

**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)	
Marva Watson and Donna Kieffer,)	
)	
Charging Party,)	
)	
v.)	FHEO No's.: 07-05-0278-8
)	07-05-0279-8
)	07-05-0405-8
)	07-05-0408-8
Ersil F. James, Dan Miller, ACtion)	
Management and Consulting Services,)	
L.L.C., Missouri Rural Housing of)	
Platte City, L.P., and MACO)	
Management Co., Inc.,)	
)	
Respondents.)	
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CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainants Marva Watson and Donna Kieffer, aggrieved persons, filed verified complaints with the U.S. Department of Housing and Urban Development (HUD) on or about March 14, 2005, and May 13, 2005, respectively. Complainant Watson's complaint number 07-05-0279-8 was amended on or about March 30, 2005, and February 17, 2006, and complaint number 07-05-0278-8 was amended on or about February 17, 2006. Complainant Kieffer's complaints were amended on or about February 17, 2006. Complainants allege Respondents committed discriminatory housing practices on the basis of sex (female) in violation of § 804(b) of the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (2005) (hereafter, the "Act").

The Act authorizes the issuance of a Charge of Discrimination (Charge) 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. § 3610(g)(1) and (2) (2005). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional

Counsel (67 Fed. Reg. 44234 (Jul. 1, 2002)), 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 her designee.

By Determination of Reasonable Cause of March 15, 2006, the FHEO Region VII Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred based on sex and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents are charged with discriminating against the Complainants based on sex in violation of 42 U.S.C. §§ 3604(b) (2005) of the Act as follows:

A. Applicable Federal Law

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex. 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005); and 100.65(a), (b)(2) and (5) (2005).

B. Background

2. Complainant Marva Watson, formerly Marva Baltizare, an ordained and licensed minister, is a 64-year-old single female who currently resides in St. Joseph, Missouri. She lived at the Platte Landing Apartments ("subject property") in Platte City, Missouri from approximately December 2003 until November 2004.
3. Complainant Donna Kieffer is a 52-year-old widowed female who currently resides at the subject property in Platte City, Missouri and has lived there since approximately 1995. She is physically disabled and uses an electric wheelchair.
4. Respondent Ersil James, A/K/A Eugene "Jim" James, is a 68-year-old male former maintenance employee at the subject property who served in that capacity from approximately June 2002 until his termination in June 2004. As the subject property's sole maintenance employee, he worked approximately two days per week and responded to tenants' maintenance requests. Respondent James had access to the keys for the apartments at the 24-unit property.
5. Respondent Dan Miller is the former site manager for the subject property and served in that capacity from approximately January 2003 until August 2004. In his capacity as site manager, he supervised Respondent James.

6. Respondent Missouri Rural Housing of Platte City, L.P., is the developer and owner of the subject property consisting of approximately 24 rental units for low and moderate-income persons. Respondent MACO Management Co., Inc., is a general partner for Respondent Missouri Rural Housing of Platte City, L.P.
7. Respondent ACtion Management and Consulting Services, L.L.C. (hereafter "Respondent Action Management"), is a Limited Partner in Missouri Rural Housing of Platte City, L.P., and manages 108 properties throughout Missouri, including the subject property. A.C. Lasher, Jr., is the owner of Respondent Action Management which employs approximately 160 full and part-time employees.

Complainant Marva Watson

8. During the first week of December 2003, Complainant Watson met Respondent James soon after she moved into the subject property.
9. During approximately January 2004, Respondent James appeared at Complainant Watson's unit unannounced. He explained he was alone for the holidays and asked if she needed anything. Complainant Watson told him she did not need anything. When Complainant Watson was holding the door for him to leave, he suddenly grabbed her breast and told her he left something on the table for her. Complainant Watson pushed his hand away and looked at her table, where she saw he had left \$2. Complainant Watson grabbed the money and threw it at him saying she was not a whore, and he had better not touch her again.
10. Later in approximately January 2004, Respondent James again appeared unannounced at Complainant Watson's unit. When Complainant Watson stepped toward the hallway to keep him from entering her unit, he explained to her an inspector was coming to the property but would not be coming to her unit because she kept it so clean. When Complainant Watson turned to close the door, Respondent James grabbed and pinched her buttocks with both hands. Complainant Watson responded by slamming the door in Respondent James' face.
11. When Complainant Watson went to the Platte Landing Apartments Office to report Respondent James' conduct to Respondent Miller, she told him she did not want Respondent James in her unit because he was too handy with his hands, and she did not let any man touch her without her permission. Respondent Miller declined to take action and responded by telling Complainant Watson she could take care of herself since she was from Texas.
12. In approximately February or March 2004, Complainant Watson asked Respondent Miller to replace a broken clothes rod in her closet. Respondent James showed up instead. Though Complainant Watson told Respondent James her sister had already replaced the rod, he insisted he had to install a rod from the property. Respondent James looked in the closet at the rod and because he had only brought a small wooden rod with him, Respondent James told her he would come back later with the correct

rod. During the encounter, Respondent James did not touch Complainant Watson, and she believed it was because Respondent Miller had told him to leave her alone.

