

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	)	
Metro Fair Housing Services, Inc.,	)	
	)	HUD ALJ No.
Charging Party,	)	FHEO Nos. 05-07-1712-8
	)	05-07-1713-8
v.	)	05-07-1714-8
	)	
Georgian Manor Condominium	)	
Association, Inc., HN Real Estate Group,	)	
LLC, d/b/a Harry Norman Realtors, Jennifer	)	
Sherrouse, John Branch, Jr. and the Estate	)	
of Jean Branch,	)	
	)	
Respondents.	)	
_____	)	

**CHARGE OF DISCRIMINATION**

I. **JURISDICTION**

On or about November 17, 2006, Complainant Metro Fair Housing Services, Incorporated (“Complainant MFHS”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD” or “the Department”), alleging that Respondents Georgian Manor Condominium Association, Incorporated (“Respondent GMCA”), HN Real Estate Group, LLC, d/b/a Harry Norman Realtors (“Respondent Harry Norman Realtors”), Jennifer Sherrouse (“Respondent Sherrouse”), National Association of Realtors, Realtor.com, and Home Store, Incorporated, d/b/a MOVE, Inc., discriminated on the basis of familial status in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (“the Act”). The complaint was later amended on February 20, 2007, to include Jean Branch, the owner of the subject condominium unit. The complaint was subsequently amended on October 23, 2008, to substitute John Branch, Jr., Jean Branch’s son and then attorney-in-fact under a durable general power of attorney, as a named respondent. The amended complaint also removed the National Association of Realtors and the Home Store, Inc., d/b/a MOVE, Inc., as named respondents.<sup>1</sup>

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that

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<sup>1</sup> The complaint filed against Respondent REALTOR.com is currently being investigated by HUD under case number 04-07-0224-8.

a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has retained and re-delegated to the Regional Counsel (73 Fed.Reg. 68442) 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.

The Office of Fair Housing and Equal Opportunity Region V 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 this case based on familial status, and has authorized and directed the issuance of this Charge of Discrimination.

## II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents Georgian Manor Condominium Association, Inc., HN Real Estate Group, LLC, Jennifer Sherrouse, John Branch, Jr., and the Estate of Jean Branch, (collectively "Respondents") are charged with discriminating against Complainant Metro Fair Housing Services, Inc., an aggrieved person as defined by 42 U.S.C. § 3602(i), based on familial status in violation of 42 U.S.C. § 3604(a) and (c) of the Act as follows:

### A. Applicable Federal Law

1. It is unlawful to refuse to negotiate for the sale or rental of a dwelling, or to make unavailable or deny a dwelling, to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a).
2. 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 unit that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c).
3. The Act, as amended by The Housing for Older Persons Act of 1995 ("HOPA"), exempts "housing for older persons" from the Act's prohibitions against discrimination because of familial status. 42 U.S.C. § 3607(b)(2); see also 24 C.F.R. §§ 100.300 – 100.308. As defined in the Act, "housing for older persons" means housing – "(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons ... ; or (B) intended for, and solely occupied by persons 62 years of age or older; or (C) intended and operated for occupancy by persons 55 years of age or older []." <sup>2</sup>

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<sup>2</sup> Section 3607(b)(2)(C) and 24 C.F.R. §§ 100.304 – 100.307 provide additional requirements that must be met in order for a housing facility or community to qualify as housing for older persons for occupancy by persons 55 years of age or older.

