

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

Secretary, United States Department)	
of Housing and Urban Development, on)	
behalf of Sally Wiesman)	
)	
Charging Party,)	
)	
v.)	HUD ALJ No.
)	FHEO No. 01-08-0224-8
Robert W. Hill, Roger Thuot and)	
the Fitchburg Housing Authority,)	
)	
Respondents.)	
)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On March 12, 2008, Sally Wiesman filed a complaint with the United States Department of Housing and Urban Development ("HUD"), alleging that the Respondents Robert Hill, Roger Thuot, and the Fitchburg Housing Authority ("FHA") discriminated in violation of the Fair Housing Act ("the Act"). 42 U.S.C. § 3601-3619.

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) - (2). The Secretary of HUD has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination; and to the General Counsel the authority to issue such a charge of discrimination. The General Counsel has redelegated to the Regional Counsel the authority to issue such a charge.

By Determination of Reasonable Cause dated March 11, 2009, the Director of the Fair Housing Hub, Office of Fair Housing and Equal Opportunity for New England, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case, and has authorized the issuance of this Charge of Discrimination by the Regional Counsel. 42 U.S.C. §3610(g)(2). Although Complainant has a case pending in

federal court based on the same facts as this charge, because the trial in this case has not yet begun, the Act permits a charge to be issued. 42 U.S.C. §3610(g)(4).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

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

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any renter because of a disability of that renter. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a) (2008).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability of that tenant. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b) (2008).
3. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2008).
4. The Act defines "handicap" as a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602 (h)(1), (2) & (3); 24 C.F.R. § 100.201 (2008).
5. Complainant Sally Weisman is a disabled individual under the Act by virtue of multiple sclerosis and a depression/anxiety disorder. 42 U.S.C. § 3602(h); 24 C.F.R. Section 100.201 (2008).¹
6. The property at 36 Daniel Heights is part of a state-funded elderly/disabled development owned by Respondent Fitchburg Housing Authority.
7. At all time relevant to this action, Respondent Roger W. Hill was the Executive Director of the Fitchburg Housing Authority.
8. At all time relevant to this action, Respondent Roger Thuot was employed as the Housing Manager of the Fitchburg Housing Authority.

¹ Although the term "handicap" appears in the Fair Housing Act, the Charge and Determination will use "disability" in its place.

9. Complainant's application for housing dated October 31, 2007 stated that she was a disabled by virtue of multiple sclerosis, and that she received the majority of her income as a recipient of social security disability payments.
10. On December 1, 2006, Complainant moved into a second-floor unit, Apartment #4, in the building at 36 Daniel Heights.
11. On June 15, 2007, Complainant sent a letter to Respondent Thuot asking him to speak to Complainant's neighbor, Ms. Genevieve Gowell, about consistently excessive noise at night and in the early morning hours.
12. Complainant followed her June 15, 2007 letter with a letter she forwarded to Respondents from her psychiatrist, Dr. John F. Aney, who wrote that Complainant was suffering from "Major Depression and Panic Disorder." Referring to Complainant's disabilities the psychiatrist's letter put Respondents on notice that "efforts to relieve overall level of environmental stress would be helpful in alleviating [Complainant's] condition."
13. Complainant's subsequent, June 23, 2007 letter to Respondent Thuot further elaborated on her medical issues. She wrote: "Unfortunately, stress, physical or emotional (or both) cause[s] a 'MS relapse.' I'm struggling." Along with this letter, she included an article from the local newspaper in which Complainant herself was the focus of an interview and in which she had described the effects of multiple sclerosis on her.
14. On July 22, 2007, Complainant wrote again to Respondent Thuot regarding the hostile behavior of her neighbor, Ms. Gowell.
15. On August 20, 2007, Complainant sent another letter to Respondent Thuot regarding excessive noise from and the hostile behavior of her neighbor, Ms. Gowell.
16. On August 22, 2007, Complainant sent a letter to Respondent Fitchburg Housing Authority, addressed "To Whom It May Concern," regarding excessive noise from and the hostile behavior of her neighbor, Ms. Gowell.
17. On the same date, August 22, 2007, this date, Complainant, frustrated by the repeated failure of the Fitchburg Housing Authority to address her concerns, filed a Complaint in Worcester Housing Court naming as defendants her neighbor, Genevieve Gowell, Ms. Gowell's friend and fellow tenant Carol Ciccone, and Respondent Hill.
18. On August 28, 2007, Complainant's doctor, Dr. Caroline Ionete, wrote and sent a letter to the Fitchburg Housing Authority informing them that Complainant is under the care of the UMASS Memorial Multiple Sclerosis Center for Relapsing Remitting

Multiple Sclerosis and also suffered from depression and anxiety. The letter emphasized that “[i]t is important for Sally to avoid stressful situations, as stress can exacerbate her depression, anxiety, and neurological symptoms.”