13. On or about April 1, 2004, Respondent James appeared at Complainant Watson's unit to install the correct rod in her closet. Because Complainant Watson believed Respondent Miller had spoken to Respondent James about his conduct, she was not too afraid to allow him in her unit. After fixing the rod, Respondent began talking to Complainant Watson. He volunteered he was not married, but he had a cleaning lady, and they did not have sex. When Complainant Watson asked why he was telling her this, Respondent James replied there were things they could do for each other, and it did not have to be sex.
14. Complainant Watson told Respondent James she did not want a man. Respondent James reached out to shake her hand and thinking he understood that she was not interested, Complainant Watson extended hers to shake his when suddenly Respondent James grabbed her hand and placed it on his crotch. Complainant snatched her hand away and yelled for him to get out of her house.
15. Ignoring Complainant Watson, Respondent James continued to tell her they did not have to have sex - that he also liked oral sex. Complainant Watson continued to reject Respondent James telling him she was not a lady of the night or a whore or a prostitute standing on the corner but was an anointed woman of God. During the encounter and after Complainant Watson rejected his advances, Respondent James informed her she would not get any more repairs to her unit.
16. Within minutes of the incident, Complainant Watson located Respondent Miller and told him Respondent James was getting too fresh, and Respondent Miller needed to do something about it. Respondent Miller declined to take action and again told her she could take care of herself.
17. Though Respondent James made no further advances after the April 1, 2004, incident, Respondent Action Management failed to make repairs to Complainant Watson's unit despite her periodic written and verbal requests.
18. Frustrated by numerous and persistent unsuccessful attempts to get repairs to her unit, Complainant Watson went to Respondent Miller and asked for the phone number to Respondent Action Management's main office in King City, Missouri. Respondent Miller told her he did not have the number.
19. Complainant Watson eventually reported Respondent James' actions to the local police department.

Complainant Donna Kieffer

20. Complainant Kieffer and Respondent James had their first contact soon after her husband suddenly passed away on March 13, 2004. After Complainant Kieffer called the manager's office to report an infestation of mice and other problems, Respondent James came to set mouse traps.
21. In the kitchen area, while Complainant Kieffer was showing Respondent James the location of mouse droppings, Respondent James began deliberately rubbing up against Complainant Kieffer's body with his arms and legs. When Complainant Kieffer attempted to move away, he grabbed her hands and held them. She immediately told him this made her feel uncomfortable and to leave her alone, and he eventually left after laying the traps.
22. Respondent James returned to Complainant Kieffer's unit the following day because the traps were full of mice. Because Complainant Kieffer, who often forgot to lock her door, was so upset about her husband's death, she often spent time lying on the sofa and was doing so when Respondent James entered her unit. Complainant Kieffer was also under psychiatric care and on medication at the time in question. Due to her emotional state and medications, she was groggy and surprised when Respondent James entered her unit.
23. Upon entering her unit, Respondent James started talking to Complainant Kieffer and then, on his own initiative, sat down beside her on the sofa. He then began rubbing up against Complainant Kieffer, putting his hand on her thigh and rubbing her back. Complainant Kieffer pulled away and told him to leave her alone. Respondent James grabbed her hands and touched her face and hair, as Complainant Kieffer tried to push him away. Respondent James finally left the unit without having checked the traps.
24. The investigation revealed that as the weeks passed, Respondent James routinely returned to Complainant Kieffer's unit, making sexual advances that became more physical and intimidating. He continued rubbing his body against hers and would touch her hair, back, thighs, buttocks, breasts and face. Complainant Kieffer physically attempted to fight him off and push him away, despite her pain and weak physical state.
25. On or about May 19, 2004, Respondent James entered Complainant Kieffer's unit to fix her bathtub. Because she was experiencing back pain, Complainant Kieffer was laying on her couch with her knees up and was in the process of waking up. Respondent James sat down on her sofa and began rubbing her hips, back, face and arms telling her he would take care of her and to stop mourning her husband. Respondent James forcibly grabbed her chin and kissed her on the mouth. Respondent James continued the sexual advances by rubbing her thighs and back while Complainant Kieffer attempted to fight him off and push him away from her. Finally, Respondent James left the unit angry.

26. On at least one occasion during the time period in question, while Complainant Kieffer was pushing Respondent James away and rebuffing his sexual advances, he cursed and yelled at her saying “fuck you” and calling her “stupid” and “dumb bitch.” He also told her he would have her evicted.
27. After the May 19, 2004, assault, Complainant Kieffer contacted the local police on May 21, 2004, and reported what Respondent James had done to her. Complainant Kieffer filed a Petition for Order of Protection against Respondent James on May 31, 2004, in the Circuit Court of Platte County, Missouri. She received an Ex Parte Order of Protection the same day, and an adult abuse hearing was scheduled for June 8, 2004.
28. On June 8, 2004, the Circuit Court of Platte County, Missouri issued Complainant Kieffer a Full Order of Protection against Respondent James, the terms of which were effective until June 8, 2005.

