**UNITED STATES OF AMERICA**
**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**
**OFFICE OF ADMINISTRATIVE LAW JUDGES**

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| The Secretary, United States Department of Housing and Urban Development, on behalf of Hope I. Watkins and her minor children, Courtney, Marquis and Deontay Watkins, | ) | |
| Charging Parties, | ) | |
| v. | ) | **FHEO No. 04-07-1129-8** |
| Arthur C.Witherington and Pina D. Witherington a/k/a Pina H. Witherington d/b/a Pina's Mobile Home Park, | ) | |
| Respondents. | ) | |

**CHARGE OF DISCRIMINATION**

## I. JURISDICTION

On April 19, 2007, Hope Watkins ("Complainant"), an "aggrieved person" under the Fair Housing Act, as amended, filed a verified complaint[1] (the "HUD Complaint"), with the U.S. Department of Housing and Urban Development ("HUD") alleging that Pina Witherington and Arthur Witherington ("Respondents") violated the Fair Housing Act as amended in 1988, 42 U.S.C. §3601 *et seq.* (the "Act" or "Fair Housing Act"), by discriminating against Complainant because of familial status.

The Act authorizes the issuance of a Charge of Discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C.

[1] On or about April 19, 2007 FHEO received Complainant's HUD 903 complaint form from the Center for Fair Housing ("CFH"). CFH represented Complainant and received the signed 903 on or about April 4, 2007. Notice letters, albeit with the wrong filing date (due to an administrative error), were served on Respondents. On October 29, 2007, the HUD Complaint was amended to correct the name of Respondents' property and to add birthdates of Complainant's minor children and an allegation of a 42 U.S.C. § 3604(c) violation. Notice was served on Respondents. On January 29, 2008, the HUD Complaint was amended to add gender as a basis for discrimination. On March 4, 2008, gender was removed as a basis and notice was mailed to Respondents' attorney. On the date this Charge was filed, FHEO issued a No Cause Determination with regard to the allegations of race and/or color discrimination due to insufficient evidence.

§ 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for the Office of Fair Housing and Equal Opportunity (FHEO) or her designee. The Assistant Secretary for FHEO has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case because of familial status and has authorized the issuance of this Charge of Discrimination.

The Region IV Director of the Office of Fair Housing and Equal Opportunity, on behalf of the Assistant Secretary of FHEO, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case because of familial status, and has authorized the issuance of this Charge of Discrimination.

## II. SUMMARY OF THE ALLEGATIONS THAT SUPPORT THIS CHARGE

Based on HUD's investigation of the allegations contained in the HUD Complaint and Determination of Reasonable Cause, Respondents Pina Witherington and Arthur Witherington are charged with discriminating against Complainant Hope Watkins and her minor children, aggrieved persons, as defined by 42 U.S.C. § 3602(i), because of familial status in violation of 42 U.S.C. §§ 3604(a), (b), (c) and (d) of the Act, as follows:

### A. Legal Authority

1. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. 42 U.S.C. § 3602(k).

2. "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

3. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a).

4. It is unlawful to discriminate against any person in the terms, conditions, or privileges of a 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(b).

5. It is unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of familial status or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).

6. It is unlawful to represent to any person because of familial status, that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d).

B. Parties and Subject Property

7. At all times relevant to the Charge, Complainant was a single, African American (Black) mother of three minor children, all of whom lived with her. Her children included a daughter, age 17, a son, age 15 and, another son, age 7. Complainant and her children are all "aggrieved persons" as defined by the Act. 42 U.S.C. § 3602(i).

8. At all times relevant to the Charge, Complainant was searching for a lot for the mobile home she and her children lived in. During her search she found a mobile home community she wanted to rent a lot in, Pina's Mobil Home Park, which is located at 1105 Whispering Pine Road, Daphne, Baldwin County, Alabama 36526 (the "subject property"). The subject property has sixty lots and these lots are "dwellings" as defined by 42 U.S.C. § 3602(b).

9. Respondent Pina Witherington ("Mrs. Witherington) and Respondent Arthur Witherington ("Mr. Witherington") are Caucasian (White). At all times relevant to this Charge, Mr. and Mrs. Witherington were the joint owners, agents and managers of the subject property. The subject property is operated by Respondents as a sole proprietorship which rents mobile homes and lots. Respondents also had employees who assisted with rentals and maintenance.

C. Other Factual Allegations

10. In February of 2006 Complainant heard about the buy-out of the mobile home park where she lived and the need for its tenants to find new lots. Once she confirmed this with the new owner, she began to search in Daphne, Alabama and the surrounding areas for a new lot.

