**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 Frank Tyler Atkinson, Bryte Atkinson and Clover Atkinson, | ) | |
| Charging Party, | ) | |
| v. | ) | FHEO No. 10-08-0149-8 |
| Shelley Milton and Edward Milton, | ) | |
| Respondents. | ) | |

CHARGE OF DISCRIMINATION

I. JURISDICTION

On January 22, 2008, Complainant, Frank Tyler Atkinson, an aggrieved person, filed a timely verified complaint with the United States Department of Housing and Urban Development ("HUD") on behalf of himself and his minor children, Bryte and Clover Atkinson, who are aggrieved persons. The complaint alleged that Respondents, Edward Milton and Shelley Milton, the owner and manager of the subject property, refused to rent to Complainant because of his familial status and made discriminatory statements to him, in violation of the Fair Housing Act ("Act"), as amended, 42 U.S.C. §§ 3601-3619.

The Act authorizes issuance of a charge of discrimination on behalf of the 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 has delegated to the General Counsel (54 Fed. Reg. 13121), who has redelegated 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 his or her designee.

The Regional Director for Fair Housing and Equal Opportunity, Region X, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and authorized the issuance of this Charge of Discrimination.

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

Based on HUD's investigation of the complaint and the attached Determination of Reasonable Cause, Respondents are hereby charged with violations of the Act, specifically, 42 U.S.C. Sections 3604(a)-(c), as set forth below.

1. It is unlawful to refuse to rent, to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any renter because of the person's familial status. 42 U.S.C. § 3604 (a).

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 therewith, because of familial status. 42 U.S.C. § 3604(b).

3. It is unlawful to make, print, or publish, or cause to be made, printed, or published, any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).

4. The term "familial status" is defined by the Act as one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals. 42 U.S.C. § 3602(k).

5. The subject property is a two-bedroom apartment at 179 College Avenue, Unit #4, Idaho Falls, Idaho. The subject property is located on the second floor of a fourplex in an eight-unit complex.

6. At all times relevant herein, Complainant, Frank Tyler Atkinson (who uses his middle name), had joint custody of his two minor children, Bryte and Clover Atkinson, who were ages 3 and 1, respectively, in January, 2008. Under the custody agreement, Complainant's children reside with him part-time: they stay with him two evenings each week and every other weekend, plus alternating holidays and two weeks in summer.

7. At all times relevant herein, Respondent Edward "Ted" Milton was the owner of the subject property.

8. At all times relevant herein, Respondent Shelley Milton was the manager of the subject property.

9. In January, 2008, Complainant was searching for housing in Idaho Falls where his former spouse had relocated with their children. Complainant had left his job in Boise to move closer to his children.

10. On or about January 11, 2008, Complainant found an advertisement for a two-bedroom apartment for rent on PostRegister.com, the online edition of the local newspaper, the Idaho Falls Post Register. The advertised monthly rent was $340.

11. On January 11, 2008, Complainant called the telephone number listed in the advertisement to inquire about renting the apartment and spoke to Respondent Shelley Milton, who identified herself to Complainant as "Shelley." Ms. Milton told Complainant that she had a two-bedroom, upstairs apartment available to rent for $340 per month. Complainant told Respondent Shelley Milton that he was moving to Idaho Falls and wanted to pay a few months' rent in advance, as he did not yet have a job in the area. Ms. Milton seemed pleased with the prospect of receiving rent in advance. Ms. Milton gave Complainant the address of the property and invited him to view the unit.

12. Respondent Shelley Milton then asked Complainant if he would be the only occupant of the unit. Complainant replied that his two children, who are ages 3 and 1, stay with him every other weekend.

13. Upon learning that Complainant had young children, Respondent Shelley Milton told Complainant that she could not rent the apartment to him because it is an upstairs apartment and there are liability issues with children living upstairs.

14. Respondent Shelley Milton told Complainant that she expected to have a vacancy on the first floor soon, but she did not know when, then she quickly ended the call.

15. On January 11, 2008, following his conversation with Respondent Shelley Milton, Complainant called the Boise HUD Office to report his experiences attempting to rent the subject property. Complainant spoke with a HUD investigator, Bobbi Olson.

16. Immediately after speaking with Complainant, the HUD investigator called the phone number he provided and spoke to Respondent Shelley Milton. Ms. Milton told the HUD investigator that Respondents only rent to families with children in the ground floor apartments because of safety and liability concerns. When the investigator asked for her last name, Ms. Milton refused to provide her last name and could be heard speaking to a man in the background; Ms. Milton then put the investigator on hold and disconnected her.

17. After the call was disconnected, the HUD investigator called Respondents' number again and Respondent Edward Milton answered. Mr. Milton told the investigator that they did not want children on the second floor. When told that it was illegal to discriminate against families with children, Mr. Milton stated that he knew it was illegal and they would not refuse to rent to a family with children on the second floor, but they would "try to discourage them." Mr. Milton added that Complainant had children the "perfect size to fall."

18. On or about January 20, 2008, Respondents rented the subject property for $325 per month to a single, adult, male occupant with no children.

19. Complainant's replacement housing was less desirable and more expensive than the subject property: Complainant had wanted to rent a two-bedroom apartment for himself and his children, but instead rented a one-bedroom apartment in Idaho Falls for $390 per month.

20. Respondents have a policy of not renting second floor apartments to families with young children.

21. Respondent committed unlawful discrimination by refusing to rent to, or otherwise making the subject property unavailable to, Complainant and his children because of familial status, in violation of 42 U.S.C. § 3604(a).

22. By adopting and enforcing a policy of restricting families with young children to ground floor apartments and attempting to discourage families with children from applying to rent apartments located above the ground floor, Respondents committed unlawful discrimination in the terms, conditions, or privileges of the rental of a dwelling because of familial status, in violation of 42 U.S.C. § 3604(b).

23. By telling Complainant that he could not rent an apartment on the second floor of the subject property because of liability issues with children living upstairs, Respondent Shelley Milton committed unlawful discrimination by making oral statements to Complainant that indicated a preference, limitation, or discrimination, or an intention to make such a preference, limitation, or discrimination, based on familial status, in violation of 42 U.S.C. §3604(c).

24. As a result of Respondents' discriminatory conduct, Complainant and his minor children have suffered damages, including economic loss, inconvenience, emotional distress and loss of an important housing opportunity.

## III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Regional Counsel for Region X, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604, and prays that an order be issued pursuant to 42 U.S.C. § 3612(g)(3) that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating on the basis of familial status in any aspect of the rental of a dwelling;

3. Awards such damages as will fully compensate Complainant, Frank Tyler Atkinson, and his minor children, Bryte and Clover, for their damages caused by Respondents' discriminatory conduct;

4. Awards a civil penalty against each Respondent for each violation of the Act committed; and,

5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

MONA A. FANDEL
Regional Counsel, Region X

JO ANN RIGGS
Attorney

U.S. Department of Housing and
Urban Development
Seattle Federal Office Building
909 First Avenue, Suite 260
Seattle, Washington 98104-1000
(206) 220-5191

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