

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 Mary Waltman,)

Charging Party)

v.)

Mississippi Regional Housing)
Authority VIII; SBMC, Inc. (dba Sun Belt)
Belt Management); Oakridge Park)
Apartments, Ltd., Bobby G. Marcellus,)
General Partner,)

Respondents)

HUD ALJ No. _____
FHEO No. 04-06-0419-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 28, 2006, Complainant Mary Waltman filed a verified complaint¹ with the United States Department of Housing and Urban Development (HUD), alleging that Mississippi Regional Housing Authority VIII (“Authority” or “MRHA”), SBMC, Inc. (dba Sun Belt Management) (“Sun Belt”) and Oakridge Park Apartments, Ltd.² (“Oakridge, Ltd.”), collectively “Respondents”, violated the Fair Housing Act, as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), on the basis of disability.³ In particular, Ms. Waltman alleged that Respondents denied her request for a reasonable accommodation when Respondents refused to transfer her to an available downstairs

¹ The complaint was amended on November 3, 2008 to include Oakridge Park Apartments, Ltd.. as a Respondent, and to formally name MRHA and Sun Belt (legal name: SBMC, Inc.) as Respondents. Bobby G. Marcellus is the General Partner of Oakridge Park Apartments, Ltd. The original complaint was filed against Mark Creech, MRHA Section 8 Supervisor, Roosevelt Dixon, MRHA Housing Inspector, and Barbara Butts, Sun Belt property manager.

² During the course of the investigation it became clear that Oakridge Park Apartments, Phase 1, is owned by Oakridge Park Apartments, Ltd., a limited partnership, not Sun Belt. Bobby G. Marcellus is the General Partner of Oakridge Park Apartments, Ltd..

³ Although the term “handicap” appears in the Fair Housing Act, the Charge and Determination will use “disability” in its place.

unit at Oakridge Park Apartments I (“Oakridge”) to accommodate her difficulty with walking.⁴

The Fair Housing Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of an aggrieved person 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 who has redelegated to the Regional Counsel, the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee. 73 Fed.Reg. 68441, 68442 (Nov. 18, 2008).

The Director of the Office of Fair Housing and Equal Opportunity for Region III, on behalf of the Assistant Secretary, has authorized this Charge because she has determined after investigation that reasonable cause exists to believe Respondents engaged in discriminatory housing practices. HUD’s efforts to conciliate the complaint were unsuccessful. 42 U.S.C. § 3610(b).

II. SUMMARY OF THE ALLEGATIONS THAT SUPPORT THIS CHARGE

Based on HUD’s investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents are charged with violating Sections 3604(f)(1), (f)(2) and (f)(3)(B) of the Act as follows:

A. LEGAL AUTHORITY

1. 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 with a dwelling, because of a disability of a tenant. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b) (2008).
2. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodation 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); 24 C.F.R. § 100.204(a) (2008).
3. HUD’s regulation at 24 C.F.R. § 8.28(a)(3) requires a recipient to provide “a current listing of available accessible units known to the PHA [public housing authority] and, if necessary, otherwise assist the family in locating an available accessible unit” when issuing a Housing Voucher to a family which includes an individual with a disability.

⁴ Ms. Waltman also filed a complaint against Mississippi Regional Housing Authority VIII on the basis of Section 504 of the Rehabilitation Act of 1973. This complaint was duly investigated by HUD and a corrected Letter of Findings was issued on September 29, 2008. HUD’s Finding was that MRHA failed to comply with Section 504 by rejecting Ms. Waltman’s reasonable accommodation request. MRHA did not appeal this Finding of Non-Compliance. Respondent did not appeal HUD’s Finding.

4. HUD public housing regulations at 24 C.F.R. § 982.309(2)(ii) permit a housing authority to “provide a shorter initial lease term [if] such shorter term would improve [the] housing opportunities for the tenant.”
5. HUD’s regulations at 24 C.F.R. § 5.105 require recipients to comply with HUD’s non-discrimination and equal opportunity laws.

