

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, on behalf of	)	
Fair Housing of the Dakotas,	)	
	)	
Charging Party,	)	HUD ALJ No.
	)	FHEO No. 05-07-1121-8
v.	)	
	)	
Van Raden Properties, Incorporated,	)	
and Van Raden Homes, Incorporated,	)	
	)	
Respondents.	)	
_____	)	

**CHARGE OF DISCRIMINATION**

I. JURISDICTION

On or about June 12, 2007, Complainant Fair Housing of the Dakotas (“Complainant FHD”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD” or “the Department”) alleging that Respondents Van Raden Homes, Incorporated and Van Raden Properties, Incorporated (collectively referred to as “Respondents”) discriminated against it on the basis of disability in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. §3601 *et seq.* (the “Act”).

The Act authorizes the issuance of a Charge of Discrimination (“Charge”) 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 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.

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

Based on HUD's investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondents Van Raden Properties, Incorporated and Van Raden Homes, Incorporated are charged with discriminating against Complainant Fair Housing of the Dakotas, an aggrieved person as defined by 42 U.S.C. § 3602(i), based on disability in violation of 42 U.S.C. § 3604(f)(1), (2), and (3)(B) and § 3604 (c) of the Act as follows:

1. 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 (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or (C) any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1).
2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges, of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of (A) that person; (B) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or (C) any person associated with that person. 42 U.S.C. § 3604(f)(2).
3. For purposes of 42 U.S.C. § 3604(f), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).
4. 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 disability, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c).
5. At all times relevant to this Charge, Respondent Van Raden Homes, Incorporated ("Respondent Van Raden Homes"), a North Dakota corporation, owned the Elm Street Apartments, a 24-unit apartment building located at 418 South Elm Street, Moorhead, Clay County, Minnesota 56560 ("subject property").<sup>1</sup> The subject property is located less than a mile from Fargo, North Dakota.

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<sup>1</sup> Upon information and belief, Respondent Van Raden Homes also owns the following residential rental properties: (1) Campus Aire Apartments, 906-908-910 8<sup>th</sup> Street South, Moorhead, MN; (2) Eastmoor Apartments, 2616-2702 4th Avenue North, Moorhead, MN; (3) Edgewood Courts Apartments, 3301-3315 North Broadway, Fargo, ND; (4) Trollwood Manor Apartments, 201-3540 35<sup>th</sup> Avenue North & 2<sup>nd</sup> Street, Fargo, ND; (5) Greystone Manor Apartments, 4243-4259 9<sup>th</sup> Avenue South, Fargo, ND; and (6) various residential duplexes located in Fargo, ND.

6. At all times relevant to this Charge, Respondent Van Raden Properties, Incorporated (“Respondent Van Raden Properties”),<sup>2</sup> a North Dakota corporation, was the management company for the subject property, as well as other properties,<sup>3</sup> located in Fargo, North Dakota and Moorhead, Minnesota. Respondent Van Raden Properties has its principal place of business located at 402 35<sup>th</sup> Avenue North, Fargo, North Dakota 58102.
7. Complainant FHD is a private, non-profit fair housing organization serving North and South Dakota and the surrounding area. Complainant FHD works to eliminate housing discrimination and to ensure equal housing opportunities for all. Complainant FHD provides fair housing services including, but not limited to, assistance to individuals pursuing legal rights and remedies related to fair housing, offers housing assistance and counseling, provides community education, promotes community involvement, investigates complaints of housing discrimination and performs research in the area of housing. As part of its housing enforcement efforts, Complainant FHD conducts fair housing “tests” to determine whether housing providers engage in discriminatory housing practices.
8. On January 9, 2007, Complainant FHD’s Housing Coordinator, Stacy Gieser, received a complaint of housing discrimination on the basis of disability in reference to a property owned and managed by Respondents. Gieser was contacted by a prospective renter, Jarret Thiseth, who had responded to a rental advertisement published in the *Fargo Forum*, the primary daily newspaper for southeast North Dakota and also much of northwest Minnesota, for a property advertised by Respondents. Thiseth told Complainant that when he called the phone number in the advertisement, a woman who answered the phone rejected him on the basis of his support animal, purportedly because of Respondents’ policy restricting dogs of his dog’s breed and dogs who weigh more than 40 pounds, even though he specified that his dog was a service animal prescribed to assist him with his disability and that the dog weighed only 35 pounds.
9. In response to Thiseth’s complaint, Complainant searched the *Fargo Forum* for units advertised by Respondents. It learned that Respondents had, in fact, placed an advertisement for rental in the *Fargo Forum*. The same rental advertisement was also published on the Internet in the *Fargo Forum*’s online version of its newspaper. Specifically, on January 10, 2007, Respondents’ rental advertisement

