

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

The Secretary, United States Department of)
Housing and Urban Development, on behalf of)
Complainant **Redacted Name**,)
)
Charging Party,)
) OHA No. _____
v.)
) FHEO No. 07-18-7909-8
)
The Apollo Gardens Homeowners Association, Inc.)
and Evelyn Thompson,)
)
Respondents.)
_____)

CHARGE OF DISCRIMINATION

I. JURISDICTION

On November 14, 2017, Complainant **Redacted Name** filed a timely complaint with the U.S. Department of Housing and Urban Development ("HUD" or the "Department") alleging she was injured by the discriminatory acts of Evelyn Thompson, Board President of The Apollo Gardens Homeowners Association, Inc. (HOA). The complaint was amended on November 16, 2017 and June 12, 2018 to add the HOA as a Respondent and to include additional sections of the Fair Housing Act implicated by the allegations. Complainant alleges Respondents discriminated against her on the basis of disability¹ and retaliated against her, in violation of Subsections 3604(f)(2)(A), 3604(f)(3)(A), and Section 3617 of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (the "Act")(2021).

The Act authorizes the Secretary of HUD to issue 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). The Secretary has delegated that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405 (2021)), who has redelegated the authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

¹ The Fair Housing Act uses the term handicap. This Charge will use the word disability, which has the same legal meaning.

By Determination of Reasonable Cause dated April 21, 2021, the Fair Housing and Equal Opportunity (“FHEO”) Acting Director for Region VII, on behalf of the Assistant Secretary for FHEO, has determined reasonable cause exists to believe that a discriminatory housing practice has occurred based on disability and retaliation and has authorized and directed the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD’s investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are hereby charged with violating 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 such dwelling, because of a disability of that person. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. §§ 100.202(b)(1), 100.50(b)(2) and 100.65.
2. Discrimination under subsection 804(f)(2) of the Act includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. 42 U.S.C. § 3604(f)(2) and (f)(3)(A); 24 C.F.R. §§ 100.203(a) and 100.65(b)(4).
3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 804 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
4. Pursuant to the Act, “aggrieved person” includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i)(1); 24 C.F.R. § 100.20(a).
5. Pursuant to the Act, disability means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person’s major life activities. 42 U.S.C. § 3602(h)(1); 24 C.F.R. § 100.201.

B. Parties and Subject Property

6. The subject property is a townhouse unit in the Apollo Gardens community located at **Redacted Name**, Mission, Kansas. The Complainant is the owner of the subject property. The subject property is one of 84 properties governed by the HOA’s Declaration of Covenants, Conditions, and Restrictions . The subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b).
7. On or around July 1, 2016, the Complainant, **Redacted Name**, purchased and moved into the subject property.

8. Complainant has a mobility impairment that substantially limits her balance and ability to walk; she uses a walker. Complainant has a disability as defined by the Act. 42 U.S.C. § 3602(h)(1).
9. Complainant is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i)(1).
10. Respondent HOA, a Kansas corporation in Mission, Kansas that administers a Declaration of Covenants, Conditions, and Restrictions that governs 84 residential properties in the Apollo Gardens community. The powers and duties of the Respondent HOA are performed by a Board of Directors elected by Respondent HOA members.
11. Respondent Evelyn Thompson was, at all times relevant to this Charge, the President of the Respondent HOA Board. Respondent Thompson is responsible for ensuring the Respondent Apollo HOA acts in compliance with its bylaws, ensuring the Respondent HOA's financial obligations are paid, and responding to requests made to Apollo HOA by its members, including requests for architectural modifications to a homeowner's property.

C. Factual Allegations

13. Apollo Gardens homeowners who wish to make changes to the exterior of their properties are governed by the "Declaration of Apollo Home Owners Association."
14. Section 4 of the Declaration provides that "[i]n order to preserve the uniformity of décor and the common façade of the improved property in the District, no structural replacements shall be made until such replacement proposal has been submitted to and approved in an Architectural Petition."
15. Section 11 of the Declaration provides that "no exterior of any residence, on the lots subject to the Declaration, shall be otherwise remodeled unless plans and applications for such shall have been submitted to [the Board] and approved of in writing in an approved Architectural Petition," and allows the Board to "review and approve or disapprove all plans submitted to it for any exterior remodeling solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the residence being remodeled, adjacent residences, and Apollo Gardens generally."
16. At all times relevant to the Charge, the Declaration did not include a reasonable modification policy. HOA members who sought a modification due to a disability were required to follow the same process as members who sought to remodel a residence for aesthetic reasons.
17. At all times relevant to this Charge, Respondents knew or should have known that Complainant had a disability because they knew Complainant used a walker and because the Complainant told the Respondents that her requests to modify the subject property were because of her impaired stability.