B. PARTIES AND SUBJECT PROPERTY

6. Complainant Mary Waltman, who was 46 years of age when she became a tenant at Oakridge, is a person with a physical disability. She has physical limitations that limit her ability to walk and climb stairs. She has been diagnosed with osteoarthritis, chronic back pain and chronic shoulder pain. Ms. Waltman is unable to work and receives social security disability benefits.
7. Respondent Mississippi Regional Housing Authority Number VIII is a federally-funded agency that operates two housing programs, Public Housing and the Housing Choice Voucher Program (“Section 8”).
8. Respondent Oakridge Park Apartments, Ltd., a limited partnership, owns Oakridge Park Apartments, Phase 1 (“subject property” or “Oakridge”) located at 7400 Gorenflo Rd, Biloxi, Mississippi.
9. Bobby G. Marcellus is the General Partner of Respondent Oakridge Park Apartments, Ltd.
10. Pursuant to a contract, Respondent SBMC, Inc. manages Oakridge. SBMC, Inc. is located at 7400 Gorenflo Road, Biloxi, Mississippi. Oakridge accepts tenants participating in Respondent MRHA’s Housing Choice Voucher Program.
11. The owners of Oakridge are responsible, as a matter of law, for the actions of its agent – Sun Belt Management – which managed the subject property.

C. FACTUAL ALLEGATIONS

12. On or about July 29, 2003, Complainant Waltman applied to participate in MRHA’s Section 8 program. The Complainant completed the Section 8 Rental Assistance form, indicating on the form that she is disabled and receives Social Security income.
13. On or about April 19, 2005, the Complainant and a representative of Respondent MRHA signed the MRHA Housing Choice Voucher Program Application form. The Complainant indicated on the form that she receives Social Security disability income and that her son and live-in aide would live with her. In response to a question on the form regarding the need for special

accommodations, the Complainant wrote: “Handicapped – wheelchair, heart problems, back surgery” and “No steps, ramp or flat to ground.”

14. MRHA issued a voucher for a two-bedroom unit to the Complainant on or about May 25, 2005.
15. In May of 2005, Complainant found a general list of available Section 8 units, not showing accessibility features, while at the housing authority. Respondent MRHA never provided the Complainant with a list of available accessible or first floor units as required by 24 C.F.R. § 8.28(a)(3).
16. Prior to moving into Oakridge, Complainant told Ms. Sheffney Sides, manager at Oakridge, that the Complainant wanted a first-floor apartment and that the Complainant had back problems and had undergone recent back surgery. Ms. Sides told the Complainant that there were no available first floor units but that she could move her to one once a downstairs apartment became available.
17. On or about August 15, 2005, the Complainant signed a lease for Apartment C-212 at the Oakridge Park Apartments. Sheffney Sides, Sun Belt’s manager at Oakridge, signed the lease documents on behalf of Sun Belt Management. The Lease and Addendum indicated that the Complainant and her care-giver would be the occupants of the second-floor, two-bedroom apartment. Complainant moved in shortly thereafter.
18. In addition to the lease agreement, Ms. Sides received from the Complainant a completed Sun Belt Standard Rental Application form dated September 29, 2005. The Complainant indicated on the form that she is disabled, receives Social Security income and has a caretaker living with her.
19. On or about October 2, 2005, the Complainant and Ms. Sides signed a U. S. Department of Agriculture (“USDA”) Rural Housing Service Tenant Certification form that indicated that the Complainant is disabled.
20. Because of her disability, the Complainant often refrained from leaving her apartment due to severe back pain and her difficulty with the steps leading to and from her apartment. The Complainant routinely wore a back brace, which went from her chin to her lower spine, and sometimes used a cane.
21. During the course of her tenancy, the Complainant fell at least three times on the Oakridge stairs near her second floor unit.
22. In early October, 2005, Unit C-109, a first floor apartment at Oakridge, became available. Ms. Sides advised the Complainant that she could move in to the unit once the carpet was cleaned and that Sides would advise MRHA about the transfer.

