

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)
Interfaith Housing Center of the)
Northern Suburbs,)
)
Charging Party,)
)
v.)
)
Martin Giarelli and Mary Giarelli,)
)
Respondents.)

HUD ALJ No.
FHEO No. 05-07-0669-8

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about March 23, 2007, Complainant Interfaith Housing Center of the Northern Suburbs (“Complainant Interfaith”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD” or “the Department”), alleging that Respondents Martin Giarelli and Mary Giarelli (“Respondents”) discriminated against its fair housing testers 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 originally referred to the Illinois Department of Human Rights (“IDHR”) pursuant to Section 810(f) of the Act. However, on or about August 27, 2007, IDHR waived the case back to HUD for investigation.¹

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 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 redelegate to the Regional Counsel (67 Fed.Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity 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

¹ Pursuant to 775 ILCS 5/3-106, the Illinois Human Rights Act provides an exemption from the Act for properties that are owner occupied and contain no more than five units.

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 Determination of Reasonable Cause, Respondents Martin and Mary Giarelli are charged with discriminating against Complainant Interfaith Housing Center of the Northern Suburbs, 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:

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); see also 24 C.F.R. § 100.60.
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, "handicap," familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); see also 24 C.F.R. § 100.75.
3. At all times relevant to this Charge, Respondents Martin and Mary Giarelli, husband and wife, were the owners of the property located at 250 Highwood Avenue, Highwood, Illinois 60040 ("subject property").
4. The subject property is a five unit owner-occupied multi-family building. Upon information and belief, Respondents reside on the first floor and lease out the remaining four units. The available unit at all times relevant to this Charge was located on the second floor and is known as "Unit 2 West" ("subject unit").
5. Complainant Interfaith is a membership-based, not-for-profit fair housing organization, serving the northern Chicago suburbs. Complainant Interfaith's mission includes ensuring that all persons have equal access to housing without regard to family status. In furtherance of its mission, Complainant Interfaith provides fair housing services including, but not limited to, fair housing counseling, education and outreach activities, filing legal actions, and investigating housing discrimination and predatory lending complaints. As part of its housing enforcement efforts, Complainant Interfaith conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices.

6. In January 2007, Complainant Interfaith's Executive Director, Gail Schechter, received a complaint of housing discrimination on the basis of familial status in reference to the subject property.² Upon information and belief, Schechter was informed that the subject property was advertised in the *Pioneer Press*.
7. In January 2007, Respondents placed an advertisement for rental in the *Pioneer Press*. The advertisement read as follows: "HIGHWOOD 1BR, newly décor, [sic] stove and refrig, no pets or smkng. 847-433-0492."
8. Between January 15, 2007 and February 9, 2007, in response to the above rental advertisement and the complaint it had received, Complainant Interfaith conducted an investigation to determine Respondents' compliance with the Act. Complainant Interfaith conducted a series of "tests" using fair housing testers to evaluate Respondents' compliance with the Act.
9. On January 15, 2007, Tester #1, posing as a single mother with a child, telephoned (847) 433-0492 and spoke to a woman later identified in the investigation as Respondent Mary Giarelli. Tester #1 indicated that she was calling about the apartment for rent in Highwood. Respondent Mary Giarelli replied by asking who would reside in the unit. Tester #1 replied that the unit would be for herself and her 7 year-old daughter. Respondent Mary Giarelli then remarked that the apartment is "very small and only suitable for one person." After Tester #1 informed her that she and her daughter had previously rented a one-bedroom apartment, Respondent Mary Giarelli responded by stating that she was looking for "only one person." Tester #1 thanked Respondent Mary Giarelli and the call ended.
10. During the telephone conversation referenced in paragraph 9, Respondent Mary Giarelli did not offer Tester #1 an appointment. Further, Respondent Mary Giarelli did not inform Tester #1 of the difference in rent for two people as opposed to one person renting the subject property.
11. On January 16, 2007, Tester #2, posing as a married woman with no children, telephoned (847) 433-0492. Tester #2 spoke with a man who identified himself as "Martin," Respondent Martin Giarelli. During the course of the conversation, Respondent volunteered that the rent was \$690.00 and that the building was for "singles." He also indicated that they did not allow pets or children.