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<sup>2</sup> Upon information and belief, the owners of Respondent Van Raden Properties include Robert Van Raden, Linda Schulte, Roger Van Raden, Thomas Van Raden and Mary Ash.

<sup>3</sup> In addition to the properties referenced in footnote 1, Respondent Van Raden Properties also manages the following properties: (1) Royal Apartments, 1212 2<sup>nd</sup> Avenue South, Moorhead, MN; (2) Southmoor Apartments, 2900-2960 17<sup>th</sup> Street South, Moorhead, MN; (3) Van’s Court Apartments, 405-411 South University Drive, Fargo, ND; and (4) Westmore Court I & II Apartments, 1439-1551 35<sup>th</sup> Street S.W., Fargo, ND.

read as follows: "2 BDRM Apt w/gar near Woodlawn Park. \$370. No pets & 1 yr lease. 284-4360, 233-2731."<sup>4</sup>

10. On January 17, 2007, in response to the above rental advertisement and the complaint it had received, Complainant FHD conducted an investigation to determine Respondents' compliance with the Act. Complainant FHD conducted a paired rental test, using two fair housing testers, to evaluate Respondents' compliance with the Act.
11. On January 17, 2007, Tester #1, posing as a single mother of a child with a disability, telephoned (218) 233-2731. Tester #1 spoke with an unidentified woman who answered the phone, "Van Raden Properties." Tester #1 inquired if the phone number she dialed was the phone number for the two-bedroom apartment advertised in the Woodlawn Park area. The woman replied "yes," and indicated that there was one two-bedroom apartment available that rented for \$370. Tester #1 then questioned the woman about the deposit and lease requirements. The woman replied that the lease was for one year and the deposit was \$250.
12. In the course of the January 17, 2007 telephone conversation, Tester #1 remarked to the woman who answered the phone that in reading the advertisement, she noticed that pets were not allowed. Tester #1 volunteered that her "autistic son" had a "therapy dog" for several years. Tester #1 then inquired whether a doctor's statement verifying the dog as a service animal would be accepted. In response, the woman asked, "What kind of dog is it?" Tester #1 answered that it was predominately a "black Lab." The woman replied, "Unfortunately, we would say no on that breed. We do not accept animals over 40 pounds." Tester #1 then informed the woman that the dog was full grown and weighed only 37 pounds. The woman asked, "You said it was a black Lab?" Tester #1 answered that it was not as large as a full-breed "black Lab." To that, the woman said, "That's not a breed we would accept. I am sorry." She then suggested Tester #1 contact the Humane Society as they keep a list of landlords that allow pets. Before the call ended, Tester #1 asked the woman for her name. The woman did not give her name, but replied, instead, "This is Van Raden Properties." Tester #1 thanked the woman and the call ended.
13. At no time did the unidentified woman referenced in paragraphs 11 and 12 ask for additional information concerning the tester's son's need for a service animal. At no time did Respondents' agent enter into an interactive discussion with Tester #1 regarding her son's need for a service animal. Instead, in response to the tester's

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<sup>4</sup> At all times relevant to this Charge, Respondent Van Raden Properties' business telephone number was (218) 233-2731. At all times relevant to this Charge, the telephone number (218) 284-4360 belonged to the resident manager of the subject property, Trent Vekkerus.

offer of a doctor's statement explaining her son's need for the service animal, the unidentified woman stated, "Unfortunately, we would say no on that breed. We do not accept animals over 40 pounds."