11. In February of 2006, after she received a referral to the subject property from her grandmother, Complainant went to the subject property to inquire about renting a lot for her mobile home. Complainant preferred the location of the subject property because she believed the schools were better, it was a racially diverse community, the area housed the "upper class," and her sister and family live nearby.

12. While at the subject property, Complainant met with Mrs. Witherington and inquired about the availability of a lot.

13. Mrs. Witherington told Complainant that there were vacancies, the monthly lot rental rate was $175.00, and that there was a $300.00 entrance fee. She asked Complainant if she had any children. When Complainant told her she did, Mrs. Witherington told her that children were an additional charge of $15.00 each per month and when they reached age 18 the amount would be raised to $30.00 per month. After hearing this, Complainant thanked Mrs. Witherington and left.

14. Complainant stated that she did not complete the application process at that time because she could not afford the extra fees she would incur for each one of her children.

15. On or about March 1, 2006, Complainant received written notice that she had 180 days to vacate the lot she was renting because the property was sold by the owner to a residential developer.

16. In April 2006, Complainant continued her search for a place to move her mobile home. She was upset and worried about the fact that she could not get the lot at the subject property because she could not afford the additional fees required for her children, and she had not yet found another suitable location for her mobile home.

17. While Complainant was at a law office on another matter, she spoke to an employee about having to move, and the employee also referred Complainant to the subject property. Complainant told the employee what happened during her February visit to the subject property. The employee told her that the fees for children were illegal and Complainant should revisit the subject property and record her visit.

18. On April 28, 2006, Complainant revisited the subject property to again inquire about applying and renting a lot for her mobile home. She recorded her visit using her cell phone.

19. When Complainant arrived at the subject property's leasing office and attempted to make contact, no one answered. Complainant went into the fitness gym[2], which was also located at the subject property, and inquired about renting a lot when she encountered a Caucasian (White) female who worked in the gym.[3] The female told Complainant that there were vacancies available to rent, but Complainant would need to speak to Respondents, and she offered to and did call Respondents.

20. Complainant spoke to Mr. Witherington when he came to the gym after the female called him. Complainant told him that she wanted to rent a lot from Respondents for her mobile home.

21. Mr. Witherington asked Complainant if she had any children, and if so, their sex and age. Complainant stated: "Yes," and she explained that she had three children; a daughter, age 17, and two sons, who were 15 and 7 years old.

22. During this visit, Mr. Witherington vacillated when he spoke to Complainant about vacancies. Initially, he told Complainant that there were no lots available so she inquired about completing an application for a future vacancy. Later, he stated that there were vacancies and they should go and talk to his wife.

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[2] One of Respondents' granddaughters indicated that individuals often made the mistake of assuming the entrance to the gym was the entrance to the rental office.

[3] After they were provided Complainant's description of the female she came in contact with, Respondents identified the female as their granddaughter "Rebecca," but their granddaughter denies meeting Complainant. Respondents stated that she worked for them off and on at the gym and was employed by them to do so during the time period in question.

23. Complainant and Mr. Witherington went to Respondents' home which is also used as the mobile home park's rental office. They met Mrs. Witherington at the house. Complainant went inside with him and spoke to Mrs. Witherington.

24. Mrs. Witherington discussed the monthly lot price and told Complainant about the additional monthly rental fees for children. She also stated that an additional $15.00 is charged for every child under the age of 18, and an additional $30.00 is charged for every child over the age of 18.

25. Mrs. Witherington also asked about the ages and sex of each of Complainant's children. Mrs. Witherington stated that their rules only allow two children per mobile home and repeated the fees required for additional children.

26. Because her housing situation was desperate, Complainant told Respondents that she was willing to have her two teenage children live with their aunt.

27. Mrs. Witherington rejected the proposition and told Complainant she was required to list all of her children on the application. Mrs. Witherington asked her husband if there were any vacancies, and he stated that there were no vacancies.

28. Mr. Witherington also asked about the ages of her children and proceeded to tell Complainant about the problems Respondents experienced with a former tenant's children.

29. Complainant asked for an application and Respondents gave one to her.

30. Complainant also asked for a copy of the property rules. Respondents told her they only had one copy of the rules available for her to read. Complainant read that copy and returned it to Respondents before she left.

31. Complainant returned the application to Respondents later the same day.

32. A few days later, Complainant called Respondents to inquire as to the status of her application. Mrs. Witherington told Complainant that she had "too many children" and Complainant hung up.

