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 the Assistant Secretary for Fair Housing and Equal Opportunity Kim Kendrick, Charging Party, v. Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group," Respondents,	)	
and	)	FHEO Complaint Numbers: 02-06-0173-8 02-02-0230-8
The Secretary, United States Department of Housing and Urban Development, on behalf of the Fair Housing Council of Central New York, Inc., Charging Party, v. Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York, and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group;" R.K. Johnson & Associates Insurance Agency, Inc.; Salanger & Hayward Agency, Inc.; The Vacco Agency, Inc.; CNY Insurance Associates; and the Grimsley Agency, Inc., Respondents.	)	

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OFFICE OF ADMINISTRATIVE LAW JUDGES

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about February 14, 2002, the Fair Housing Council of Central New York, Inc., dual-filed a verified complaint, Complaint 02-02-0230-8, with New York State and the United States Department of Housing and Urban Development ("HUD"), alleging that Erie Insurance Group, R.K. Johnson & Associates Insurance Agency, Inc., Salanger & Hayward Agency, Inc., CNY Insurance Associates, The Vacco Agency, Inc., and the Don Grimsley Agency violated the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (hereafter the "Act"), by discriminating based on race and color. As of July 20, 2004, the Don Grimsley Agency is doing business as the Grimsley Agency, Inc. On December 24, 2002, HUD reactivated Complaint 02-02-0230-8 from the New York State Division of Human Rights. On February 9, 2006, the FHCCNY amended this complaint to add additional alleged violations of the Act, including 42 U.S.C. §§ 3604(a) and (b). On April 9, 2006, the FHCCNY amended this complaint to name additional entities as respondents including Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York, and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group."

On December 22, 2005, the Assistant Secretary for Fair Housing and Equal Opportunity for the United States Department of Housing and Urban Development ("Assistant Secretary") filed Complaint 02-06-0173-8 against Erie Insurance Group, alleging violations of 42 U.S.C. §§ 3604(a) and (b). On April 9, 2006, the Assistant Secretary amended Complaint 02-06-0173-8 to name additional entities as respondents including Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York, and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group."

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 (1989), who has redelegated to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement, 67 Fed.Reg. 44234 (2002), 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.

By Determination of Reasonable Cause of October 19, 2006, the Deputy Assistant Secretary for Enforcement and Programs, on behalf of the Assistant Secretary, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in Complaints 02-02-0230-8 and 02-06-0173-8, based on race, and has authorized and directed the issuance of this Charge of Discrimination.

II. LEGAL AUTHORITY

1. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race. 42 U.S.C. § 3604(a).

2. It is 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 therewith, because of race. 42 U.S.C. § 3604(b).

3. It is unlawful to refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently because of race. 24 C.F.R. § 100.70(d)(4).

III. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and the aforementioned Determination of Reasonable Cause, Respondents Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York, and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group;" R.K. Johnson & Associates Insurance Agency, Inc.; Salanger & Hayward Agency, Inc.; CNY Insurance Associates; The Vacco Agency, Inc.; and the Grimsley Agency, Inc., are charged with discriminating in the sale of insurance on the basis of race in violation of 42 U.S.C. §§ 3604(a) and 3604(b), as follows:

1. Complainant Fair Housing Council of Central New York, Inc. ("FHCCNY") is a fair housing agency located in Syracuse, New York, whose mission includes: helping enforce laws that prohibit discrimination in housing; educating individuals about their rights and responsibilities in the housing market; helping to create and sustain diverse neighborhoods; and engaging in advocacy to promote these objectives. The FHCCNY operates throughout central and northeastern New York State.

2. Respondent "Erie Insurance Group" is a fictitious name[1] registered in the State of Pennsylvania that describes a group of Erie entities that sell homeowners, renters, and various other types of insurance in eleven states (including New York) and the District of Columbia. The Erie Insurance Group includes, but is not limited to, the Erie Insurance Company, the Erie Insurance Company of New York, and the Erie Indemnity Company. According to Erie's website, the Erie Insurance Group's home office is located at 100 Erie Insurance Place, Erie, Pennsylvania 16530.

3. Respondent Erie Indemnity Company is a Pennsylvania insurance business corporation and the management company for the Erie Insurance Group. The Erie Indemnity Company's registered office address is 144 E. 6th Street, Erie, Pennsylvania 16530. Upon

[1] The registration of fictitious names in Pennsylvania is governed by the "Fictitious Names Act." 54 Pa. Cons. Stat. §§ 301-332 (2006).

information provided during the investigation, the Erie Indemnity Company owns the Erie Insurance Company and the Erie Insurance Company of New York.

4. Respondent Erie Insurance Company is a Pennsylvania insurance business corporation licensed to sell insurance in New York State. The Erie Insurance Company's registered office address is 144 E. 6th Street, Erie, Pennsylvania 16530.

