

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 Michelle Swib,	)	
	)	HUD ALJ No.
Charging Party,	)	
	)	FHEO No. 05-07-1626-8
v.	)	
	)	
Darryl Bushee,	)	
	)	
Respondent	)	
	)	

**CHARGE OF DISCRIMINATION**

I. JURISDICTION

On or around September 26, 2007, Complainant Michelle Swib (“Complainant”) filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondent Darryl Bushee (“Respondent”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the “Act”) by making a discriminatory statement expressing a limitation on renting to individuals with disabilities who use service animals, a violation of 42 U.S.C. § 3604(c); by representing that the subject property was unavailable due to a discriminatory policy prohibiting all dogs, including service dogs, a violation of 42 U.S.C. § 3604(d); by refusing to show or rent the subject property to her based on her daughter’s disability, a violation of 42 U.S.C. § 3604(f)(1); and by refusing to modify his “no dog” policy as to enable her to rent the subject property, a violation of 42 U.S.C. § 3604(f)(3)(B).

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 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 disability 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, Respondent Darryl Bushee is charged with discriminating against Complainant Michelle Swib and her minor children Aisha Wood and Isaac Wood, who are aggrieved persons as defined by 42 U.S.C. § 3602(i), based on disability in violation of 42 U.S.C. §§ 3604(c), 3604(d), 3604(f)(1), and 3604(f)(3)(B) as follows:

1. 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); see also 24 C.F.R. § 100.75.
2. It is unlawful to represent to any person because of disability that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d); see also 24 C.F.R. § 100.80 (b)(2).
3. It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); see also 24 C.F.R. §§ 100.60, 100.202.
4. It is unlawful to refuse to make reasonable accommodations in the 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); see also 24 C.F.R. § 100.204.
5. At all times relevant to this Charge, Respondent was the sole owner and manager of the property located at 1023 4<sup>th</sup> Avenue NW Unit 4, East Grand Forks, Minnesota ("subject property").
6. The subject property is a three bedroom apartment unit located in a multifamily dwelling containing six apartment units.
7. Complainant is the mother of two minor children, Aisha and Isaac Wood. Aisha has a mental disability resulting from childhood sexual abuse, perpetrated by a family acquaintance. She requires the assistance of a service dog to engage in major life activities. At all times relevant to this Charge, Complainant was in possession of a physician's note stating that the service dog must be accommodated to support Aisha's "chronic psychological condition."

8. The subject property became available when the existing tenants provided Respondent with a notice of intent to vacate sometime in July of 2007. Accordingly, Respondent ran advertisements for the subject property in July of 2007.
9. From July 20, 2007 until July 26, 2007, Respondent posted an advertisement in the Grand Forks Herald. The advertisement placed by Respondent listed Respondent's telephone number, 701-741-1714, and read, "3 Bed, 2 bath, laundry, dishwasher, air, private entrance. No dogs. \$625."
10. In or around July of 2007, Complainant was seeking rental housing for herself and her children. On or around July 26, 2007, she noticed the advertisement placed by Respondent.
11. On or around July 26, 2007, Complainant called the phone number in the rental advertisement referenced in paragraph 9, above and spoke with a man later identified as Respondent.
12. During the July 26, 2007 conversation with Complainant, Respondent affirmed to Complainant that the subject property was available and that he accepted Section 8 vouchers. However, when Complainant mentioned that she had a service dog for her disabled daughter, Respondent admonished her that he had put "no dogs" in the advertisement for a reason. Complainant tried to explain what a service dog was to Respondent, stating that it was akin to a seeing-eye dog for the blind; she offered to show the physician's note for the dog, but Respondent replied that it did not matter and he did not have to accept the dog. When Complainant then explained that federal law required landlords to accept service animals, Respondent stated that he knew he did not have to accept dogs because he had been through" such a request before with a tenant and won a lawsuit, or words to that effect. The call ended after Respondent refused to answer Complainant's inquiry as to why he did not accept dogs.
13. On or about July of 2006, the Polk County District Court of Minnesota dismissed a lawsuit against Respondent filed by a former tenant, who alleged that he denied her a reasonable accommodation when he refused to let her live with a service animal. The claim was dismissed on grounds that the former tenant failed to prove that the animal was medically necessary.
14. The subject property remained available until August of 2006, at which time the then-existing tenants rescinded their notice of intent to vacate.

15. On or around September 26, 2007, Complainant filed a complaint with HUD.
16. As a result of Respondent's discriminatory conduct, Complainant became distressed and frustrated. Aisha also became distressed and upset because she was aware that Complainant was rejected because of the service dog. The difficulty of finding suitable housing created tension in the family. Fearing that her mother would choose housing over the service animal, Aisha declared that she would run away with the service dog if Complainant abandoned the service dog, causing further distress and mental pain to Complainant and Aisha. Complainant was ultimately unable to find suitable permanent housing that would accommodate the service dog within the available timeframe and temporarily sheltered her family in a motel in a different town, where she and her children stayed for three months. The motel was inadequate for the family's needs and caused numerous inconveniences, difficulties, frustration, reduced income, added expenses and reduced social support for Complainant and her children.

### III. FAIR HOUSING ACT VIOLATIONS

17. Respondent violated 42 U.S.C. § 3604(c) by making a statement indicating a limitation based on disability, when he stated that he does not accept any dogs in response to Complainant's statement that she had a service dog.
18. Respondent violated 42 U.S.C. § 3604(d) by representing that the subject property was unavailable to Complainant because it was his policy to not accept any dog, including a service dog.
19. Respondent violated 42 U.S.C. § 3604(f)(1) by refusing to allow Complainant to view or rent an available unit, as a result of her informing him that her daughter had a service dog.
20. Respondent violated 42 U.S.C. § 3604(f)(3)(B) by refusing to modify his "no dogs" policy to enable Complainant and her disabled daughter to live in the subject property with the service dog.

### IV. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in a discriminatory housing practice in violation of Sections 3604(c), 3604(d), 3604(f)(1) and 3604(f)(2)(B) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*
2. Enjoins Respondent, his agents, employees and successors and all other persons in active concert or participation with him from discriminating on the basis of disability against any person in any aspect of the rental or sale of a dwelling in violation of the Fair Housing Act, as amended 42 U.S.C. § 3601, *et seq.*
3. Awards such damages as will fully compensate Complainant and her two aggrieved children for the emotional distress, economic loss and loss of a unique housing opportunity caused by Respondent's discriminatory conduct in violation of 42 U.S.C. §§ 3604(c), 3604(d), 3604(f)(1), and 3604(f)(3)(B); and
4. Assesses a civil penalty of sixteen thousand dollars (\$16,000) against Respondent for each violation of the Fair Housing Act that Respondent has committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. Section 180.671(a)(1).

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

Respectfully submitted,

  
COURTNEY B. MINOR

Regional Counsel, Region V



LISA M. DANNA-BRENNAN

Supervisory Attorney-Advisor for Fair Housing



SOL TERENCE KIM

Trial Attorney

U.S. Department of Housing and Urban  
Development  
Office of the Regional Counsel for Region V

77 West Jackson Blvd., Room 2617  
Chicago, Illinois 60604-3507  
Tel. 312-353-6236  
Fax. 312-886-4944

Date: 12/29/2008