B. Factual Background

4. Complainant MFHS is a not-for-profit fair housing corporation, serving the state of Georgia. Complainant MFHS's mission is to promote social justice and eliminate housing and lending inequities for all people through leadership, education and outreach, public policy, advocacy and enforcement. Complainant MFHS works to assist in enforcing federal and state housing laws which make it illegal to discriminate in housing based on race, color, sex, national origin, religion, age, disability, marital status, legal source of income, sexual orientation, and family status. In furtherance of its mission, Complainant MFHS also engages in activities to identify barriers to fair housing in Georgia that help counteract and eliminate discriminatory housing practices. As part of its housing enforcement efforts, Complainant MFHS conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices.
5. At all times relevant to this Charge, Jean Branch was the owner of a three-bedroom, three-bathroom condominium unit located at 3648 Peachtree Road, Unit 1G, Atlanta, Georgia ("subject property").
6. On or about September 13, 1996, Jean Branch executed a durable power of attorney ("POA,") appointing her son, John Branch, Jr., as her lawful attorney-in-fact. Upon information and belief, the POA is recorded at Page 230 of Deed Book 441954, Fulton County, Georgia. In or around 2002, after the passing of her husband, Jean Branch vacated the subject unit due to health issues and resided in various health care facilities. Upon information and belief, Jean Branch, passed away in or around December 2008; and, upon information and belief, Respondent Branch was appointed executor of her estate.
7. At all times relevant to this Charge, Respondent Sherrouse was a licensed realtor in the state of Georgia and is affiliated with Respondent Harry Norman Realtors, an independent real estate brokerage firm located in Fulton County, Georgia. As a real estate agent for Respondent Harry Norman Realtors, in 2006, Respondent Sherrouse split her earned commission at a ratio of 75% (realtor) and 25% (Harry Norman Realtors). Upon information and belief, Respondent Sherrouse has been licensed and practicing real estate in Georgia for approximately 14 years and specializes in marketing and selling condominium properties.
8. Respondent GMCA is a not-for-profit membership corporation that was formed in or around 1985. Each of the 28-single-family condominium units at Georgian Manor Condominiums ("GMC") are privately owned by members of Respondent GMCA.
9. As of the filing date of the subject complaint in November 2006, to at least February 2007, GMCA published and maintained the following rules and regulations restricting and/or imposing a limitation on occupancy of GMC units by children under the age of 14, including the subject property:

Section XV(F). The Board is directed not to approve leases where the proposed tenants or Residents have either pets or children under the age of 14 who would become Residents of the building.

XV(G). The limitation on the age of children who are to be Residents is based on the intention of the Owners to live in a mature adult condominium in which no provision has been made for the recreation of children.

XXI Mature Adult Community. Inasmuch as the Association is a mature adult community, with no facilities for the recreation of children, no owner may sell his unit to anyone having a child under the age of 14 who would reside in the building. *(XXI was added on 6/11/85. Subsequently, a U.S. Supreme Court decision would seem to have rendered XXI unconstitutional under present (June 1992) conditions.)* (Emphasis original.)

10. Between approximately 2002 and May 2006, Respondent Branch contracted with several real estate agents, including agents other than Respondent Sherrouse, affiliated with Respondent Harry Norman Realtors, but was unsuccessful in selling the subject property. Respondent Branch admits that during the aforementioned time period, he informed several realtors that Respondent GMCA prohibited children.
11. In or around May 2006, Respondent Branch contracted with real estate agent Respondent Sherrouse of Respondent Harry Norman Realtors to list the subject property for sale.
12. By electronic mail ("email") dated May 10, 2006, Respondent Branch advised Respondent Sherrouse of the following: "Unfortunately, Georgian Manor does not allow pets or children. Just wanted to make sure you were aware." On the same day, Respondent Sherrouse responded by email stating: "Yes, I knew that about the restrictions. If it weren't for the restrictions, the building would be marketable to more people and easier to sell (and, for higher prices). I will disclose the restrictions in the FMLS comments to agents." Respondent Branch admits that he did not object to Respondent Sherrouse's intention to disclose the restriction on children in the local multiple listing service.
13. During a January 5, 2009 interview with a HUD investigator, Respondent Sherrouse stated that her decision to disclose GMCA's restrictive policy prohibiting children under 14 was influenced by her familiarity with GMC demographics, noting that the GMC community gave her the impression that children were prohibited, and that it had the "look and feel of a mature community."
14. Upon information and belief, on or about June 5, 2006, Respondent Sherrouse created a marketing flyer for the subject property which stated, in relevant part, "Building does not allow pets or children." Respondent Sherrouse admits that she distributed the

aforementioned flyer to Respondent Branch and all GMC unit owners and also left copies of the flyer inside the subject property for prospective buyers and their agents.