5. Respondent Erie Insurance Company of New York is a New York corporation licensed to sell insurance in New York State. According to the New York State Insurance Department's website, the Erie Insurance Company of New York's office address is 120 Corporate Woods, Suite 150, Rochester, New York 14623. Unless otherwise specified, the Erie entities described in paragraphs III 2-5 are collectively referred hereafter as "Erie."

6. Erie's Personal Lines Underwriting Division, located at Erie's home office in Erie, Pennsylvania, drafts the underwriting guidelines for New York and for other states in which entities of the Erie Insurance Group sell insurance policies. The Personal Lines Underwriting Division is part of all of the Erie entities, and acts for and on behalf of the Erie Insurance Company and the Erie Insurance Company of New York when drafting underwriting guidelines for New York State.

7. Respondent R.K. Johnson & Associates Insurance Agency, Inc., is an insurance agency licensed to sell Erie insurance products located at 4921 West Genesee Street, Onondaga County, Camillus, New York 13031.

8. Respondent Salanger & Hayward Agency, Inc., is an insurance agency licensed to sell Erie insurance products located at 3700 James Street, Onondaga County, Syracuse, New York 13206.

9. Respondent CNY Insurance Associates is an insurance agency licensed to sell Erie insurance products located at 4205 Long Branch Road, Onondaga County, Liverpool, New York 13090.

10. Respondent The Vacco Agency, Inc., is an insurance agency licensed to sell Erie insurance products located at 6848 East Genesee Street, Onondaga County, Fayetteville, New York 13066.

11. Respondent the Grimsley Agency, Inc., formerly doing business as the Don Grimsley Agency, is an insurance agency licensed to sell Erie insurance products located at 5320 Taft Road, Onondaga County, North Syracuse, New York 13212. Unless otherwise specified, the insurance agencies described in paragraphs III 7-11 are referred collectively hereafter as "the agencies."

12. The agencies went through an agent appointment process with Erie, which included a detailed interview and investigation process. Upon approval, the agencies signed an "Agency Agreement" with Erie and Erie licensed the agencies through the state insurance

department to secure applications for the lines of insurance that Erie writes in New York State.

13. The "Agency Agreement" provides that Erie's authorization of the agencies to act on Erie's behalf "is subject to...the rules and regulations of ERIE;" that "ERIE has the right...to refuse to write, cancel or refuse to renew contracts of insurance in full compliance with applicable law;" and that the agencies must "abide by the manuals, rules, regulations, and specific instructions of ERIE."

14. Erie assists the agencies with providing quotes for Erie insurance and underwrites insurance applications in the following ways: (1) Erie provides the agencies with software to help them quote and write applications; (2) the agencies submit applications for homeowner's insurance and endorsements to Erie through the computer; (3) if one of the agencies sells an Erie policy, the underwriting for that policy takes place at Erie's headquarters in Erie, Pennsylvania, through Erie's automated underwriting system or through one of the Erie underwriters responsible for New York State; and (4) Erie makes the final decision on whether it will maintain an insurance policy the agencies write because the agencies are obligated to follow Erie underwriting guidelines or Erie can cancel the risk.

15. Erie trains and monitors the agencies in various ways including: (1) when an agency first starts selling Erie insurance, an Erie district sales manager is available to help train individuals at the agency on Erie products, procedures, processes, policies, and type of coverage, and how to rate a policy with Erie and (2) Erie has an agency review process to work with and monitor the agencies.

16. Erie provides the agencies with various materials including, but not limited to, marketing materials with Erie's logo on them, homeowner's insurance applications, the "Erie Agency Guide," and underwriting guidelines with rate pages.

17. Erie pays the agencies a commission for each sale of Erie homeowners insurance. In addition, during specific contest periods, the agencies may receive a bonus or other financial incentive based on the number of insurance policies submitted, approved, and still maintained by Erie.

18. Erie sells its insurance policies through agents and Erie's underwriting guidelines require its agents to inspect properties to be insured. Erie also has its agents update Erie insurance policies for policyholders.

19. Several of the agencies clearly displayed to potential policyholders that they sell Erie insurance products. At Salanger & Hayward Agency, Inc., an Erie sign was posted in the office lobby. At The Vacco Agency, Inc., an Erie sign and its logo were displayed adjacent to the agency's main sign and an Erie sign was posted on the fence leading up to the main entrance. At the Grimsley Agency, Inc., Erie's name and logo were displayed on signs in the office, on business cards, stickers, and stationary.