² The investigation revealed that Schechter received a telephone call from Christine Bakalar, a social worker, on behalf of her client "Alex," who wished to remain anonymous. The anonymous individual is allegedly a young single Hispanic mother of two young children who was seeking housing in the Highwood area. Bakalar offered to assist "Alex" in her housing search. Schechter alleges that Bakalar found a rental advertisement in the *Pioneer Press* for the subject property and made an appointment for "Alex" to view a unit on January 10, 2007. Schechter alleges that Bakalar informed her that "Alex" visited the subject property and met with Respondents who informed her that they did not rent to children.

12. Respondent Martin Giarelli then asked whether the unit was just for Tester #2. In response, Tester #2 stated that the unit was for herself and her husband. During the course of the conversation, Respondent Martin Giarelli indicated that "they" would consider making an exception for her husband but that the rent would increase to cover the increased utility cost of renting to two people, as opposed to one person. Respondent Martin Giarelli indicated that he needed to check with his wife first and advised the tester to call back after 5:00 p.m. Subsequently, an appointment to view the unit was secured for January 19, 2007.
13. At no time during the telephone conversation referenced in paragraphs 11 and 12 did Respondent Martin Giarelli indicate to Tester #2 that the unit was too small for two adults.
14. On January 19, 2007, Tester #2 arrived for the scheduled appointment and met with Respondents Mary and Martin Giarelli. During the course of the visit, Respondent Martin Giarelli indicated that he and his wife were concerned about who might be living under their roof and indicated that the building was "quiet."
15. At no time during the visit did either Respondent Mary Giarelli or Respondent Martin Giarelli indicate that the unit was too small for two adults. Instead, Tester #2 was informed that the rent for one person was \$690 and the rent for two people was \$740. Respondents offered Tester #2 an application and instructed her to mail the application to their residence at 250 Highwood Avenue, the subject property.
16. On January 19, 2007, Tester #3, posing as a single mother with a child, telephoned (847) 433-0492 and spoke with a woman later identified during the investigation as Respondent Mary Giarelli. Tester #3 indicated that she was calling about the apartment advertised in the *Pioneer Press*. After Tester #3 inquired about the rent, Respondent Mary Giarelli placed Tester #3 on hold and when she returned to the phone, Respondent Mary Giarelli questioned Tester #3 about whether the unit was for herself, "just one person?" Tester #3 replied, "No, actually it's for myself and my daughter."
17. Respondent Mary Giarelli then inquired as to the age of the tester's daughter. After Tester #3 responded "she's 10," Respondent Mary Giarelli replied that the unit was "really just for one person" and continued by stating that the unit was "a small, little apartment." Tester #3 thanked Respondent Mary Giarelli and the call ended.
18. Tester #3 noted that after she informed Respondent Mary Giarelli that she had a child, Respondent Mary Giarelli became very abrupt and adamant that the unit was suitable for just one person.

19. Respondent Mary Giarelli did not offer Tester #3 an appointment. Further, Respondent Mary Giarelli did not inform Tester #3 of the difference in rent for two people as opposed to one person renting the subject property.
20. In addition to the abovementioned tests based on familial status, Complainant Interfaith also conducted a test to determine if Respondents would express a preference based upon national origin.³
21. On February 9, 2007, Tester #4, posing as a single Hispanic male with no children, telephoned (847) 433-0492 and spoke to a woman who identified herself as "Mary Giarelli," Respondent in this case. The tester informed her that he was calling about the apartment for rent. Respondent Mary Giarelli inquired about the number of people that would be moving in. Tester #4 responded, "Oh, just me." Respondent Mary Giarelli then proceeded to describe the unit in detail. An appointment for the tester to see the unit was scheduled for that same day.
22. Later that evening, Tester #4 arrived for the scheduled appointment and met with Respondents. Once in the unit, Tester #4 commented on how clean the unit was and Respondents remarked that they had just remodeled the unit. During the course of the visit, Respondent Martin Giarelli informed Tester #4 that all the tenants in the building are "single." Respondent Mary Giarelli interjected stating, "we want to make sure we have a quiet environment; no children, no smoking and no pets." At the end of the viewing, Respondent Martin Giarelli indicated that he and his wife live right below the subject unit and that the tester would have a neighbor next door to him and another neighbor across the hallway. He continued by stating "that's why we only have single people [] we want to guarantee a quiet place for everybody."
23. At all times relevant to this Charge, the Property Maintenance Code for the City of Highwood, Ordinance No. 2004-O-10, adopted the *International Property Maintenance Code*, a model code adopted by numerous municipalities. Specifically, Section 404.4.1 of the *International Property Maintenance Code* states in part, "Area for sleeping purposes. Every bedroom occupied by one person shall contain at least 70 square feet (6.5 m²) of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet (4.6 m²) of floor area for each occupant thereof."
24. In Respondents' Answer to the HUD complaint, Respondents admit the following: (1) they are the owners of the subject property and reside on the first floor of the apartment, (2) the rental unit in question was available for rent, (3) the subject unit is located on the second floor of the subject property and is known as "Unit 2 West," (4) they indicated that they would not rent to individuals with "children," (5) they indicated to one tester that the unit was