15. Subsequently, Respondent Sherrouse revised her marketing materials to specifically reflect Respondent GMCA's policy of only prohibiting occupancy by children under the age of 14.
16. Respondent Sherrouse admits that she published Respondent GMCA's restriction of occupancy by children under the age of 14 in several advertising mediums, including the local multiple listing service, her personal real estate website, [www.jennifersherrouse.com](http://www.jennifersherrouse.com), Respondent Harry Norman Realtors' website, [www.harrynorman.com](http://www.harrynorman.com), the National Association of Realtors' website, REALTOR.com, the local newspaper, and on various flyers and brochures.
17. Respondent Sherrouse specifically admits that she posted a comment in the local multiple listing service which stated, "No pets or residents under 14."
18. Respondent Sherrouse also specifically admits that she posted an advertisement on REALTOR.com which read, "Georgian Manor does not allow pets, rentals, or residents under the age of 14." The listing statistics for the REALTOR.com advertisement revealed that the listing generated approximately 633 property views<sup>3</sup> during a 7-week period.
19. In or around June 2006, Brenda Shavers, the interim supervisor for Fair Housing Enforcement with HUD's Office of Fair Housing and Equal Opportunity ("FHEO") in Atlanta, was house-hunting for a personal residence when she read one of the ads posted by Respondent Sherrouse for the subject property. She noticed it contained discriminatory language prohibiting occupancy of the subject property by children. In response, on or about June 8, 2006, HUD, at Shavers' direction, referred the matter to Complainant MFHS.
20. In response to HUD's referral, Complainant MFHS conducted an investigation to determine Respondents' compliance with the Act. Complainant MFHS conducted a "test" using a fair housing tester to evaluate Respondents' compliance with the Act.
21. On or about June 12, 2006, the tester, posing as a single mother with two children under the age of 14, telephoned Respondent Harry Norman Realtors at (404) 495-8265 and asked for Respondent Sherrouse. A woman identifying herself as Jennifer Sherrouse took the tester's call. The tester told Respondent Sherrouse that she was calling about a condominium for sale advertised on the internet, and located at 3648 Peachtree Road, the subject property. Respondent Sherrouse asked the tester if she would like to see the property. The tester replied, "yes," but then immediately expressed concern that the advertisement contained language restricting occupancy of

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<sup>3</sup> Upon information and belief, property views include the "number of times a listing is viewed on REALTOR.com" or on a realtor's website.

the subject property to those over the age of 14 years old. The tester volunteered that she had 2 children and asked if that would be a problem. Respondent Sherrouse told the tester that there could be “no pets” and “no children” at the subject property, or words to that effect. Respondent Sherrouse then inquired whether the tester’s children were under 14. When the tester replied, “yes,” Respondent Sherrouse told her that she could not show the unit to her, that it would be a “waste of time,” or words to that effect.

