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 Byron L. Jones, Charging Party, v. Niagara Falls Housing Authority, Respondent.	FHEO No. 02-08-0653-8

CHARGE OF DISCRIMINATION

JURISDICTION

1. On April 26, 2008, Byron L. Jones ("Complainant") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"). Complainant, who is disabled, alleges that Respondent refused to grant him a reasonable accommodation in violation of the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* ("Act"). In particular, Complainant alleges that Respondent denied his request for a striped access aisle adjacent to handicap parking spaces that would allow him safe access to and from his vehicle.

2. The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and 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 re-delegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause.

3. The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint were unsuccessful. See 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 the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person or a person residing in that dwelling after it is sold or rented. 42 U.S.C. § 3604(f) (2) (A) and (B). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f) (3) (B).

PARTIES:

5. Mr. Jones suffers from herniated cervical discs for which he underwent an anterior cervical decompression and fusion. He is limited in his ability to walk more than 200 feet. In addition, he has difficulty bending his upper body. Mr. Jones is unable to work because of his physical ailment and, as a result, collects Social Security disability benefits. Mr. Jones has a permit to utilize handicap parking.

6. Respondent Niagara Falls Housing Authority (NFHA) is a public housing authority that owns and operates the Packard Court housing complex in Niagara Falls, New York. NFHA receives federal funding for the operation and maintenance of its public housing complexes, including Packard Court. The Packard Court housing complex is comprised of 32 one and two story apartment buildings that provide 166 apartments units. In addition, the Packard Court Community Center is on the complex grounds.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Mr. Jones leases unit 29A in Packard Court which he moved into in or around July 2006.

8. There are approximately 210 parking spaces within the Packard Court complex and around its perimeter. None of these spaces is reserved and parking is available on a first-come-first-serve basis. In or around July 2006, NFHA repaired, sealed, and striped the Packard Court parking lots.

9. A parking lot near Mr. Jones' apartment contains approximately 23 spaces, five of which are designated for the disabled. The first of these designated handicap spaces is approximately 40 yards away from Mr. Jones' apartment. The second is approximately 50 yards away; while the third, fourth, and fifth handicap spaces are each approximately 60 yards away.

10. The Uniform Federal Standards of Accessibility (UFAS) ¶ 4.6.3 states that "[p]arking spaces for disabled people shall be at least 96 in. (2440 mm) wide and shall have an adjacent access aisle 60 in. (1525 mm) wide minimum."

11. None of Packard Court's parking spaces near to Mr. Jones apartment that are designated for the disabled has a marked access aisle adjacent to the space.

12. When utilizing the handicap space closest to his apartment, Mr. Jones found, at times, that cars in the adjoining space parked too close to allow him to enter and to exit his vehicle. On more than one occasion, Mr. Jones has struck his head on a vehicle parked in the adjoining space. An access aisle of the measurements called for in the UFAS would keep adjacent vehicles parked at a safe distance to allow Mr. Jones to enter and to exit his vehicle.

13. On November 5, 2007, Mr. Jones spoke with the Packard Court Manager, Ida Seright, about the difficulty he was having using the designated handicap space. Mr. Jones told Ms. Seright that he has health problems, including an injured neck, and that cars parked next to handicap spaces park too close, making it difficult for him to enter and exit his vehicle. Mr. Jones told Ms. Seright that the handicap spaces need a striped access lane next to them. Ms. Seright replied that these spots were not marked for wheelchair accessibility, but she would look at the spaces herself.

14. By letter dated November 26, 2007, Ms. Seright responded to Mr. Jones stating that she found the handicap space "appropriately marked/reserved for handicap parking." Even though Mr. Jones had explained his difficulty entering and leaving his vehicle without an access lane, Ms. Seright stated "[t]his space is not specifically marked for a person who uses a wheelchair or a specially equipped vehicle, for which an extra access or striped area would be needed to allow for access to the parking space." Ms. Seright further advised Mr. Jones: "[i]f you are experiencing problem[s] entering and exiting your automobile, perhaps you may try backing into the spot as an alternative."

15. Because the handicap spaces closest to his apartment lack access aisles, Mr. Jones parks in a handicap space on a road that runs along the perimeter of the Packard Court housing complex. This space is an on-street parking space that opens from the driver's side of the vehicle on to the road. This space is approximately 200 yards from Mr. Jones' apartment.

FAIR HOUSING ACT VIOLATIONS:

16. Respondent violated the Act because it refused to make a reasonable accommodation in their rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant equal opportunity to use and enjoy his dwelling.

CONCLUSION:

WHEREFORE, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g) (2) (A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 (f) (2) and § 3604 (f) (3) (B) and prays that an order be issued that:

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

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

3. Mandates that Respondent maintain access lanes adjacent to handicap parking spaces;

4. Enjoins Respondent, their agents, employees, and successors, and all other persons in active concert or participation with them, from coercing, intimidating, threatening or interfering with Complainants' exercise or enjoyment of rights granted or protected by the Act;

5. Awards such damages pursuant to 42 U.S.C. §3612(g) (3) as will fully compensate Complainant for emotional distress, including embarrassment and humiliation, inconvenience, and economic loss caused by Respondent's discriminatory conduct;

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

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

Respectfully submitted,

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New York/New Jersey

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Date: September 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Notice," and "Determination" in Byron L. Jones v. Niagara Falls Housing Authority, FHEO No. 02-08-0653-8, was sent via overnight mail:

Byron L. Jones (Complainant)
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City of Niagara Falls Housing Authority (Respondent)
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And:

By Overnight Mail

Chief Docket Clerk
Office of Administrative Law Judges
409 3rd Street, S.W., Suite 201
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DATE: September 29, 2008

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