³ Because "Alex" is Hispanic, Complainant Interfaith decided to conduct a test based on national origin, as well.

“more suitable” for a single individual due to its small size, (6) they have rented units at the subject property on numerous occasions to married couples, (7) they informed Tester #2 (married tester with no children) that they would rent to her and her husband for \$700⁴ per month due to the increase in utility costs for two individuals, as opposed to the \$690 for one person, and (8) they indicated to Tester #2 that they would not rent to a married couple with children.

25. The investigation revealed that the subject unit bedroom size is 12' x 11' feet, for a total floor area of 132 square feet. Pursuant to the Property Maintenance Code for the City of Highwood, the maximum occupancy limit for the subject unit is two persons.⁵ In order for three people to reside in the subject unit, pursuant to Ordinance No. 2004-O-10, the minimum bedroom size needed would be 150 square feet of floor area.
26. Respondents maintain that pursuant to their occupancy policy, not more than two people per bedroom would have been allowed to rent the subject property.
27. Respondents did not offer testers posing as two-person families, consisting of one parent and one child, an appointment to view the subject unit. Instead, Respondents made discriminatory statements and discouraged single parent households with one child from applying.
28. Respondents treated Testers #1 and #3, the testers posing as single mothers with one child, less favorably than the married couple tester, Tester #2, or the single male tester with no children, Tester #4, when Respondents refused to offer an appointment to view the unit to Testers #1 and #3, but offered appointments to Testers #2 and #4.
29. Respondents treated Testers #1 and #3 less favorably than the married couple tester, Tester #2, when Respondents discouraged Testers #1 and #3, the testers posing as single mothers of one child, by telling them the unit was “pretty small” and “really only suitable for one person,” but did not similarly discourage Tester #2, who posed as a prospective renter intending to occupy the unit with another adult, her husband.
30. Respondents, through the actions described above, refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to the testers because of familial status, in violation of 42 U.S.C. § 3604(a) of the Fair Housing Act.

⁴ Respondents allege they informed Tester #2 that the rent for one person was \$690 and the rent for two people was \$700. Conversely, Tester #2 indicated that Respondents informed her that the rent for one person was \$690 and the rent for two people was \$740.

⁵ The Building Department for the City of Highwood issued a Certificate of Compliance, dated April 10, 2006, for the subject unit, allowing a maximum occupancy of two people.

31. By making statements with respect to the rental of a dwelling that Respondents “do not rent to children,” “the apartment is very small and only suitable for one person,” “we” are “looking for only one person,” and “the unit is “really just for one person” Respondents indicated a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
32. As a result of Respondents’ discriminatory conduct, Complainant Interfaith has suffered damages, including inconvenience, economic loss through diversion of its resources, and frustration of its mission to promote equal housing opportunities in the northern Chicago suburbs. Complainant Interfaith was forced to divert some of its scarce resources when its time and resources were diverted away from housing counseling, education, advocacy and other activities and toward the investigation of the discriminatory conduct and the enforcement of fair housing laws against Respondents. Complainant Interfaith also diverted its resources by spending time advising Christine Bakalar, the social worker who telephoned Complainant Interfaith regarding the anonymous prospective tenant, “Alex,” in addition to spending time recruiting and retaining legal counsel for its HUD complaint.
33. 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 frustrates Complainant Interfaith’s purpose and interferes 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 Mary and Martin Giarelli 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 Interfaith, 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 eleven thousand dollars (\$11,000.00) against each Respondent for violations of the Act pursuant to 42 U.S.C. § 3612(g)(3).

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

Respectfully submitted,


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