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 Robert N. Leather, Charging Party, v. Florence Tollgate Condominium Association, Respondent.	)	FHEO No. 02-06-0101-8

CHARGE OF DISCRIMINATION

JURISDICTION

1. On or about November 15, 2005, Complainant Robert Leather filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"), alleging that Respondent Florence Tollgate Condominium Association ("FTCA") discriminated against him in the terms, conditions, or privileges of sale or rental of a dwelling because of familial status in violation of the Fair Housing Amendments Act ("Act"). 42 U.S.C. §§ 3601-3619. After initially forwarding the complaint to the New Jersey Division on Civil Rights for investigation, HUD reactivated the complaint in February 2007, for investigation under the Act.

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 (24 C.F.R. § 103.400 (a)(2)(i), 103.405), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441, 68442 (Nov. 18, 2008), the authority to issue such 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 FTCA 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 familial status. 42 U.S.C. § 3604 (a) and (b).

PARTIES

5. Complainant is the owner of five condominium apartments at Florence Tollgate Condominiums ("FTC"). He asserts that FTCA's unreasonable, restrictive limits on the number of persons allowed to occupy certain condominium units have limited his ability to rent or sell his condominium units to persons with children. Complainant is fearful that complying with FTCA's occupancy limitations will compel him to violate the Act's prohibition against discrimination because of familial status. Complainant is an aggrieved person as defined by 42 U.S.C § 3602(i).

6. FTCA is a non-profit organization responsible for the administration and management of FTC, located at 50-1 Florence Tollgate Place, Florence, New Jersey. FTC consists of 320 units, in 40 buildings, each containing 8 units.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

8. All FTC units contain a living room, dining room, kitchen and bathroom.

9. FTC has 188 one-bedroom units, 68 one-bedroom deluxe units and 64 two-bedroom units.

10. The one-bedroom units have approximately 847 square feet of space.

11. The deluxe units have one bedroom and a room labeled a "den" and measure approximately 1027 square feet. The two-bedroom units also measure approximately 1027 square feet.

12. The den in the one-bedroom deluxe units and the second bedroom in the two-bedroom units contain the same square footage. A number of both one-bedroom deluxe units and two-bedroom units contain an additional half bath.

13. In 1999, FTCA passed a residency resolution, limiting the number of persons in each type of unit. More specifically, the resolution allows no more than two persons to occupy the one-bedroom units and the deluxe units and no more than

four persons to occupy the two-bedroom units.

14. FTCA's resolution states that "living room, dining room and dens are not considered sleeping areas and shall not be counted in the square footage as such."

15. FTCA's rules and regulations impose monetary penalties on condominium owners that violate its occupancy restrictions.

16. Complainant owns five units at FTC that he utilizes as rental properties, two of which are deluxe units and the remaining three are one bedroom units.

17. In September 2002, Complainant rented one of his deluxe units to a couple without children. The couple gave birth to their first child in February 2003 and the President of FTCA's Board told Complainant that he was violating FTCA's residency resolution because deluxe units were limited to a maximum of two persons.

18. In 2005, the same couple gave birth to a second child. FTCA instructed Complainant to evict the couple and told him that fines would be assessed against his unit. Complainant refused to evict these tenants and renewed their lease on May 1, 2005.

19. In February 2005, Complainant rented his other deluxe unit to a couple with a child.

20. Complainant was again advised he was in violation of FTCA's occupancy rules and his tenants were required to pay an additional fee if they wished to bring their child to the FTC's pool because of FTCA's occupancy restrictions.

21. Complainant has been threatened with assessments because he failed to comply with FTCA's deluxe unit occupancy restrictions.

22. On information and belief, at all material times to the Complaint, local law permitted four persons to reside in FTC's deluxe units. Until 2006 however, it was the practice of Florence Township Construction Code Officials to adopt the occupancy limitations established by FTCA when they issued Certificates of Occupancy ("CO") for FTC apartments.

23. On information and belief, in or about 2006, Florence Township Officials revised their practice and commenced issuing COs based on the square footage of "livable space" rather than issuing COs based the limitations established by the FTCA. As a result of this revision, Florence Township Officials now permit up to four persons to reside in FTC's deluxe units.

24. Despite Florence Township's increase in occupancy limits for deluxe units, FTCA continues to limit the deluxe units to no more than two persons.

25. FTCA's occupancy restrictions limit Complainant's ability to rent or sell his deluxe units to families with children.

26. Complainant has suffered emotional distress and other damages because of FTCA's unreasonable occupancy restrictions.

27. By limiting its deluxe units to two persons, FTCA's policy and practice has a disproportionate effect on families with children seeking housing. More specifically, as a result of FTCA's occupancy rules, only 64 of 320 units (20%) are available for families with children. If FTCA's occupancy rules were in accord with local housing codes, there would be 132 units (41%) available to families with children.

28. FTCA's occupancy regulations unreasonably operate to limit or exclude families with children from residing in FTC.

FAIR HOUSING ACT VIOLATIONS

27. FTCA has violated the Act by 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 familial status. 42 U.S.C. § 3604 (a) and (b).

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 FTCA 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 FTCA as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoins FTCA, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of familial status 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. Enjoins FTCA, its agents, employees, and successors, and all other persons in active concert or participation with it, from limiting occupancy at the deluxe units to less than four persons;

4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for the discriminatory impact and effect caused by FTCA's discriminatory conduct;

5. Awards a $16,000 civil penalty against FTCA 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
Regional Counsel
New York/New Jersey Office

Henry Schoenfeld
Associate Regional Counsel
New York/New Jersey Office

Iris Springer-Elkerson
Trial Attorney
Office of Regional Counsel
U.S. Department of Housing
and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278-0068
(212) 542-7208

Date: February 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Important Notice," and "Determination" in Robert N. Leather V. Florence Tollgate Condominium Association, FHEO No. 02-06-0101-8 were sent to the following individuals in the manner indicated:

By Fedex:

Complainant: Robert N. Leather
12 William Feather Drive
Voorhees, NJ 08043

Respondent: Florence Tollgate Condominium Association
50-1 Florence Tollgate Place
Florence, NJ 08518

Respondent's Representative: Robert A. Gleaner
415 S. White Horse Pike
Audubon, NJ 08106
856-546-8010

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 11th day of February, 2009.

Ilene Ross, 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) 542-7218