19. Complainant withdrew her Housing Court Complaint following a September 6, 2007 meeting, convened under the auspices of the FHA with Respondent Thuot, Ms. Gowell, and Ms. Ciccone, at which Complainant became persuaded that the noise caused by her neighbors, leading to her high stress levels, would improve.
20. On October 1, 2007, Complainant wrote to Respondent Thuot about the resumption of excessive, “almost unbearable” noise from her neighbors, Ms. Gowell and Ms. Norris, whose grandchildren were staying with her.
21. On November 5, 2007, Complainant wrote to Respondent Thuot requesting that the FHA permit her to move to another building in the development. Complainant’s letter referred to the excessive noise caused by the presence of Ms. Norris’s grandchildren, and reasserted that Complainant was not well and could not endure the bullying of her neighbors, Ms. Gowell and Ms. Norris.
22. On November 12, 2007, Complainant wrote again, in her eighth (8th) letter about these issues, to Respondent Thuot asking if anything was being done about the noise and if she could move to a specific unoccupied unit in the development. The letter advised Respondent Thuot that Complainant was undergoing tests for cancer in addition to treatment for multiple sclerosis and that she could not rest because of the noise from Ms. Norris’s apartment.
23. In a November 18, 2007 letter addressed to the Respondent Fitchburg Housing Authority, Complainant asked that she be transferred to another apartment at the development because of the bullying of Ms. Gowell and the further noise disturbances from Ms. Norris’s apartment. Complainant reiterated that she had been diagnosed with Multiple Sclerosis and that she would be compelled to find a new place to live if her concerns were not addressed.
24. After speaking by phone to Bob Pacetti, Director of Operations for the Fitchburg Housing Authority, Complainant submitted a formal transfer application to the Fitchburg Housing Authority on November 22, 2007. On this application, Complainant circled “Other” as the reason for transfer. In the space to specify the reason for request Complainant wrote: “Noise disturbances deny me my lawful right to peace and to fully enjoy my apartment.”
25. On November 27, 2007, Complainant received notification from Mr. Pacetti that her transfer request was denied as she was ineligible based upon the criteria in the FHA’s Transfer Policy. This notification stated that Complainant could request a private conference or redetermination of this denial within 20 days.

26. The November 27, 2007, notification acknowledged that Complainant's transfer request was made for medical reasons, specifically emphasized that only those reasons set forth in the written Transfer Policy were grounds for a transfer, and provided a summary of the grounds for a health based transfer based upon the Transfer Policy.
27. The FHA's Transfer Policy, in effect throughout the period of Complainant's numerous requests, allows health-based transfers *only* when a tenant requires a specifically designed accessible apartment, *only* when a tenant can no longer navigate stairs, or *only* when transfer to and from a congregate unit is medically necessary. Even in these cases, the policy provides that the transfer is at the "discretion and convenience of the Authority"
28. Respondent Fitchburg Housing Authority's reasonable accommodation policy asserts that the FHA "may provide accommodations by making structural alterations to an existing facility, or if an equivalent result can be achieved, by other means such as the employment of auxiliary aids or by the utilization of the FHA's Transfer Policy."
29. Upon information and belief, during Complainant's tenancy and in previous years, Respondents granted transfers to physically disabled tenants whose condition adversely affected their ability to navigate stairs.
30. On December 26, 2007, Complainant wrote to Mr. Pacetti that she would like to discuss the situation further. According to that letter, the reason that she did not appeal the FHA's November 27, 2007 decision was because the noise level diminished for a couple of weeks. In this letter, Complainant once again requested a transfer, emphasizing that she suffered from multiple sclerosis and that her condition is worsened by stress. In this letter, Complainant notified Mr. Pacetti that she would be sending another letter from her doctor regarding her request.
31. At some time after the December 26, 2007 letter was mailed, Complainant spoke to Mr. Pacetti over the phone. Mr. Pacetti told Complainant to request a conference with Respondent Hill.
32. On January 7, 2008, Complainant wrote to Respondent Hill requesting a conference regarding her transfer request and the constant noise disturbances in the building.
33. Respondent Hill never replied to Complainant's January 7, 2008 request.
34. On January 11, 2008, Complainant sent Respondent Fitchburg Housing Authority a second letter from her psychiatrist, Dr. John F. Aney. This letter affirmed Complainant's previously stated assertions that her medical conditions were adversely

affected by stress and loud noise and that a transfer to a quieter apartment would benefit Complainant.

35. On January 29, 2008, having received no response from Respondent Hill, Mr. Pacetti, or any other FHA official, Complainant gave notice to Respondents that she would be vacating her apartment by the end of February. Complainant paid February rent on this date.
36. On February 17, 2008, Complainant left the premises due to Respondents' failure to provide her with a reasonable accommodation allowing her an equal opportunity to enjoy her dwelling.
37. Under these circumstances, where Complainant provided ample notice to the Respondents regarding her disability, where her request for a transfer was made on numerous occasions, and in view of the clear nexus between the disability and the accommodation requested, Respondents' refusal to permit the Complainant to move to a different unit constitutes a violation of 42 U.S.C. § 3604(f)(3)(B).
38. Under these circumstances, where Respondents' refusal to transfer Complainant resulted in a constructive eviction of Complainant, Respondents' actions constitute a violation of 42 U.S.C. § 3604(f)(1)(A).
39. Respondents violated the Act by discriminating against Complainant in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of her disability through their rejection of her reasonable accommodation request. 42 U.S.C. § 3604(f)(2)(A).
40. As a result of the Respondents' conduct, Complainant has suffered damages, including economic loss and emotional distress.

III. CONCLUSION

WHEREFORE, the Secretary of Housing and Urban Development, through the Office of the Regional Counsel for New England, and pursuant to 42 U.S.C. §3610(g)(2)(A), hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §3604(f)(1)(A), 42 U.S.C. §3604(f)(2)(A), and 42 U.S.C. §3604(f)(3)(B) 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. § 3601-3619;
2. Enjoin the Respondents from further violations of 42 U.S.C. § 3604(f)(1-3) of the Act;

3. Awards such damages as will fully compensate Complainant for her economic loss and emotional distress caused by the Respondents' discriminatory conduct;
4. Awards a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3);
5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination" in FHEO Case 01-08-0224-8 was served this 12th of March, 2009 by federal express upon the following:

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