Other Victims

29. In addition to engaging in serious, continuing, and unwanted acts of a sexual nature against Complainants Watson and Kieffer, Respondent James engaged in similar conduct against at least three other female victims during an approximately two-year period. The victims, including Complainants Watson and Kieffer, were tenants at three separate properties within a radius of approximately twelve miles, all of which were managed by Respondent Action Management with Respondent James acting as the maintenance employee.
30. Respondent James’ pattern of behavior was consistent with all of the victims, each of whom was elderly and/or disabled. Respondent James consistently entered the women’s units with the pretext of conducting his maintenance duties. Generally, after initially attempting to gain the women’s sympathies by telling them of his loneliness and various personal problems, he used his unfettered access to their apartments to sexually prey on them.
31. Three of the victims, including Complainant Kieffer, obtained full orders of protection against Respondent James.

Respondent James’ Termination, Arrest, and Conviction

32. On or about June 2-3, 2004, after Mr. Lasher heard about the allegations against Respondent James, he terminated Respondent James.
33. On or about June 3, 2004, the local police department arrested Respondent James at the subject property for the assaults of Complainants Watson and Kieffer and another female tenant from the subject property.

34. On or about September 14, 2004, the Platte City Police Department arrested Respondent James for the assault of a female tenant residing at another rental property for which Respondent James served as a maintenance employee.
35. On December 7, 2004, the Circuit Court of Platte County, Missouri, Platte City Municipal Division, found Respondent James, pursuant to his guilty plea, guilty of assaulting the four women, including Complainants Watson and Kieffer, in violation of City Ordinance 220.010.

Respondents' Practices

36. Though Respondent Action Management had a written grievance policy, they did not have a sexual harassment policy for employees or residents at the time the events occurred.
37. Even though they were on notice as early as May 2002 that Respondent James was accused of inappropriate and unwanted sexual contact with a disabled female tenant¹ at their Smithville, Missouri Property, Respondent Action Management did not provide sexual harassment training to any of its 160 full and part-time employees.
38. Respondents, by allowing Respondent James to continue in his maintenance position for Respondent Action Management, not taking action against Respondent James for his sexual misconduct, and not making requested repairs, fostered an environment of sexual harassment at the subject property to the detriment of Complainants Watson and Kieffer.

C. Fair Housing Act Violations

39. By Respondent James engaging in severe and pervasive conduct by sexually assaulting Complainant Watson by grabbing her breast and buttocks and placing her hand on his crotch, and by discussing his sexual desires with her, Respondents violated 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005) based on sex.
40. By Respondent James informing Complainant Watson, after she rejected his unwelcome sexual advances, that she would not get any repairs to her unit, and by Respondents thereafter failing to make her requested repairs, Respondents adversely

¹ The tenant, who suffered from multiple sclerosis, alleged Respondent James entered her unit for the purpose of conducting maintenance work. During the visit, he told her of his difficult and depressing life, asked her for a hug, and when she hesitantly hugged him, he would not let her go. After she yelled at him and he let her go, he then grabbed her again and attempted to forcibly kiss her. She quickly reported the conduct to the local police and obtained a full order of protection against Respondent James. She also notified the property's site manager of the assault, and the site manager, in turn, notified Ms. Gibson and Mr. Lasher, who quickly transferred Respondent James away from the Smithville property to the subject property where he began preying on other women.

affected Complainant Watson's tenancy and violated 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005); 100.65(a), (b)(2) and (5) (2005) based on sex.

41. By Respondent James engaging in severe and pervasive conduct by sexually intimidating and frightening Complainant Watson and causing her to fear for her safety and well-being because of her sex, Respondents violated 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005).
42. By Respondent James engaging in severe and pervasive conduct by sexually assaulting Complainant Kieffer by purposely rubbing against her with his arms and legs; making unwelcome sexual advances by touching her hair, back, thighs, hips, buttocks, breasts, and face; and forcibly grabbing her chin and kissing her on the mouth, Respondents violated 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005) based on sex.
43. By Respondent James engaging in severe and pervasive conduct by sexually intimidating and frightening Complainant Kieffer and causing her to fear for her safety and well-being because of her sex, Respondents violated 42 U.S.C. § 3604(b) (2005); 24 C.F.R. § 100.50(b)(2) (2005).
44. As a result of Respondents' actions, Complainants Watson and Kieffer experienced a burdensome housing environment that was significantly less desirable than if the conduct had not occurred, and, consequently, they suffered damages including emotional distress, embarrassment, humiliation, inconvenience, and economic loss.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) (2005) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(b), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Act, 42 U.S.C. §§ 3601 *et seq.* (2005);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of sex against any person in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainants Watson and Kieffer for their emotional distress, embarrassment, humiliation, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2005); and

4. Awards an \$11,000 civil penalty each against Respondent James and Respondent ACTION Management and Consulting Services, L.L.C., and a \$5,000 penalty each against Respondent Dan Miller, Respondent Missouri Rural Housing of Platte City, L.P., and Respondent MACO Management Co., Inc., for each violation of the Act that they are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) (2005).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2005).

Respectfully submitted,

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