20. The respondent agencies are agents of Erie.

21. Between August 2000 and May 2001, the FHCCNY conducted a total of twelve paired tests of Erie and the agencies. Each individual agency was the subject of two or three separate paired tests.[2] Each of the paired tests occurred within approximately seven days to two months of each other.

22. In the tests, the paired testers posed as first-time homebuyers with no insurance claims in the past five years. For each paired test, a tester called one of the agencies seeking homeowners insurance for a home located in Liverpool, New York. A second tester subsequently called the same agency seeking homeowners insurance for a home located in Syracuse, New York. In each of the twelve tests, the testers did not request a specific brand of homeowners insurance and the agencies routinely offered at least one of the matched-paired testers an Erie policy.

23. In the tests, the FHCCNY closely matched several characteristics of the Liverpool and Syracuse homes including, but not limited to, the (1) purchase price of the property, (2) age of the property, (3) type of construction, (4) square footage of the property, (5) number of bedrooms/bathrooms, (6) age and type of the siding, roof, and heating and plumbing systems, (7) type of wiring, (8) distance to a fire department and fire hydrant, and (9) presence of burglar and smoke alarms.

24. In Tests 305, 307, 308, and 402, the paired testers seeking insurance for homes in Syracuse did not receive a quote for homeowners insurance despite a specific request, whereas the paired testers seeking insurance for homes in Liverpool received a quote over the telephone or by mail.

25. In Tests 304, 309, 408, and 410, the paired testers seeking insurance for homes in Syracuse did not receive a quote for an Ultracover homeowner's insurance policy nor were they told of the possibility of Ultracover, whereas the paired testers seeking insurance for homes in Liverpool received a quote for an Ultracover policy. In Tests 304, 309, 408, and 410, the tester seeking insurance for a home in Syracuse received a quote for an Extracover homeowner's insurance policy.

26. According to respondents, the difference between the terms of Ultracover and Extracover is a $1.00 endorsement for full replacement coverage instead of 80 percent replacement coverage. The most comprehensive homeowner's insurance policy sold by Erie is the Ultracover policy. The Extracover homeowner's insurance policy has the second broadest coverage. The Ultracover policy provides more extensive replacement cost coverage, both in the amount of replacement cost coverage and the scope of property covered by the replacement cost coverage, than the Extracover policy. Yet, the difference in cost between an Ultracover and Extracover policy is $1.00.

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[2] The breakdown of the tests by agency is as follows: (1) in Tests 304, 309, and 310, The Vacco Agency, Inc., was tested; (2) in Tests 305, 307, and 308, Salanger & Hayward Agency, Inc., was tested; (3) in Tests 401 and 408, CNY Insurance Associates was tested; (4) in Tests 402 and 409, the Grimsley Agency, Inc., was tested; and (5) in Tests 403 and 410, R.K. Johnson & Associates Insurance Agency, Inc., was tested.

27. Erie claimed that, as of June 2001, after the tests were conducted, but before the FHCCNY's complaint was filed, Ultracover was the only coverage offered. However, during an administrative deposition conducted by HUD in November 2003, an Erie Vice-President testified that, at the time of the deposition, Erie was offering both Ultracover and Extracover policy forms in all Erie locations in New York State.

28. According to 2000 census data, Liverpool is predominately white and has substantially fewer African-American residents and owner-occupied dwellings with an African-American resident than Syracuse. Liverpool and Syracuse are nearby communities within Onondaga County, New York.

29. In the census tracts where the properties involved in the testing were located in Liverpool, the number of owner-occupied dwellings with an African-American resident ranged from approximately 0.4% to 1.3%.

30. In the census tracts where the properties involved in the testing were located in Syracuse, the number of owner-occupied dwellings with an African-American resident ranged from approximately 37% to 61%.

31. The investigation revealed that there is spatial separation between the white and African-American communities in Syracuse and the Syracuse properties involved in the testing conducted by the FHCCNY are located in areas that are perceived as predominately African-American.

32. An analysis of policy data provided by Erie, covering policies in force from January 1, 1999 through June 30, 2004, including policy activity, issuance, renewal, cancellation and non-renewal, from November 1973 through May 2005, reveals that Erie's owners' insurance market shares,[3] in both Onondaga County and New York State, decrease as the percentage of African-American population of the ZIP Code increases. Based on a linear regression analysis, the percentage African-American population of a ZIP Code is a statistically-significant predictor of Erie's sales in that ZIP Code: the higher the African-American population, the fewer sales by Erie.

