant on June 27, 2017 and Respondents deposited Complainant’s \$1,100 check in their bank account on July 3, 2017.
15. On or about July 12, 2017, the lease agreement was finalized when Respondents signed the lease agreement. Occupancy under the final lease was scheduled to begin September 1, 2017. The executed lease, at Paragraph 20(T), stated, “Residents are not allowed to have pets of any kind on the premises. There are no exceptions to this rule.” Elsewhere in the lease, Respondents had a provision that warned, “NO PETS ALLOWED.”
16. On or about July 26, 2017, Complainant wrote a letter to Respondents and requested a reasonable accommodation to this no pet policy. The reasonable accommodation requested was for permission to permit Complainant’s daughter to reside with her assistance animal<sup>2</sup> at the subject property.

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<sup>2</sup> The term “assistance animal” is used interchangeably with “support animal” as an animal used to ameliorate the effects of Complainant’s daughter’s disabilities.

17. The request was sought because Complainant's then-minor daughter had a disability-related need for her assistance animal.<sup>3</sup>

18. Complainant's reasonable-accommodation request to Respondents included a letter from **NAME REDACTED**, MS, LP, a clinical psychologist, that explained Complainant's daughter's need for the assistance animal. Ms. **NAME REDACTED** had treated Complainant's daughter since November of 2015.

19. Ms. **NAME REDACTED** letter stated, in relevant part:

“**NAME REDACTED** has suffered from Major Depressive Disorder for several years and is on medication for this disorder. She has also regularly attended therapy and a therapy skills training group. In the group, participants are encouraged to find coping strategies that are not self-destructive and one of **NAME REDACTED** coping strategies is petting and being with her cat. The cat is a companion animal that has assisted **NAME REDACTED** in dealing with her depression. I would be in favor of **NAME REDACTED** being allowed to have this animal in her new living environment if at all possible.”

20. On August 1, 2017, Respondents responded, by letter to Complainant's request for a reasonable accommodation, denying Complainant's reasonable accommodation request. In addition to denying the request itself, Respondents terminated the executed lease agreement. Respondents also refunded Complainant's \$1,100 damage deposit.

21. Respondents' letter to Complainant stated, in relevant part:

We are so very sorry and sympathetic to hear of your family situation. And we understand how difficult these situations can be. We have, and have had, some very similar situations.

Unfortunately, we have a strict NO pet policy. This is clearly stated on the application. So, if we let you have a pet, then everyone else will want one. Do you see how this will go? We really would have liked for your family to move to our place in Ottertail. But, we understand that your daughter needs her pet.

So please find enclosed your Damage Deposit for the 3 bedroom townhouse. We are sorry for the situation in your family and wish you the Best of Luck.

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<sup>3</sup> Complainant's daughter was a minor at the time of the events in question. She has since that time reached the age of majority.

22. In or around the first week of August 2017, Complainant received Respondents' letter denying her reasonable accommodation request. Her initial response to the letter was to make several telephone calls to Respondents. She left several voicemail messages for Respondents. In addition to the telephone calls, on August 7, 8, and 9, 2017, Complainant sent text messages to Respondent Linda Dally, requesting reconsideration of Respondents' denial of her reasonable accommodation request. The text messages Complainant sent to Respondent Linda Dally included reference to relevant fair housing laws and guidance, particularly concerning emotional support animals. By way of these messages, Respondent Linda Dally was informed of her obligation to accommodate a person with a disability.
23. On August 9, 2017, Complainant mailed Respondents a letter requesting reconsideration of Respondents' denial of her reasonable accommodation request. Again, Complainant acted to educate Respondents of the law in the body of the letter.
24. On August 11, 2017, under stress to find housing that would satisfy the terms of her custody agreement under her then-recent divorce before the beginning of the school year, Complainant signed a lease for a unit at a different property. This property charged for the use of a garage, making the cost to rent nearly \$40 more per month than the subject property.
25. On August 14, 2017, Ms. **NAME REDACTED** sent a follow-up letter to Respondents reasserting Complainant's daughter's need for an emotional support animal.
26. On August 15, 2017, Respondent Linda Dally sent a text message to Complainant stating, "We have contacted our Attorneys, and they will be contacting you with more information by the end of next week."
27. The Respondents' attorney did not contact Complainant by the end of the following week.
28. On September 7, 2017, Complainant received a letter from Respondents' attorney, Joseph Krueger, wherein he requested that Ms. **NAME REDACTED** furnish him and his clients with more information about Complainant's daughter's disability, including the nature and severity of her daughter's disability. That letter stated, in relevant part:

"In order to fully evaluate your request and determine whether a reasonable accommodation can be made, I am requesting that Ms. **NAME REDACTED** provide answers to the following questions:

1. What is the exact nature of **NAME REDACTED** disability?
2. How does it substantially limit Ms. **NAME REDACTED** daily life activities?
3. For how long has Ms. **NAME REDACTED** been receiving treatment for this disability? What treatment is required to treat the disability?
4. Why is a cat needed to ameliorate the disability?

5. Are there other reasonable alternatives available to Ms. **NAME REDACTED** to ameliorate her disability that do not involve a live animal? If so, please describe them.
6. If there are no other reasonable alternatives to ameliorate Ms. **NAME REDACTED** disability, other than a live animal, please describe why this is the case.

Once we have received a response from Ms. **NAME REDACTED** to the above questions, my client will be able to fairly evaluate your daughter's request for a reasonable accommodation. We will advise you of my clients' decision once we receive the responses from Ms. **NAME REDACTED**. If there is any additional information you wish us to consider, please send that to my office at the address enclosed."

29. This letter from Respondents' attorney was sent over a month after the Respondents had already denied Complainant's reasonable-accommodation request and terminated the lease. Also, the letter was sent after the tenancy under the lease was set to begin.
30. In their interviews with HUD, Respondents admitted to denying Complainant's reasonable accommodation requests because they were unaware that the law required them to consider reasonable accommodations for emotional support animals.

#### **D. LEGAL ALLEGATIONS**

31. Respondents discriminated on the basis of disability in violation of the Act when they denied Complainant's reasonable accommodation request for an exception to Respondents' no pet policy for her daughter's disability-related need for an assistance animal in her home. 42 U.S.C. § 3604(f)(1), (f)(3)(B); 24 C.F.R. §§ 100.202(b), 100.204.
32. Respondents' denial of Complainant's request for her daughter's disability-related need for an assistance animal in the dwelling, and Respondents' termination of the lease agreement violated Section 3604(f)(1) of the Act by making housing unavailable because of the disability of Complainant's daughter, an intended occupant of the dwelling. 42 U.S.C. §§ 3604(f)(1), 3604(f)(3)(B).
33. As a result of Respondents' discriminatory acts, Complainant has suffered damages, including economic losses, emotional distress, inconvenience, and loss of a unique housing opportunity.

#### **III. CONCLUSION**

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the Regional Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory

housing practices in violation of 42 U.S.C. §§ 3604(f)(1) and 3604(f)(3) of the Act, and prays that an order be issued that:

34. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;
35. Enjoins Respondents, their agents, employees, 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 rental, occupancy, use or enjoyment of a dwelling;
36. Enjoins Respondents, their agents, employees, successors, assigns, and all other persons in active concert or participation with them from further violation of the Act, including, but not limited to, their use of a policy that inquires into the nature or severity of a person's disability in violation of 24 C.F.R. § 100.202(c);
37. Awards such monetary damages as will fully compensate Complainant and her children for their economic losses and emotional distress, including but not limited to, all out-of-pocket expenses, medical expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, the loss of a housing opportunity and any and all other damages caused by Respondents' discriminatory actions; and
38. Awards a civil penalty against each Respondent for their violation of the Act pursuant to 42 U.S.C. § 3612(g)(3).
39. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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COURTNEY B. MINOR  
Regional Counsel, Region V

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JARET R. FISHMAN  
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