33. During HUD's investigation, Mrs. Witherington admitted that she met with Complainant twice, at least once in April 2006 and Complainant returned the application. Mrs. Witherington stated that she limits the number of children per mobile home because they were having too many problems with children in the park and other tenants were complaining about bullying, fighting, destruction of property, and parents not disciplining their children. She also stated that she charges the extra fee to offset water and sewage costs.

34. During HUD's investigation, Mrs. Witherington provided a copy of the subject property's rules. Rule #5 states: "We only allow two children per family when a new family moves in."

35. During HUD's investigation, Mr. Witherington denied ever meeting Complainant. Mr. Witherington stated that he limits the number of children per mobile home due to the septic tanks. He also stated that only three (3) mobile homes are allowed on one septic tank and no more than twelve (12) people, otherwise the septic tank would overflow, and he charges the extra fee to offset water, sewage and grass cutting. Mr. Witherington also stated that Respondents have had these rules for thirty (30) years without any problems. He also noted that the fees are applied when the tenant moves in.

36. Complainant's recording of her meeting with Respondents on April 28th confirm that Mr. Witherington and Mrs. Witherington both met with and spoke to Complainant. During the conversation, Respondents reiterated their rules regarding the extra fees for children.

37. During HUD's investigation, Respondents confirmed, in writing, that they informed Complainant that they only allow two children per family, that they have extra charges for children, and a tenant is charged $15.00 for every child under the age of 18 and $30.00 for every child over the age of 18.

38. During HUD's investigation, Mrs. Witherington stated that "if you have too many kids, you have too many problems." Respondents also stated that they do not have a playground for children but did have a designated area for the children to play, but the children will not play there.

39. During HUD's investigation, other tenants with children stated that they had been charged additional fees for their children or grandchildren.

40. During HUD's investigation, Mr. Witherington admitted that Lots B8 and A9 were available for rent at the time of the complaint; however, Mr. Witherington alleges that B8 had a septic problem. Mrs. Witherington admitted that two lots were available in 2007.

41. Alabama's On-Site Sewage disposal systems (sewage/septic tanks) requirements, obtained from the Alabama State Board[4] and the Director of Onsite Sewage Program and Environmental Health for Baldwin County, Alabama, confirmed that there were no restrictions on the number of children per mobile home.[5]

42. Complainant worried about, was upset by, and experienced stress related to the fact that she could not rent a lot in the mobile park of her choice due to her familial status.

43. Because Complainant was not able to rent a lot at the subject property, she was forced to move in with a friend for a time until she was able to locate a lot.

44. Complainant and her children have suffered damages, including, but not limited to, economic loss, including out-of-pocket expenses, physical and emotional distress,

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[4] The State Board is empowered to promulgate rules and regulations regarding sewage disposal.
[5] The restrictions, pertaining to mobile homes and septic tanks, covered the number of bedrooms per mobile home.

frustration, embarrassment, humiliation, inconvenience, and the loss of a housing opportunity as a result of Respondents' discriminatory conduct.

D. Fair Housing Act Violations

45. By refusing to rent a residential mobile home lot to Complainant because of her familial status, Respondents violated 42 U.S.C. § 3604(a).

46. By requiring Complainant and families with children to pay extra fees for children, Respondents violated 42 U.S.C. § 3604(b).

47. By making and publishing statements to Complainant and others, regarding a "two children per family" limitation and extra fees charged for children based on their age, with respect to the rental of a residential mobile home lot, Respondents violated 42 U.S.C. § 3604(c).

48. By representing to Complainant that because of her children a residential mobile home lot was unavailable for rental when such lot was in fact available, Respondents violated 42 U.S.C. § 3604(d).

## III. CONCLUSION

Wherefore, the Secretary of HUD, through the Office of General Counsel, and pursuant to 42 U.S.C. §§ 3610(g)(2)(A) and (g)(3), hereby charges Respondents with engaging in discriminatory housing practices as set forth above, and prays that an order be issued that:

A. Declares that the Respondents' discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;

B. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating against any person based on race, color and/or familial status in any aspect of the rental, sale, occupancy, use or enjoyment of a dwelling;

C. Awards such monetary damages as will fully compensate Complainant and her children for their economic loss, including but not limited to, out-of-pocket expenses, and for emotional and physical distress, frustration, embarrassment, humiliation, inconvenience, and all other damages caused by the Respondents' discriminatory conduct;

D. Awards a $16,000 civil penalty against each Respondent for each violation of the Act; and

E. Awards such additional relief as may be appropriate pursuant to 42 U.S.C. § 3612 (g)(3).

Respectfully submitted,

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