

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)	
)	
Windy Calderon-Grau and Natanael Aybar,)	
)	
Charging Party,)	
)	
v.)	FHEO No. 04-07-0253-8
Parques De Las Flores Condominium Association,)	
)	
)	
Respondent.)	

CHARGE OF DISCRIMINATION

JURISDICTION

1. On November 24, 2006, Windy Calderon-Grau (“Complainant”) filed a verified complaint with the Department of Housing and Urban Development (“HUD”) on behalf of herself and her minor son, Natanael Aybar, who has severe physical disabilities and is a wheelchair user. She alleged Respondent refused to grant her 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 alleged that Respondent denied her a sorely needed handicapped accessible parking space, though it had four such spaces close to her apartment that were rarely used by handicapped residents or visitors.

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). (On January 31, 2008, HUD issued a similar Charge of Discrimination against respondent Parques De Las Flores Condominium Association, which it voluntarily withdrew on February 6, 2008, because the charge was not delivered to the complainant and the respondent.)

LEGAL AUTHORITY IN SUPPORT OF CHARGE

4. It is unlawful to discriminate against any person by refusing 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. Complainant, Windy Calderon-Grau, is the mother and primary caregiver of Natanael Aybar, a six year old boy with severe disabilities. She requires a minivan to provide transportation for her son.
6. Natanael Aybar has cerebral palsy and suffers physical impairments and developmental delays. He uses a wheelchair, is unable to speak, and has limited ability to control jerking and swaying body movements.
7. Respondent, Parque de las Flores Condominium Association, is a condominium corporation consisting of 140 garden style apartment units. Association members own their residential units and share common areas. The Association has 289 parking spaces, 280 of which are deeded to individual unit owners as part of their real property. The Association is governed by a board of directors and is managed by an administrator. Jose D. Orama Vazquez is the president of the Board during the relevant period.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE:

8. Between February 2005 and August 2007, Complainant lived as a tenant at Parque de las Flores Condominium, 25 Blvd. De La Media Luna, Apt. 2201, Carolina, Puerto Rico.
9. As a tenant, Complainant had use of two private parking spaces, which were deeded to and constituted the property of the unit owner. The spaces are positioned one behind the other with the inner parking space vertically facing the sidewalk in front of the apartment entrance. A vehicle in the inner space is blocked in by a vehicle parked

in the outer space, and both spaces are sandwiched between parking spaces to their left and right.

10. In order to place her son into the minivan, Complainant must maneuver his wheelchair alongside the sliding door of the minivan, lift him out of his wheelchair, and place him into a car seat. She then proceeds to the back of the van and loads the wheelchair into the cargo space. To remove her son from the minivan, Complainant must once again align the wheelchair alongside the sliding door of the van, lift her son from the car seat and place him in the wheelchair. Complainant cannot make these maneuvers if other vehicles are parked closely alongside her minivan.
11. Respondent has four handicapped accessible parking spaces in a visitor's parking lot directly across the street from Complainant's unit. These parking spaces offer large aisles, allowing for greater maneuverability for a wheelchair user.
12. On September 13, 2006 Complainant requested, as a reasonable accommodation, that Respondent allow her to utilize one of the visitors' handicapped parking spaces so that she would be able to safely place her son into and safely remove him from her minivan. Prior to making her request, Complainant noted that those spaces, for the most part, were either vacant or used by persons without disabilities or occupied by garbage dumpsters and utility vehicles.
13. By letter dated September 26, 2006, Mr. Vazquez denied Complainant's request, stating that the American with Disabilities Act of 1990 ("ADA") mandates that Respondent have a minimum of five accessible parking spaces for disabled visitors and Complainant's use of one of those spaces would render the Association in violation of the ADA.
14. However, since Respondent has only nine visitor parking spaces, there is no requirement that four spaces be handicapped accessible.
15. Complainant could not accept Respondent's alternative offers of accommodation because they would have required her to leave her disabled son unattended either on the sidewalk or in her apartment, potentially causing him physical injury or mental distress.

FAIR HOUSING ACT VIOLATIONS:

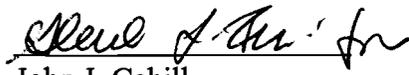
16. Parque de las Flores Condominium Association violated the Act because it refused to make a reasonable accommodation in its rules, policies, practices, or services, when such an accommodation was necessary to afford the Complainants equal opportunity to use and enjoy their dwelling.

CONCLUSION:

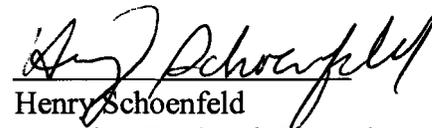
WHEREFORE, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g) (2) (A), hereby charges the Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f) (3) (B) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondent, its 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. Awards such damages pursuant to 42 U.S.C. § 3612(g) (3) as will fully compensate Complainants for emotional distress, inconvenience, lost housing opportunity and economic loss caused by Respondent's discriminatory conduct;
4. Awards a civil penalty against the Respondent for 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 for
New York/New Jersey



Henry Schoenfeld
Associate Regional Counsel
for Program Enforcement and Litigation



Lorena Alvarado
Attorney Advisor

Office of Regional Counsel
U.S. Department of Housing and
Urban Development
26 Federal Plaza, Room 3500
New York, New York 10278-0068
(212) 542-7734

Date: February 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Notice," and "Determination" in Windy Calderon-Grau v. Parques de las Flores Condominium Association, FHEO No. 04-07-0253-8, was sent to the following, in the manner indicated:

By Overnight Mail:

Windy Calderon-Grau
Natanael Aybar (Complainants)
Residencial San Fernando
Building 4, Apartment 81
San Juan, Puerto Rico 00927
(939) 630-4875

Parques De Las Flores Condominium Association
ATTN.: Board President
c/o Marcos Bandas
5 Blvd. De La Media Luna, Apartment Administration
Carolina, Puerto Rico 00987-4811
(787) 762-5259

By Overnight Mail and Facsimile:

Chief Docket Clerk
Office of Administrative Law Judges
451 7th Street, SW
Room 3142
Washington, DC 20410
FAX (202) 708-3722

This 7th day of February 2008



Thomas Ellwood, Paralegal Specialist
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
26 Federal Plaza, Suite 3500
New York, New York 10278
(212) 542-7217