22. During the course of the June 12, 2006 test, the tester asked Respondent Sherrouse why children were not allowed to live at the subject property. Respondent Sherrouse told her the “Association rules” were that no one under the age of 14 could reside at the subject property. Respondent Sherrouse added that the “owners” preferred that everyone be over 18 years old, but that the condominium rules indicated residents must be over 14 years old. Respondent Sherrouse further commented that, “if you asked the neighbors, they would tell you” that everyone had to be over 18 years of age, and added that “they really mean it,” or words to that effect. Respondent Sherrouse then informed the tester that Respondent Sherrouse had a few other properties that she could show the tester and offered to show her a smaller, less expensive condominium in Chastain Park.
23. Although the tester indicated that she would like to see the unit, at no time did Respondent Sherrouse offer the tester an opportunity to view the subject property. Though Respondent Sherrouse maintains that she believed the property to be exempt under HOPA, at no time did Respondent Sherrouse ask the tester whether the tester or anyone in her household was 55 years of age or older.
24. Respondents Sherrouse and Harry Norman Realtors admit that Respondent Sherrouse received at least two telephone calls from women inquiring about the availability of the subject property, around the same time period in which MFHS performed its test. Respondent Sherrouse admitted that both prospective buyers volunteered that they had young children and that she informed both women that GMCA rules prohibited occupancy by children under the age of 14. Respondent Sherrouse also recalls offering to show one of the prospective buyers a unit that accepted children near Chastain Park, on information and belief, the MFHS tester. Respondent Sherrouse told a HUD investigator that both women sounded discouraged after she informed them of the restriction on children.
25. On or about July 5, 2006, Respondent Sherrouse sent Respondent Branch and his sister, Barbara Branch Scott, an email stating, “I had two prospects call me in June but I wasn’t able to show it to them because both needed a condo that would allow elementary school age children.”
26. Recognizing that he was losing potential purchasers, on or about July 31, 2006, Respondent Branch sent an email to Respondent Sherrouse, informing her that he planned to contact Hugh Sawyer,<sup>4</sup> president of the GMCA homeowners association,

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<sup>4</sup> Upon information and belief, Hugh Sawyer passed away in or around August 2008.

for clarification on the Association rules regarding occupancy by children under the age of 14.

27. On or about August 1, 2006, Respondent Branch sent Respondent Sherrouse an email stating that he met with Sawyer and that Sawyer had assured him that there was no enforced age restriction at GMC. Respondent Branch alleges that, in reliance on Sawyer's representations, he advised Respondent Sherrouse to contact the interested prospects with children who were previously unable to view the subject property. Attempts to contact these parties either failed because Respondent Sherrouse did not have contact information or because the prospects were no longer interested.
28. On or about August 1, 2006, Respondent Sherrouse removed the restrictive language in some of the listings and brochures advertising the sale of the subject property. On or about August 29, 2006, Respondent Sherrouse also emailed Respondent Harry Norman Realtors' web department requesting that the sentence, "Georgian Manor does not allow pets, rentals or residents under age 14," be removed from the listing for the subject property.
29. Respondent Sherrouse admits that prior to August 1, 2006, several prospective purchasers with children under the age of 14 inquired about the subject property. Respondent Sherrouse admits informing prospective purchasers with families of the age restriction on children.
30. On or about December 26, 2006, the subject property was sold to a single female without children.
31. Upon information and belief, on or about February 28, 2007, and in response to the HUD complaint, the Board for Respondent GMCA passed a revision to its rules and regulations that removed its policies prohibiting children under the age of 14 in connection with the sale and leasing of condominiums at GMC.

C. Fair Housing Act Violations

32. By discouraging Complainant MFHS's tester, and other prospective buyers, from negotiating for the purchase of the subject unit because of the existence of Respondent GMCA's rules and regulations prohibiting children under the age of 14, Respondents Sherrouse, Harry Norman Realtors and Branch unlawfully made housing unavailable based on familial status in violation of 42 U.S.C. § 3604(a) of the Fair Housing Act.
33. By making, printing and/or publishing GMCA's rules and regulations restricting and/or imposing various limitations on children under the age of 14, Respondent GMCA unlawfully made discriminatory statements indicating a limitation or discrimination against families with children with respect to the sale of a dwelling in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.