14. At no time did the unidentified woman referenced in paragraphs 11 and 12 offer Tester #1 an opportunity to apply for rental. Instead, Tester #1 was discouraged from applying and was directed to the Humane Society for a list of landlords that allow "pets."
15. Later in the afternoon of January 17, 2007, Tester #2, posing as a single mother with a child, telephoned (218) 233-2731 and spoke to a woman who identified herself as "Tracy."<sup>5</sup> Tester #2 indicated that she was calling about the apartment for rent near Woodlawn Park. "Tracy" replied that the apartment was still available and confirmed that the rent was \$370 for a one-year lease.
16. In the course of the telephone conversation referenced in paragraph 15, "Tracy" informed Tester #2 that the unit was a two-bedroom, one bath apartment at the garden level. She also stated that there was a \$250 deposit and stated that "no pets" were allowed in the building. Tester #2 indicated that she would drive by the complex to view the building and asked "Tracy" for the address of the property. "Tracy" replied that the address was 418 South Elm Street and continued by stating that there were 24 apartments in the building. Before the call ended, Tester #2 thanked "Tracy" and informed her that she would contact Tracy if she was interested.
17. At all times relevant to this Charge, a "no-pet" policy was in effect at the subject property.
18. Upon information and belief, in April 2002, Respondents implemented a written policy concerning service animals. Respondents' procedure in processing requests for service animals requires the applicant to submit the following: (1) a written statement explaining why the animal is needed; (2) a completed Service Animal Application; (3) a completed Service Animal Request form; and (4) a completed Service Animal Addendum. In addition to these documents, Respondents also provide applicants with a copy of Respondents' service-animal policy that sets forth the criteria and restrictions.
19. At all times relevant to this Charge, Respondents' service animal policy, "Requirements and Restrictions for Service Animals/Emotional/Support Animals," stated, in part, the following:

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<sup>5</sup> At all times relevant to this Charge, Respondents employed Tracy Kochis. Kochis was employed as an office assistant and was responsible for answering phones. Respondents admit that Kochis was one of the female employees working at Respondent Van Raden Properties' main office on January 17, 2007. Upon information and belief, Kochis resigned from her position sometime in January 2008.

The required criteria for approval include: ... Proof of Renter's Insurance with Liability Insurance (\$100,000 minimum).

Animals that will not be allowed under the Service Animal Addendum include: Snakes and other reptiles. Insects and spiders. Rodents including but not limited to rabbits, ferrets, hamsters, mice, guinea pigs and rats. Birds larger in size than a parakeet. (Small birds are currently allowed under Residential Lease). Dogs with an adult weight less than forty (40) pounds are preferred. Dogs of the following full and/or mix breeds: Rottweilers, Pit Bulls, Staffordshire Bull Terriers, American Staffordshire Terriers, Mastiffs, Chows, Dobermans, Dalmatians, Beagles, Basset Hounds and any dog-wolf mix.

20. Respondents also include a "Service Animal Addendum" to the residential lease for those requesting a reasonable accommodation to its "no pet" policy. The Addendum provides that the minimum insurance policy of \$100,000 as referenced in paragraph 19 "cover damages and/or injury that may be caused by the animal. A current copy of such policy must be furnished to Van Raden Properties, Inc. with each policy renewal."
21. Respondents allege, but the Department's investigation did not confirm, that all tenants are obligated to obtain a renters' insurance policy, with no specified coverage amount, under the residential lease agreement. Conversely, under Respondents' service-animal policy, not only does it require tenants with service animals to obtain renters' insurance, but it also requires the insurance coverage to be worth a minimum of \$100,000.
22. Respondents allege that, although none of Respondents' employees recall speaking with Tester #1 in January 2007, whoever took the call may have misunderstood the caller's request and thought the caller was interested in Respondents' pet friendly building which maintains a weight restriction of 40 pounds.<sup>6</sup> As referenced in paragraph 11, Tester #1 specifically indicated that she was interested in the apartment near the Woodlawn Park area, the location of the subject property.
23. Respondents allege that the 40 pound weight restriction for service animals is a "preference," and not a "prohibition." Notwithstanding Respondents' allegation, after Tester #1 informed Respondent Van Raden Properties that her "autistic son" had a "therapy dog," a "black Lab," Tester #1 was told that Respondent Van Raden Properties "would say no on that breed" and that they "do not accept animals over 40 pounds."