23. Sometime in early October, 2005, Ms. Sides spoke with Roosevelt Dixon, MRHA Housing Quality Standards Inspector, about the proposed transfer. Mr. Dixon told Ms. Sides that the Complainant could not transfer to the downstairs unit because a tenant must remain in a unit for one year before transferring to another unit.
24. HUD regulations at 24 C.F.R. § 982.309(2)(ii) allow a housing authority to permit a shorter lease term when doing so would improve a housing opportunity for the tenant.
25. On or about August 28, 2005, Hurricane Katrina (Katrina) had hit the southern coast of the United States, including Biloxi, killing more than 1,000 people and displacing thousands from their homes.
26. On or about October 7, 2005, Sun Belt received a Letter of Priority Entitlement (LOPE) from the United States Department of Agriculture regarding the priority placement of displaced Hurricane Katrina victims in Section 8 housing. The LOPE authorized Sun Belt to give displaced Katrina victims priority placement on its waiting list over all other tenants on the waiting list except disabled tenants in need of particular design features of an apartment.
27. Based upon Dixon's guidance as articulated in paragraph 21 above and the LOPE, on or about October 20, 2005, Sun Belt reneged on its agreement to transfer the Complainant to a first floor unit and instead rented the unit to a person displaced by Katrina.
28. Upon information and belief the tenant described in the preceding paragraph had no disability.
29. On or about January 30, 2006, Ms. Waltman's attorney sent a letter to Oakridge management requesting a reasonable accommodation for Waltman's disability immediately. The letter stated that Waltman's physical disability prevents her from ascending and descending stairs and that her current second-floor unit requires her to use the stairwell whenever she needs to leave the apartment. The letter recited Sun Belt's promise to Waltman of providing her with a ground level unit as soon as one became available, and MRHA's refusal to permit Waltman to transfer her Section 8 voucher to the first floor unit. Complainant's attorney asked that Complainant be provided the first available apartment that is suitable to her needs or be released from her obligations under the lease.
30. In its written response to the Complainant's attorney dated March 7, 2006, Sun Belt Management stated that there were no downstairs units available and encouraged Ms. Waltman to go to the office and complete a reasonable accommodation request and tenant transfer form.

31. On or about February 6, 2006, the Complainant gave oral notice to Sun Belt's manager, Barbara Butts, that the Complainant would be leaving Oakridge Apartments.
32. On or about February 7, 2006, Complainant contacted Brian Warren, MRHA Housing Specialist, and requested a transfer of her Section 8 voucher to Tennessee. Mr. Warren provided forms for the Complainant to complete and informed the Complainant that she would need to obtain a release from her current landlord, fax the portability request to the housing authority in Tennessee and have the Tennessee Housing Authority approve the portability voucher.
33. On or about February 28, 2006, the Complainant moved out of her unit at Oakridge and returned the keys to Oakridge management.
34. After leaving her unit at Oakridge, Complainant Waltman moved to a hotel in Tennessee and thereafter lived in approximately ten different places, including hotels, and in the homes of family and friends.
35. The requested accommodation, a downstairs unit with no stairs, was necessary in order to afford Ms. Waltman full enjoyment of equal housing rights; such access would have improved her quality of life by reducing the effects of her disability.
36. The requested accommodation – to transfer the Complainant to another unit before the end of the initial lease term – was permitted by HUD regulation 24 C.F.R. § 982.309(2)(i) (2005).
37. The Respondents were required to approve the requests because such accommodations were necessary to afford the Complainant an equal opportunity to enjoy her dwelling.
38. As a result of Respondents' failures to grant a reasonable accommodation and their imposition of differing terms and conditions, Complainant has suffered the loss of a housing opportunity, economic loss, humiliation, and physical, mental and emotional distress.

D. FAIR HOUSING ACT VIOLATIONS

39. Respondents violated the Act by discriminating in the rental of a dwelling when they refused to make a first floor unit available to the Complainant, through a reasonable accommodation in their rules and policies, which was necessary for the Complainant to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(1) and (f)(3)(B); 24 C.F.R. § 100.204 (2008).

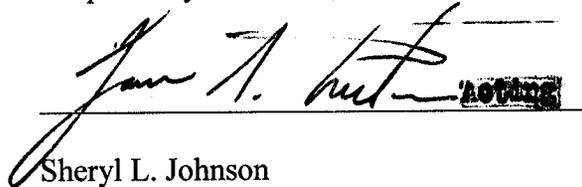
40. Respondents violated the Act by discriminating against the Complainant in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of her disability. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202 (b) (2008).

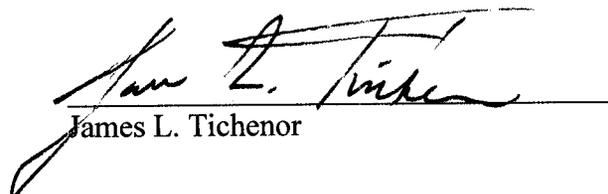
III. CONCLUSION

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 Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(1), (f)(2) and (f)(3)(B) and prays that an order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with Respondents, from discriminating because of disability status against any person in any aspect of 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 the emotional distress and financial costs associated with Respondents' discriminatory conduct.
4. Awards a civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671 (2008).
5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,


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