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 Icelene Barrett, Charging Party, v. Burton Towers Housing Development Fund Company, Inc. and Betty Evans, Respondents.	FHEO No. 02-08-0636-8

CHARGE OF DISCRIMINATION

JURISDICTION

1. On or about May 20, 2008, Complainant Icelene Barrett filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"), alleging Respondents violated the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* ("Act"). In particular, Complainant alleged Respondents unlawfully denied her request for an assigned parking space closer to her building as a reasonable accommodation for her physical disability. 42 U.S.C. §§ 3604 (f) (2) (A) and (f) (3) (B).

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 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 of FHEO, 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 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 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 accommodation may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f) (3) (B).

PARTIES:

5. Complainant is an elderly woman with physical disabilities, including Coronary Artery DS, Diabetes Mellitus, Massive Obesity, Neuropathy of Feet, and Chronic Obstructive Pulmonary Disease. Complainant's physical impairments pose substantial limitations on her ability to walk. Complainant resides at 36 Cerone Place, Apt. 811, Newburgh, NY 12550.

6. Respondent Burton Towers Housing Development Fund Company, Inc. is the owner of Complainant's apartment and 126 other housing units in a development for the elderly in Newburgh, New York ("Burton Towers").

7. Respondent Betty Evans is a former Manager of Burton Towers.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

8. Complaint moved into Burton Towers in 1994. From the inception of her tenancy until August 2007, Complainant had been assigned parking space #18, which is located close to the entrance to her building, because she had difficulty walking and breathing.

9. In 2007, Burton Tower's management company notified tenants that assigned parking spaces would be redistributed on a first-come, first-serve basis. Beginning July 31, 2007, all tenants could visit the management office to request any parking space.

10. Upon receiving notice of the intent to redistribute parking spaces, Complainant informed Respondents that she needed to retain parking space #18 because she could not walk long distances.

11. On August 1, 2007, when Complainant went to the management office to

again request parking space #18, it was no longer available. Complainant was assigned parking space #11, which is considerably farther away from her apartment building than her previously assigned parking space #18.

12. In a letter to Respondent Evans, dated March 25, 2008, Complainant requested that Respondents assign her a parking space closer to her apartment because of health reasons and submitted a letter from her internist, Dr. Susan M. Jensen, supporting her need for a parking space as close to the entrance of her building as possible because of her inability to walk.

13. Respondents denied Complainant's request for a parking space closer to her building, alleging that all residents of Burton Towers require parking spaces as close to their building entrances as possible. Respondents have failed, however, to present evidence supporting their reason for denying Complaint's request for a reasonable accommodation.

14. Complainant has suffered emotional distress and other damages because Respondents have refused to grant her a reasonable accommodation.

FAIR HOUSING ACT VIOLATIONS:

15. Respondents have violated the Act by refusing to make reasonable accommodations in their 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) (2) (A); 42 U.S.C. § 3604 (f) (3) (B); 24 C.F.R. § 100.204.

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 Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 (f) (2) (A) and 42 U.S.C. § 3604(f) (3) (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, 42 U.S.C. §§ 3601 *et seq.*;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled persons equal opportunity to use and enjoy their dwellings pursuant to 42 U.S.C. § 3612(g)(3);

3. Grants Complainant parking space #18 or another parking space that is as close, or closer, to Complainant's building entrance;

4. Awards such damages pursuant to 42 U.S.C. § 3612(g) (3) as will fully compensate Complainant for the emotional distress and financial cost she suffered because of Respondents violation of the Act.

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

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

Respectfully submitted,

John J Cahill
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New York/New Jersey Office

Henry Schoenfeld
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Date: September 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Notice," and "Determination" in Barrett v. Burton Towers Housing Development Fund Company, Inc., et al., FHEO No. 02-08-0636-8, was sent via overnight mail:

Icelene Barrett (Complainant)
36 Cerone Place
Apt. 811
Newburgh, NY 12550

Gary D. Friedman, Esq. (Respondent Burton Towers' Representative)
Gutman, Mintz, Baker & Sonnenfeldt, P.C.
813 Jericho Turnpike
New Hyde Park, NY 11040

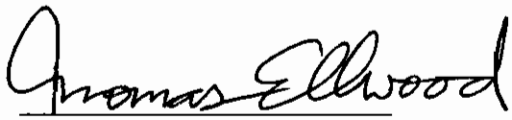
Burton Towers Housing Development Fund Company, Inc. (Respondent)
36 Cerone Place
Newburgh, NY 12250

Betty Evans (Respondent)
Burton Towers Housing Development Fund Company, Inc. 36 Cerone Place
Newburgh, NY 12250

And:

By Overnight Mail and Fax:
Chief Docket Clerk
Office of Administrative Law Judges
U.S. Department of Housing & Urban Development
409 3rd Street, SW, Suite 201
Washington, DC 20024
(202) 402-3607 and (F) (202) 619-7304

This 29th day of September 2008.



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