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<sup>6</sup> The telephone records for Complainant FHD's testers demonstrate that calls were made on January 17, 2007, to telephone number (218) 233-2731, the telephone number for Respondent Van Raden Properties.

24. By prohibiting Complainant FHD's tester from viewing or renting a unit at the subject property, Respondent Van Raden Properties discriminated against Complainant FHD by discouraging and refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to Tester #1 by telling the tester that Respondent Van Raden Properties did not "accept animals over 40 pounds" and that a "black Lab" is "not a breed we would accept," and finally suggesting that Tester #1 contact the Humane Society as they keep a list of landlords that allow "pets," in violation of 42 U.S.C. § 3604(f)(1).
25. By implementing a written policy requiring disabled tenants to obtain a renter's insurance policy of a minimum of \$100,000 for service animals as a condition to receiving a reasonable accommodation, but not requiring the same minimum \$100,000 insurance policy of its tenants who do not use service animals, Respondents failed to apply the same rental terms and conditions at the subject property on the basis of disability in violation of 42 U.S.C. § 3604(f)(2).
26. By refusing to grant Complainant FHD's tester's reasonable accommodation request to its "no-pet" policy and/or refusing to engage in the interactive process with Tester #1 regarding her son's need for a service animal even after Tester #1 offered a doctor's statement verifying her son's need for the service animal, Respondents discriminated against Complainant FHD in violation of 42 U.S.C. § 3604(f)(3)(B).
27. By publishing a policy prohibiting certain service animals, because they are known to be "noisy" breeds; preferring service animals who weigh less than 40 pounds, and requiring a \$100,000 renters' insurance policy on service animals, Respondents communicated a discriminatory preference for renters who do not have service animals or who have a very limited type of service animal, in violation of 42 U.S.C. § 3604(c).
28. Complainant FHD 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 FHD has suffered damages, including frustration of its mission and/or diversion of its resources.
29. As a result of Respondents' discriminatory conduct, an unknown number of prospective tenants with service animals and/or current tenants<sup>7</sup> who need service animals were discouraged from seeking a rental opportunity and/or reasonable accommodation at the subject property. Respondents' refusal to make a reasonable accommodation in its rules and/or policies frustrates Complainant FHD's mission and interferes with its ability to ensure that its consumers are able

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<sup>7</sup> Moreover, in Respondents' response to the HUD complaint, Respondents explained that in July 2007, they received a request for a service animal from a resident at the subject property. Respondents admit that they denied the resident's request based on the dog's breed, a Doberman cross-breed, it appears, without further consideration.

to seek and obtain housing without being subject to discrimination, or seek and obtain housing of their choice regardless of their need for a service animal.

30. As a result of Respondents' discriminatory conduct, Complainant FHD 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 FHD was forced to divert some of its scarce resources to investigate Respondents' discriminatory conduct by testing the subject property and counseling Jarret Thiseth regarding his fair housing rights. In order to address Respondents' discriminatory conduct, Complainant FHD diverted some of its resources away from other fair housing activities, including advocacy services, counseling, education and outreach, referral services and enforcement activities.

### 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 with engaging in discriminatory housing practices in violation of § 3604(f)(1), (2), and (3)(B) and § 3604 (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 disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant FHD, an aggrieved party, for its diversion of resources and frustration of mission caused by Respondents' discriminatory conduct pursuant to Section 3604(f)(1), (2), and (3)(B) and Section 3604 (c);
4. Awards such damages as will fully compensate Complainant FHD for frustration of its mission and diversion of its resources away from other fair housing activities caused by Respondents' discriminatory conduct; and
5. Awards a civil penalty of sixteen thousand dollars (\$16,000) against each Respondent for each violation 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).

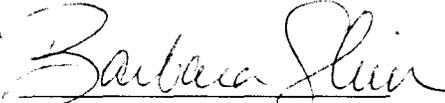
Respectfully submitted,



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