

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

Secretary, United States Department)	
of Housing and Urban Development,)	
on behalf of Complainant [REDACTED])	
)	HUD OHAP No.
)	
Charging Party,)	FHEO No. 05-16-4148-8
)	
v.)	
)	
Westview Park Apartments, LP; Tilsenbilt Homes, LLC;)	
James Tilsen & Deborah Brookins)	
)	
Respondents.)	
)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant [REDACTED] timely filed a complaint with the U.S. Department of Housing and Urban Development (the “Department” or “HUD”) on September 21, 2015, alleging that Respondents Westview Park Apartments, LP, and Tilsenbilt Homes, LLC discriminated against him on the basis of disability¹ in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601-3619. The complaint was amended on September 7, 2017, to include James Tilsen and Deborah Brookins as Respondents.

The Act authorizes the Secretary of HUD to issue 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. §§ 3610(g)(1), (2). The Secretary has delegated to the General Counsel, who has redelegate 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. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region V has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case, and has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

¹ While the Act uses the term “handicap,” this Charge uses the term “disability” as interchangeable with “handicap.”

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the findings contained in the attached Determination of Reasonable Cause, the Secretary charges Respondents Westview Park Apartments, LP; Tilsenbilt Homes, LLC; James Tilsen; and Deborah Brookins, with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate in the rental of, or to otherwise make unavailable, a dwelling to any renter because of a disability of that renter. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a)(1).
2. 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 a dwelling, because of a disability of that renter. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
3. For the purposes of § 3604(f)(1-2), "discrimination" includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
4. It is unlawful to coerce, intimidate, threaten, or interfere with any person in their exercise or enjoyment of, or attempt to exercise, any right protected by §§ 3603-3606 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

B. PARTIES AND SUBJECT PROPERTY

5. Complainant [REDACTED] ("Complainant") has been diagnosed with a major depressive disorder. Complainant also suffers from anxiety and post-traumatic stress disorder. Complainant's disabilities affect the major life activities of sleeping, working, and interacting with others. Complainant, a veteran who has served tours of duty in Iraq and Afghanistan, receives Veterans Benefits Administration disability benefits based on his major depressive disorder. Complainant is disabled within the meaning of 42 U.S.C § 3602(h).
6. At all times relevant to this Charge, Respondent Westview Park Apartments, LP ("Respondent Westview") owned the apartment complex known as Westview Park Apartments, a multi-building complex located in West St. Paul, Minnesota, which property included the apartment building located at 1875 Oakdale Avenue.
7. At all times relevant to this Charge, the management agency of Westview Park Apartments was Tilsenbilt Homes, LLC ("Respondent Tilsenbilt"), an agent of Respondent Westview.

8. At all times relevant to this Charge, Respondent James Tilsen ("Respondent Tilsen") was the owner of Respondent Tilsenbilt and Respondent Westview.
9. At all times relevant to this Charge, Respondent James Tilsen ("Respondent Tilsen") was employed by Respondent Tilsenbilt as the Development Manager of Westview Park Apartments. Respondent Tilsen was an agent of Respondent Tilsenbilt. On information and belief Respondent Tilsen was responsible for the day to day operations of Westview Park Apartments.
10. At all times relevant to this Charge, Respondent Deborah Brookins ("Respondent Brookins") was employed by Respondent Westview as the Rental Manager of Westview Park Apartments. Respondent Brookins was an agent of Respondent Westview.
11. From the beginning of February 2015 through January 2016, Complainant resided in the Westview Park Apartments, 18775 Oakdale Avenue, Apartment [REDACTED] West St. Paul, Minnesota 55118 ("subject property") in an efficiency unit.
12. The subject property constitutes a dwelling within the meaning of 42 U.S.C. § 3602(b). The subject property is not exempt under the Act.

C. FACTUAL ALLEGATIONS

13. On January 30, 2015, Complainant signed a year-long lease for the subject property, the term of which ran from February 1, 2015, through January 31, 2016.
14. In a letter, dated August 11, 2015, Complainant requested that Respondent Westview Apartments permit him to keep an emotional support dog in his unit. Complainant included an August 1, 2015, letter from "Sutherland Counseling," supporting his need for the animal, along with his own written statement, describing his symptoms and need for the animal, and the HUD-DOJ Joint Statement on Reasonable Accommodations.
15. In a letter, dated August 12, 2015, Respondent Tilsen replied to Complainant's request, suggesting that Complainant get a cat as an emotional support animal, and including the Westview Park Apartments Policy, Lease Regulations, a memorandum on Amendments to City Ordinance 1101, and a Cat Agreement. Respondents did not permit emotional support animals over 12 pounds. The Westview Park Apartments policy read as follows:

Westview Park regulations allow for one animal (cat) with appropriate rules. We strongly suggest you consider a cat for your emotional support animal. Failing that, the following policy rules are considered reasonable accommodations and MUST be fully complied with. City ordinance requires the animal to be licensed. We require compliance with City rules, with proof supplied to management.