33. The number of Erie agents from December 21, 1994 through February 1, 2005, by ZIP Code was compared to the African-American share of the population by ZIP Code in Onondaga County and throughout New York State. In both Onondaga County and New York State, the number of Erie agents decreases as the percentage African-American population of the ZIP Code increases. In Onondaga County, there are no Erie agents in the ZIP Codes with an African-American population over 10%. In New York State, in the 600 ZIP Codes in which the African-American population is less than 1% of the ZIP Code's population, Erie has 49 agents, representing 2.7 agents per 100,000 population. In New York State, in the 27 ZIP Codes in which the African-American population is greater than 30% of the ZIP Code's population, Erie has two agents, representing 0.55

[3] Market share refers to the number of Erie policies divided by the number of occupied units. Market share is a measure of how many policies Erie is writing relative to the number of potential customers.

agents per 100,000 population. Stated differently, in New York State, Erie has four times as many agents per 100,000 population in ZIP Codes with the lowest African-American share of the population than in ZIP Codes with the highest African-American share of the population.

34. In the State of New York, Erie does not market its products or appoint agents on Long Island, in New York City, or in the suburban counties north of New York City, including Delaware, Columbia, Dutchess, Orange, Sullivan, Putnam and Ulter Counties. Erie appoints agents and markets its insurance products in the remainder of New York State from Erie County east through Albany County. The parts of New York State where Erie has no agents and does not actively sell its products are also the parts of New York State with a larger African-American population. The absence of Erie agents in African-American communities in New York State is consistent with the lower insurance sales by Erie in those communities. Erie requires agents to inspect properties to be insured.

35. Erie policy data was analyzed covering policies in force from January 1, 1999 through June 30, 2004, including policy activity, issuance, renewal, cancellation, and non-renewal, from November 1973 through May 2005. For New York State, a regression analysis indicates a statistically-significant relationship between African-American population and fewer sales of Ultracover homeowner's insurance policies, as measured by the percentage of Ultracover policies to total homeowners' policies sold by Erie. For Onondaga County, there is statistical evidence of a relationship between African-American population and fewer sales of Ultracover homeowner's insurance policies, as measured by the percentage of Ultracover policies to total homeowners' policies sold by Erie. This data confirms the testing evidence that homeowners in African-American areas were not offered Erie's best insurance product (Ultracover) and paid essentially the same amount of money for lesser coverage.

36. The African-American population of a ZIP Code is a statistically-significant predictor of Erie sales in that ZIP Code, as measured by Erie's market share and a statistically-significant predictor of the policy form sold by Erie, as measured by the Ultracover share of total homeowners' policies.

37. By offering higher-quality homeowner's insurance products (Ultracover) to homeowners in predominately white areas of Liverpool, and either lesser-coverage (Extracover) or no homeowner's insurance products to homeowners in recognized African-American areas in Syracuse, Erie and the agencies discriminated based on race in violation of 42 U.S.C. §§ 3604(b) or (a).

38. Erie sells fewer homeowners' policies in African-American communities in New York State, sells lesser-coverage homeowners' policies to African-Americans in New York State, and has fewer agents in New York State in ZIP Codes where African-Americans comprise a high percentage of the population than in ZIP Codes with few African-Americans. There is reasonable cause to believe that Erie discriminates and has discriminated in the sale of homeowners insurance in New York State in violation of 42 U.S.C. §§ 3604(a) and (b) since at least April 21, 2001.

39. Respondents' actions diverted the FHCCNY's resources and frustrated its mission to ensure equal availability of housing and housing services. The FHCCNY's damages include, but are not limited to, significant staff time costs, out-of-pocket expenses, testing fees, costs for tester training, and other test-related costs. Due to the respondents' discrimination, the FHCCNY was unable to complete several activities or projects including, but not limited to, a sales testing project, a grant application for JP Morgan Human and Supportive Services, a self-testing contract with the National Fair Housing Alliance, and a predatory lending brochure.

40. By discriminating against African-Americans in the provision of homeowners insurance in New York State, Erie harmed the public interest.

IV. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a) and 3604(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. Sections 3601-3619;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating because of race against any person in the provision of homeowners insurance;

3. Awards such damages as will fully compensate the Fair Housing Council of Central New York, Inc. for its actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§ 3604(a) and (b);

4. Awards significant public interest relief such as compensation for homeowners who were denied Erie insurance or who were not offered Ultracover insurance because of their race or the racial composition of their neighborhood; training for Erie agents and corporate personnel; recruitment and hiring of African-American insurance agents; and marketing and outreach to African-American communities in New York State; and

5. Awards civil penalties against Erie Insurance Company; Erie Insurance Company of New York; Erie Indemnity Company; and Erie Insurance Company, Erie Insurance Company of New York, and Erie Indemnity Company collectively operating with others as the "Erie Insurance Group;" R.K. Johnson & Associates Insurance Agency, Inc.; Salanger & Hayward Agency, Inc.; CNY Insurance Associates; The Vacco Agency, Inc.; and the Grimsley Agency, Inc., for each violation of the Act committed, 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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