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 Priscilla Batista,	)	
Charging Party,	)	
v.	)	FHEO No. 02-08-0398
Cooperativa Jardines de San Ignacio	)	
Respondent.	)	

CHARGE OF DISCRIMINATION

JURISDICTION

1. On or about October 15, 2007, Priscilla Batista, (Complainant) filed a verified complaint with the United States Department of Housing and Urban Development (HUD), alleging that Cooperativa Jardines de San Ignacio (Respondent) discriminated against her because of her disability, in violation of the Fair Housing Act (Act). 42 U.S.C. §§ 3601-3619.

2. The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (Charge) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory act 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 redelegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), or his or her designee.

3. The Director of the Office of FHEO for New York/New Jersey Hub, on behalf of the Assistant Secretary, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe Respondent engaged in a discriminatory housing practice. HUD's efforts to conciliate the complaint were unsuccessful. 42 U.S.C. § 3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

4. 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 a disability. 42 U.S.C. § 3604(f)(2). Discrimination under 3604 (f)(2) includes refusals to make reasonable accommodations in rules, policies, practices, or services, when such accommodations 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).

PARTIES

5. Complainant is a person with physical disabilities. She suffers from fibromyalgia. This condition causes Complainant recurring severe physical pain. She also suffers from severe fatigue and depression. Complainant is substantially limited in the daily activity of walking and uses a walker to assist her with her. Complainant's condition is such that she is often unable to leave her apartment.

6. Respondent, Cooperativa de Viviendas Jardines de San Ignacio and its Board of Directors is a cooperative corporation owned by resident shareholders. The cooperative has two buildings containing 511 units. It is located at 1690 San Guillermo Street, San Juan, Puerto Rico, 00927.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Complainant moved to the subject cooperative on March 3, 1983. She is a shareholder in apartment 1714-A where she presently resides.

8. Respondent has been aware of Complainant's disability since at least 2000 when Respondent identified Complainant as disabled in its Owner's Certification of Compliance with HUD's Tenant Eligibility and Rental Procedures.

9. On September 14, 2006, Respondent informed the residents of the cooperative that it intended to close the garbage disposal rooms located on each floor to improve sanitation and that residents would be expected to dispose of their garbage in trash dumpsters located outside the buildings.

10. On September 18, 2006, Complainant wrote Respondent requesting a reasonable accommodation. In particular, Complainant requested that Respondent either arrange to have her garbage picked up from her apartment or provide her with a key to the garbage disposal room on her floor so that she could leave her garbage there for pick-up. Respondent failed to respond to this request.

11. On April 13, 2007, Complainant sent a second letter to Respondent, referencing her earlier letter and asking Respondent how it planned to accommodate her and other disabled tenants once the garbage disposal rooms were closed.

12. By letter dated April 27, 2007, Respondent told Complainant that the garbage disposal rooms would be closed on May 1, 2007, and that Respondent garbage disposal policy would be communicated to residents at a later date.

13. On June 8, 2007, Medardo Rosario, Respondent project administrator, told Aurea Negron, HUD Multifamily Division Project Manager, that Complainant's garbage and the garbage of the other disabled tenants would be collected daily at their apartment door.

14. On June 11, 2007, Respondent closed the garbage disposal rooms. Residents were then required to place their garbage in dumpsters located in the back of each of the two buildings comprising the cooperative.

15. Because of her disability, Complainant could not access her building's garbage dumpster.

16. On June 14th and 15th, 2007, Complainant sent letters to Respondent stating that her garbage would be left by the door of her apartment. Respondent collected Complainant's garbage on June 13, 15 and 20, 2007. Respondent failed to collect Complainant's garbage thereafter.

17. By letter dated June 22, 2007, Respondent invited Complainant to meet with its Board and attorney to discuss the garbage disposal room closures.

18. On June 25, 2007, Complainant responded, requesting that Respondent put in writing any information it wished to give her regarding the disposal of garbage.