16. Prior to receiving Respondent Tilsen's letter, Complainant adopted his emotional support dog from an owner with whom he was familiar; he met and bonded with this dog. Complainant's emotional support dog was a Great Dane/Golden Retriever mix.
17. In a letter dated August 31, 2015, Respondent Brookins warned Complainant that he was keeping a dog in violation of the lease. The letter stated that the dog should be removed immediately and warned that three lease violations could lead to eviction.
18. In a letter from Complainant to Respondent Westview, dated September 14, 2015, Complainant requested reconsideration of his reasonable accommodation request. In his letter, Complainant specifically requested that Respondent Westview reconsider the weight limit on his emotional support animal and stated that "[a] larger dog is necessary for me to receive the comfort, support, and security needed to treat my symptoms." Complainant also wrote: "I have already bonded and feel secure with my current ESA."² Complainant enclosed a pet résumé, a West Saint Paul pet license, and a certificate of training with his letter.
19. In another letter that same day, September 14, 2015, Complainant wrote to Respondent Brookins, requesting reconsideration of his reasonable accommodation request. Complainant provided a pet license, more information on the animal, a certificate of training, and a fact sheet about emotional support animals published by the Bazelon Center for Mental Health.
20. In a letter dated September 16, 2015, Respondent Tilsen replied to these requests for reconsideration stating:

The 12 pound weight limit was arrived at after serious consideration. While there may be little room for movement, the animal you have is way too big and is not a reasonable accommodation. Furthermore, our understanding of state law is that any service animal including those for therapy/emotional support must be trained and certified for the purpose intended. We have no such documentation on your animal. Again, your dog must be removed from Westview property immediately.
21. On or about September 21, 2015, Respondent Brookins sent Complainant a second letter notifying him that he was in violation of the lease by having the dog at the property.
22. In a letter, dated September 25, 2015, Respondent Brookins informed Complainant that he was required to vacate the apartment by October 9, 2015, or an unlawful detainer action would be filed against him and he would be responsible for the \$392 filing fee and all related court costs.
23. In a letter, dated September 30, 2015, Respondent Tilsen again replied to Complainant's request for reconsideration of his reasonable accommodation request. This letter stated:

² Emotional Support Animal.

We received your letter dated September 14, 2015.

We have offered you a reasonable accommodation which you have not followed. Your online prescription and the information from the so-called Bazelton Center [sic] do **not** comply with your lease and applicable Minnesota state law. If you have not vacated the property or the animal is not removed by the date specified in our previous letter (October 9), we **will** commence the eviction proceedings.

24. On or about October 9, 2015, Respondent Westview filed an eviction action against Complainant. The parties appeared in court on October 21, 2015, and the parties entered into a settlement agreement. The eviction action was dismissed and, in exchange, Complainant agreed to vacate the subject property on January 31, 2016, at the expiration of his lease. In the meantime, Complainant was allowed to keep his support animal at the subject property.
25. In a letter, dated November 30, 2015, Complainant gave sixty days' notice of his intent to vacate the apartment. This letter also stated: "I am leaving because my emotional support dog is unwelcome and as a result I agreed to move out at the end of my lease to avoid an unlawful detainer against me."
26. At the end of January 2016, Complainant vacated the subject property. Complainant was not charged by Respondents for any damage to the unit.
27. As a result of Respondents' actions, Complainant has suffered actual damages, including but not limited to physical and emotional distress, inconvenience, frustration, and loss of a housing opportunity.

D. FAIR HOUSING ACT VIOLATIONS

28. Respondent Westview, Respondent Tilsenbilt, Respondent Tilsen, and Respondent Brookins violated § 3604(f)(1)(A) of the Act by making housing unavailable to Complainant when they sought to evict Complainant from his unit for maintaining an emotional support animal in his unit, and when they denied Complainant's request to keep an emotional support animal at the subject property as a reasonable accommodation that was necessary to afford Complainant an equal opportunity to use and enjoy his dwelling. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
29. Respondent Westview, Respondent Tilsenbilt, Respondent Tilsen, and Respondent Brookins violated § 3604(f)(2)(A) of the Act by refusing to allow Complainant to live at the subject property with his emotional support animal when such reasonable accommodation was necessary to afford Complainant an equal opportunity to use and enjoy his dwelling. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).

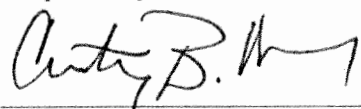
30. Respondent Westview, Respondent Tilsenbilt, Respondent Tilsen, and Respondent Brookins violated § 3617 of the Act by interfering with Complainant's right to a reasonable accommodation by enforcing arbitrary, unnecessary, and unlawful restrictions on the weight and type of emotional support animal Complainant could have as a reasonable accommodation, and by repeatedly threatening Complainant with eviction. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

III. CONCLUSION

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

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. § 3601, *et seq.*;
2. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability against any person in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainants for the actual damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3)(i);
4. Awards a \$19,787 civil penalty against each Respondent for each violation of the Act committed, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
5. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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09/28/2017
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