

**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,)
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Charging Party,) ALJ No.: _____
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on behalf of **NAME REDACTED**,) **FHEO No. 02-18-8785-8**
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Complainant,)
)
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v.)
)
Thomas Frawley,)
)
)
Respondent.)
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CHARGE OF DISCRIMINATION

I. JURISDICTION

On November 28, 2017, **NAME REDACTED** (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Thomas Frawley (“Respondent”) discriminated against him on the basis of familial status in violation of the Fair Housing Act (“the Act”), as amended, 42 U.S.C. §§ 3601 *et seq.* Specifically, Complainant alleges that Respondent refused to rent a one-bedroom apartment to him when Respondent learned that Complainant’s minor son would be living there with him part-time.

The Act authorizes the Secretary of HUD to issue 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)-(2); 24 C.F.R. § 103.400(a). 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. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined, after investigation, that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1) and (2)(A); 24 C.F.R. § 103.400(a).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based upon HUD’s investigation of the allegations contained in the aforementioned complaint and the findings contained in the Determination of Reasonable Cause, the Secretary charges Respondent with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate in the sale or rental, to refuse to negotiate for the sale or rental, or to otherwise make unavailable or deny, a dwelling to any person because of the person’s familial status. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.60(a), (b)(2).
2. It is unlawful to make, print, or publish 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 an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.75.
3. Under the Act, “‘Familial Status’ means one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such individual or individuals[.]” 42 U.S.C. § 3602(k).

B. PARTIES AND SUBJECT PROPERTY

4. At the time of the alleged discriminatory act, Complainant **NAME REDACTED** (“Complaint”) was the father of a son, **NAME REDACTED** who was then 17 years old.
5. Complainant was divorced at the time of the alleged discriminatory act and, as part of the terms of his divorce, **NAME REDACTED** would stay with him approximately three nights per week.
6. During the time period relevant to this Charge, Thomas Frawley (“Respondent”) owned and managed a residential and commercial mixed-use property located at 223 Main Street, Hamburg, New York (the “Subject Property”).
7. The Subject Property is comprised of a dental surgery practice on the first floor, operated by Respondent, and two residential units on the second floor. The second floor contains a one-bedroom apartment that is the subject of this Charge (the “Subject Apartment”) and

a two-bedroom apartment that, at the time relevant to this Charge, was rented to a family of four.

8. The Subject Property includes a parking lot. The Subject Apartment is allotted one space, the two-bedroom unit is allotted two parking spaces, and the remainder of the parking spaces are used to accommodate the staff, patients, and operation of Respondent's dental practice.

C. FACTUAL ALLEGATIONS

9. On October 30, 2017, Complainant telephoned Respondent to inquire about the Subject Apartment after seeing a sign advertising it for rent.
10. On the Call, Respondent described the apartment as a "one-bedroom upper" and agreed to show it to Complainant later that day.
11. During the showing, Complainant asked if the apartment was quiet, to which Respondent replied that the two children residing in the other, two-bedroom, unit could be "quite loud at times."
12. Complainant believed that the one-bedroom apartment would be well-suited to his situation, specifically that it would accommodate him and his son for the three nights per week they would spend together, and that, when his son went off to college in the autumn of 2018, the apartment would not be excessively sized for him to live there alone.
13. At the conclusion of the showing, Respondent gave Complainant a rental application, which Complainant promised to return shortly along with proof of his income and creditworthiness.
14. Complainant duly completed the application. Under the field labeled "Number of Occupants that will be Living in Apartment," the Complainant wrote "1.5 myself & my son (<50%)." Under "Year/Make of Automobile," Complainant wrote "Ford F-250." Under "Persons Living With You (ages of children)," Complainant wrote "(1) 17 years old."
15. Complainant returned the application along with proof of his credit score and income on October 31, 2017.
16. On November 1, 2017, Complainant called Respondent to ensure that he received the rental application. During the call, Respondent accused Complainant of deliberately

misrepresenting that he would be the sole occupant of the Subject Apartment during the initial showing.

17. Complainant then explained that the reference to 1.5 occupants was intended to indicate the fact that his then 17-year-old son **NAME REDACTED** would stay with him approximately three nights per week pursuant to the terms of Complainant's divorce.
18. Respondent replied that: "I don't want any kids there"; "It is only a one-person apartment"; and "I don't want any kids there during the day, as I have a dental practice downstairs."
19. Respondent stated that the Subject Apartment was only allotted one parking space.
20. Complainant responded that **NAME REDACTED** did not own a motor vehicle, but if he did acquire one sometime in the future, Complainant would make alternate arrangements to secure a parking space nearby. Complainant specifically identified the possibility of negotiating the use of a parking space from **NAME REDACTED**, the owner of an adjacent commercial property with whom Complainant had a preexisting relationship, or by using a nearby municipally-owned lot, which primarily served a commercial gym.
21. Complainant then asked Respondent if he intended to rent the Subject Apartment to him. Respondent replied that he would get back to Complainant in a few days.
22. On November 5, 2017, Complainant telephoned Respondent and recorded the call. Complainant asked for the status of his rental application.
23. Respondent stated that, although he was still reviewing applications, he would not rent the Subject Apartment to Complainant and offered to return Complainant's application materials.
24. Respondent explained that he was "concerned with the parking. And originally [Complainant] told [him] just one person was there, would be living there, and that's what [Respondent was] looking for."
25. Complainant then requested Respondent's justification for declining to rent the unit to him. Respondent explicitly disclaimed that his decision was based on credit concerns and responded that: "I want one person there. I only have one parking space."
26. Complainant responded that if it became necessary, he would secure alternate parking arrangements for his son. Respondent then ended the conversation and the call.

27. The Subject Apartment remained available for rental until November 15, 2017, when Respondent rented the Subject Apartment to a single male tenant pursuant to a one-year lease.

D. FAIR HOUSING ACT VIOLATIONS

28. Respondent violated Section 804(a) of the Act by refusing to rent to Complainant based on familial status, namely the fact that Complainant's 17-year-old son would reside with him on a part-time basis. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.60(a), (b)(2).
29. Respondent violated Section 804(c) of the Act by stating that he did not desire to have any children in the Subject Apartment. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a) and (c) of the Act, and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Act, as amended, 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondent, his agents, officers, employees, and successors, and all other persons in active concert or participation with him, from further violations of the Act;
3. Mandates that Respondent, his agents, officers, employees, and successors, and all other persons in active concert or participation with him, 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 damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
5. Assesses a civil penalty against 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 any additional relief, as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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