34. By making discriminatory statements to Respondent Sherrouse with respect to prohibiting the sale of the subject property to families with children, and instructing her to abide by GMCA's prohibition against families with children when marketing the subject property for sale, Respondent Branch violated 42 U.S.C. § 3604(c) of the Fair Housing Act.
35. By Respondent Sherrouse making discriminatory statements to Complainant MFHS' tester with respect to the sale of the subject property, specifically statements that there could be "no children" at the subject property; that the "owners" prefer that everyone be over 18 years old; that the Association required residents to be over the age of 14, and that the "neighbors" would tell the tester that all residents must be over 18 years old and "they really mean it," or words to that effect, Respondent Sherrouse, Harry Norman Realtors and Branch violated 42 U.S.C. § 3604(c) of the Fair Housing Act.
36. By publishing discriminatory statements indicating a limitation or discrimination against families with children with respect to the sale of the subject property in several advertising mediums, specifically, "No pets or residents under 14;" "Georgian Manor does not allow pets, rentals, or residents under the age of 14;" and the "Building does not allow pets or children," Respondents Sherrouse, Harry Norman Realtors and Branch violated 42 U.S.C. § 3604(c) of the Fair Housing Act.
37. At no time during the events of this complaint did Respondent GMCA, or the subject property, qualify as a housing for persons who are 55 years of age or older, or qualify under any other exemptions relating to housing for older persons, pursuant to 42 U.S.C. § 3607(b); see also 24 C.F.R. §§ 100.300-100.308.
38. At no time during the marketing of the subject property did Respondent Sherrouse screen prospective purchasers to determine whether at least one family member age 55 or older resided in the household.
39. At no time during the events of this complaint and Charge did Respondent Sherrouse act with a good faith belief that the housing facility qualified for an exemption relating to housing for older persons thereby shielding her from liability from civil monetary damages pursuant to 42 U.S.C. § 3607(b)(5); see also 24 C.F.R. § 100.308.
40. Complainant MFHS is an aggrieved person within the meaning of 42 U.S.C. § 3602(i), and as a result of Respondents' discriminatory conduct as described above, Complainant MFHS has suffered damages, including frustration of its mission and/or diversion of its resources.
41. As a result of Respondents' discriminatory conduct, Complainant MFHS has suffered damages, including economic loss through diversion of its resources, and frustration of its mission to promote equal housing opportunities for all of its consumers. Complainant MFHS was forced to divert some of its resources to investigate Respondents' discriminatory conduct by testing the subject property and to enforce

the Act. In order to address Respondents' discriminatory conduct, Complainant MFHS also diverted some of its resources away from other fair housing activities, including education and outreach, training and/or enforcement activities.

42. As a result of Respondents' discriminatory conduct, an unknown number of prospective tenants with children were discouraged from seeking a rental opportunity at the subject property as a result of Respondents' discriminatory rental practices. Respondents' expression of their preferences against families with children frustrated Complainant MFHS's mission and interfered with its ability to ensure that its clients are able to seek and obtain housing without being subject to discriminatory statements, or seek and obtain housing of their choice regardless of their familial status.

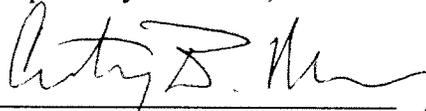
### III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel, Region V, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents Georgian Manor Condominium Association, HN Real Estate Group, Inc., Jennifer Sherrouse, John Branch, Jr., and the Estate of Jean Branch, with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a) and (c) of the Act 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, as amended, 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 any of them from discriminating on the basis of familial status against any person in any aspect of the rental or sale of a dwelling;
3. Awards such damages as will fully compensate Complainant MFHS, an aggrieved party, for its economic loss, inconvenience, and frustration of mission caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3604(a) and (c); and
4. Assesses a civil penalty of sixteen thousand dollars (\$16,000) against each Respondent for each violation of the Fair Housing Act that Respondents committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



COURTNEY B. MINOR  
Regional Counsel for the Midwest  
Region V



LISA M. DANNA-BRENNAN  
Supervisory Attorney-Advisor for Fair Housing



BARBARA SLIWA  
Trial Attorney  
U.S. Department of Housing  
and Urban Development  
Office of the Regional Counsel  
for the Midwest  
77 West Jackson Boulevard, Room 2633  
Chicago, Illinois 60604-3507  
PHONE: (312) 913-8613  
FAX: (312) 886-4944

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