18. When the Complainant moved into the subject property on or around July 1, 2016, the front porch of the property was connected to the driveway by a 3-foot wide sidewalk that ran parallel to the front wall of the property. Three and one quarter feet of landscaped area separated the sidewalk from the front wall, and there were paver stones running parallel and adjacent to the other side of the sidewalk, the side furthest from the front wall.
19. In November 2016, HOA community members elected the Complainant to the HOA Board to serve a 2-year term as a block captain.
20. During an April 18, 2017, meeting of the HOA Board, the Complainant submitted an architectural petition requesting permission to modify the exterior of the subject property by installing a handrail along the sidewalk leading to the front door of the subject property. The Respondents approved the Complainant's request on the condition that the handrail was constructed out of black or white wrought iron.
21. The Complainant considered different handrails; but, determined that her needs would be served better by expanding the sidewalk towards her home so she could lean against the house for support when walking.
22. During a May 9, 2017 HOA Board meeting, the Complainant made a verbal request to install a ramp and to replace the existing pavers with cement pavement. The request was supported by an architectural drawing with handwritten notations to "fill in driveway holes", "widen driveway", and "widen sidewalk to include pavers."
23. The HOA Board tabled the request until the Complainant "could provide a more detailed drawing of what she wanted to do."
24. On May 13, 2017, the Complainant sent a new drawing to Respondent Thompson that included handwritten notations to "fill in holes" and "widen driveway 2". The drawing also depicted the sidewalk as 4½ feet wide and the "greenery" area next to the sidewalk at 12 inches, reflecting a change from the original condition of the subject property which had a 3-foot wide sidewalk and 3¼ feet of landscaped greenery.
25. The drawing was attached to an email in which Complainant wrote that she "would prefer not doing anything to the front of the house, but [her] stability says differently."
26. Complainant also forwarded the May 13, 2017 drawing to the HOA Board two days later on May 15, 2017.
27. On or around May 22, 2017, three HOA Board members met the Complainant at the subject property to discuss Complainant's proposed modifications.
28. During the May 22, 2017 visit, the Board members told the Complainant that a ramp and addition of cement to the driveway were approved, "but nothing else."

29. Respondent HOA's notes from the May 22, 2017 visit state that the members told the Complainant that adding cement to the space near the driveway would give the Complainant "plenty of room to use her walker."
30. On May 31, 2017, Respondent HOA sent an email to the Complainant stating that the request to construct a wheelchair ramp leading to the Complainant's front door and fill in the elongated space in her driveway with cement were approved, but "the driveway expansion and sidewalk expansion [were] NOT approved."
31. On June 6, 2017, Complainant resubmitted the May 13, 2017 architectural drawing and verbally petitioned Respondent HOA to expand the sidewalk directly in front of her residence towards her house.
32. In response to Complainant's June 6, 2017 request, the HOA Board told Complainant that her request was not likely to be approved but directed her to submit an architectural petition and to provide additional details about the measurements of the proposed expanded sidewalk.
33. On or around June 7, 2017, a contractor hired by Complainant, filled the holes located in her driveway and adjacent to the front door with cement, constructed a wheelchair ramp leading to the front door, and replaced the bushes in her landscape area with a concrete wedge that expanded the sidewalk to within 4 inches of the front wall of her home.
34. Complainant paid the contractor \$2,550 for the work.
35. Respondents found out about the work Complainant had done to the exterior of her home on June 8, 2017.
36. On June 28, 2017, Respondent HOA's Board voted, in a closed session, to strip the Complainant of her Board position and to remove the concrete wedge that expanded the Complainant's sidewalk.
37. Respondent Thompson admitted she would never have convened the June 28, 2017, special session of the Board if Complainant had not expanded her sidewalk.
38. On July 17, 2017, during an HOA Board meeting, Complainant provided a letter to Respondents explaining that the sidewalk expansion "made a big difference in [her] ability to use [her] front sidewalk."
39. During the July 17, 2017 meeting, the Respondent HOA Board voted to uphold its decision removing Complainant from her Board position.
40. On July 20, 2017, the Complainant emailed an architectural petition, dated July 19, 2017, to the HOA Board members requesting permission to keep the modified sidewalk.
41. The HOA Board members did not present the July 19, 2017 petition to the Board for formal review.

42. On July 26, 2017, Respondent Thompson emailed the Complainant that Respondents did not approve the architectural petition to keep her modified sidewalk and directed Complainant to restore the expanded sidewalk to its original condition by August 1, 2017, to submit an architectural petition for replacement bushes by September 1, 2017, and to plant new bushes by October 1, 2017.
43. In their response rejecting the August 10, 2017 petition to reinstate the Complainant to the HOA Board, which was prepared by Respondent Thompson, Respondents acknowledged that Complainant wanted to expand the sidewalk towards her home, not towards the yard, so that she could hold on to the side of the house and have more room for her walker.
44. On September 6, 2017, Respondent Thompson, accompanied by other HOA Board members and a contractor, went to the Complainant's residence and removed the concrete wedge that expanded Complainant's sidewalk towards her home.
45. Respondents paid the contractor \$600 to remove the concrete.
46. On or about October 14, 2017, and again on November 8, 2017, the Respondents mailed the Complainant an invoice for \$600 for "fee incurred restoring the sidewalk in front of her residence to its original condition."
47. Respondents never requested medical documentation to support Complainant's request for a modification.
48. On November 28, 2017, Complainant provided Respondents with a letter from her physician that read "[d]ue to a disability she is under my care for, [the Complainant] needs a cement wedge at her home extending from the garage to the home entrance."
49. Respondents never responded to Complainant after receiving the physician's letter.
50. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages, including emotional distress, inconvenience, and out-of-pocket costs.

D. Legal Allegations

51. As described above, Respondents violated Subsections 804(f)(2)(A) and 804(f)(3)(A) of the Act by discriminating in the terms, conditions, or privileges of housing because of disability by denying Complainant's reasonable modification request, when such a modification was necessary to afford Complainant full enjoyment of the dwelling. 42 U.S.C. §§ 3604(f)(2)(A) and (f)(3)(A); 24 C.F.R. §§ 100.203(a) and 100.65.
52. As described above, Respondents violated Section 818 of the Act by retaliating against Complainant by removing her from the HOA Board, and rejecting her reinstatement, on account of her exercising or enjoying a right(s) granted or protected by section 804 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(2)(A), (f)(3)(A) and 3617, and requests 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 against any person because of disability in any aspect of the sale, rental, use, or enjoyment of a dwelling;
3. Awards such monetary damages as will fully compensate Complainant for the damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
4. Assesses a civil penalty against each Respondent for each violation of the Act that Respondents have 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 on this ____ day of April 2021.

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