19. After receiving complaints from tenants living on Complainant's floor about garbage in the hallway, Respondent instructed Complainant on July 20, 2007, to attend a hearing scheduled for August 1, 2007, regarding allegations that she had engaged in improper and unacceptable behavior by leaving garbage in the hallway.

20. Complainant and the tenants who had filed complaints against her attended the August 1, 2007 hearing.

21. On August 13, 2007, Respondent issued a resolution which, among other things, reprimanded Complainant for leaving her garbage in the hallway, failing to attend a meeting with the Board without justification, and failing to provide Respondent with information to justify her reasonable accommodation request.

22. The resolution also ordered Complainant to deposit her garbage in a first floor trash container located inside the laundry room. However, the trash container Respondent provided was too small to hold Complainant's household garbage.

23. On February 8, 2008, four months after Complainant filed a complaint with HUD and more than 8 months after the requested reasonable accommodation became necessary, Respondent agreed to provide Complainant with a key to the garbage room on her floor so that she could place her garbage there for collection.

24. Respondent failed to provide Complainant with the accommodation she required until after she filed her complaint with HUD.

25. As a result of Respondent's failure to timely provide a reasonable accommodation, Complainant has suffered damages, including emotional and physical distress, embarrassment and humiliation.

FAIR HOUSING ACT VIOLATIONS

26. Respondent has violated the Act by refusing to timely make reasonable accommodations in its rules, policies, practices, or services, when such accommodations were necessary to afford Complainant an equal opportunity to use and enjoy her dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204 and by unlawfully discriminating against Complainant 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 her disability. 42 U.S.C. § 3604(f)(2).

CONCLUSIONS

WHEREFORE, the Secretary of HUD, through the office of the 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(f), 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, 42 U.S.C. §§ 3601-3619;

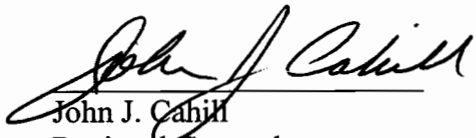
2. Enjoin Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of handicap against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);

3. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate complainant for her humiliation, embarrassment, and emotional and physical distress caused by Respondent's discriminatory conduct;

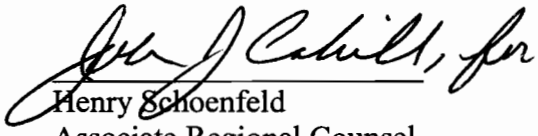
4. Awards a $16,000 civil penalty against Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3); and

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

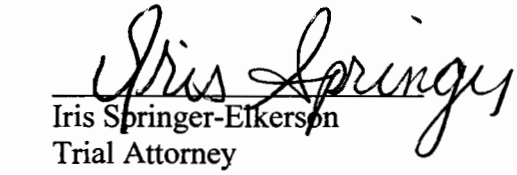
Respectfully submitted,



John J. Cahill
Regional Counsel
New York/New Jersey Office



Henry Schoenfeld
Associate Regional Counsel
New York/New Jersey Office



Iris Springer-Elkerson
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U.S. Department of Housing
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26 Federal Plaza, Room 3500
New York, NY 10278-0068
(212) 542-7208

Date: August 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Important Notice," and "Determination" in Priscilla Batista v. Cooperative de Viviendas Jardines San Ignacio, FHEO No. 02-08-0039-8 were sent to the following individuals in the manner indicated:

By Fedex:

Priscilla Batista
Cooperative Jardines de San Ignacio
Apt. 1714-A
Calle San Guillermo 1690,
San Juan, PR 00927
787-767-5079

Cooperativa de Viviendas Jardines de San Ignacio
1690 Calle San Guillermo, Ofic. 122-A
San Juan, PR 00927
787-751-1472

By Fedex and Fax:

Chief Docket Clerk
Office of Administrative Law Judges
U.S Department of Housing and Urban Development
409 3rd Street, SW, Suite 201
Washington, DC 20024
(202) 245-1226 and FAX (202) 619-7304

on this 5th day of August, 2008.

Ilene Ross

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