

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

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
Complainant Jane Doe,')	
)	
)	
Charging Party,)	
)	
v.)	HUDALJ No.:
)	FHEO No.: 05-20-8706-8
)	
Burnham Rentals, LLC, Burnham Place)	
Apartments, LLC, John Burnham, Jr.,)	
John S. Burnham, Myra Burnham,)	
John P. Burnham, Amanda Burnham,)	
and Nancy Slough,)	
)	
Respondents.)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On April 9, 2020, Complainant Jane Doe ("Complainant") filed a complaint with the United States Department of Housing and Urban Development ("Department" or "HUD"), alleging that Respondents ("Respondents") violated the Fair Housing Act, as amended in 1988, 42 U.S.C. § 3601, *et seq.* (the "Act"), by refusing to rent to Complainant because of Complainant's disability² and for denying Complainant's reasonable accommodation request for an assistance animal.

The Complaint was first amended on September 11, 2020 to add John Burnham, Jr., as a named respondent, to revise the most recent date of when the alleged discrimination occurred, and to add a Section 3604(0)(1) "otherwise make unavailable" allegation. The Complaint was amended a second time on November 10, 2020, to add Burnham Place Apartments, LLC, as a named respondent and to correct the HUD case number. The

This Charge of Discrimination has been filed using pseudonyms to protect the identity of Complainant and her father, a witness, given the confidential and protected disability information disclosed in this public Charge. Respondents have participated in this investigation and are aware of Complainant's and her father's identity for purposes of responding to the claims in this Charge. An unaltered version of the Charge and Determination, identifying Complainant and her witness by their real names, has been filed under seal with the Office of Hearing and Appeals.

² The Act uses the term "handicap" or "handicapped," which are considered outdated terms. In this Charge, the terms "disability" or "disabled" will be used instead. Those terms have the same legal meaning as the term "handicap" or "handicapped," as defined in the Act.

Department amended the Complaint a third time on March 23, 2021, to add Respondents John P. Burnham, John S. Burnham, Myra Burnham, Amanda Burnham, and Nancy Slough; to add a Section 3617 interference allegation; to correct the most recent date of alleged discrimination; and to clarify facts including, but not limited to, the properties located at 444 E. 3rd Street, 808 E. Hunter Ave., 320 S. Dunn St., 330 S. Dunn St., and 334 S. Dunn St., Bloomington, Indiana. Complainant alleges Respondents discriminated against her because of disability, in violation of 42 U.S.C. §§ 3604(0(1), 3604(0(2), 3604(0(3)(B), and 3617 of the Act (2020).

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons 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 to the General Counsel, who has retained and re-delegated 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 and 103.405; 76 Fed. Reg. 42462-42465 (July 18, 2011).

The Director of the Region V Office of Fair Housing and Equal Opportunity, on behalf of the Acting Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred based on disability 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 HUD Complaint and the Determination that reasonable cause exists, Respondents are charged with discriminating against Complainant, an aggrieved person as defined by 42 U.S.C. § 3602(i), based on disability, in violation of 42 U.S.C. §§ 3604(0(1), 3604(0(2), 3604(0(3)(B), and 3617 as follows:

A. LEGAL AUTHORITY

1. It is unlawful to make unavailable or deny a dwelling to any buyer or renter because of a disability of that buyer or renter, or a person residing, or intending to reside, with that buyer or renter. 42 U.S.C. § 3604(0(1); 24 C.F.R. §§ 100.50(b)(1), 100.60(a), 100.202(a).
2. It is unlawful to discriminate in the terms, conditions, or privileges of sale or rental of a dwelling because of a disability of: [a disabled] person; or a person residing in or intending to reside in that dwelling after it is rented or made available; or any person associated with that person. 42 U.S.C. § 3604(0(2); 24 C.F.R. §§ 100.202(b) and 100.50(b)(2).
3. For the purposes of Subsection 3604(0, "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(0)(3)(B); 24 C.F.R. § 100.204.

4. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3603, 3604, 3605, or 3606 of this title. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).
5. Pursuant to the Act, an "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i).
6. "Handicap," herein referred to as "disability," means, with respect to a person — "(1) a physical or mental impairment, which substantially limits one or more of such person's major life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment" 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

B. PARTIES AND SUBJECT PROPERTY

7. Complainant is an individual with a disability within the meaning of the Act, because Complainant has a condition which substantially limits one or more of Complainant's major life activities. 42 U.S.C. § 3602(h).
8. Complainant has been injured by Respondents' actions and is an "aggrieved person" as defined by the Act. 42 U.S.C. § 3602(i).
9. Respondent John Burnham, Jr., individually, and through his company, Burnham Rentals, LLC, and Burnham Place Apartments, LLC, owns and operates residential rental properties in the Bloomington, Indiana, area. On information and belief, he manages the properties in Bloomington, Indiana, located at 808 East Hunter Avenue, 320 South Dunn Street, 330 South Dunn Street, 334 South Dunn Street, and 444 East Third Street: Burnham Place Apartments (collectively, "subject properties") at which Complainant sought to rent. Respondents own and/or manage around 14 properties and 189 units in the Bloomington, Indiana, area.
10. On information and belief, Respondent Burnham Place Apartments, LLC, owns the property located at 444 East Third Street, Bloomington, Indiana, which is managed by Burnham Rentals, LLC, and Respondent John Burnham, Jr.
11. On information and belief, 320 South Dunn Street, Bloomington, Indiana, is owned by Burnham Rentals, LLC. It is also managed by Burnham Rentals, LLC, and Respondent John Burnham, Jr.
12. On information and belief, 330 South Dunn Street, Bloomington, Indiana, is owned by John S. Burnham, Myra Burnham, and John P. Burnham. It is managed by Burnham Rentals, LLC.

13. On information and belief, 334 South Dunn Street, Bloomington, Indiana, is owned by John S. Burnham and Myra Burnham. It is managed by Burnham Rentals, LLC.
14. On information and belief, 808 East Hunter Avenue, Bloomington, Indiana, is owned by John S. Burnham.
15. Respondents Amanda Burnham and Nancy Slough are both leasing agents for the subject properties and spoke to Complainant during the time relevant to this Charge regarding her attempts to rent a unit at one of their properties.

C. FACTUAL ALLEGATIONS

16. Complainant has received professional treatment for mental health conditions since at least 2013.
17. In Summer 2018, Complainant's need for an assistance animal was medically recognized after she sought to stop taking medication for her mental health due to side effects. Complainant's assistance animal is a cat. The cat assists Complainant by alleviating one or more symptoms of Complainant's disability.
18. On March 13, 2019, **Redacted Name**, M.D., Complainant's treating physician, wrote a letter stating that Complainant is a patient under her care, has a disability, and would benefit from an Emotional Support Animal ("ESA"). The specific animal is not identified in the letter, but Dr. **Redacted Name** was aware that the animal was a cat.
19. On October 7, 2019, Complainant and her mother were in Bloomington, Indiana, looking for housing for Complainant to begin leasing in August 2020. At the time of her search, Complainant lived in West Lafayette, Indiana, on the Purdue University campus, and was in her senior year of college. She was searching for housing for her first year of graduate school at Indiana University's School of Optometry.
20. On October 7, 2019, Complainant and her mother went into Respondents' office in the Burnham Place Apartments building, at 444 East Third Street, Bloomington, Indiana, to look for an apartment for Complainant. Burnham Rentals, LLC, and Burnham Place Apartments' office is located at this address along with rental units.
21. While at Respondents' office, Complainant, on information and belief, spoke to Respondent Amanda Burnham,³ leasing agent for Respondents. Respondent Amanda Burnham provided Complainant with information about their apartments, including which units were close to the School of Optometry and gave her their website address. She told Complainant and her mother that they would begin leasing the units soon. Respondent Amanda Burnham took Complainant's information to contact her when the leasing process began.
22. Respondents' leases run from August to the following August.

³ Amanda Burnham is married to Respondent John Burnham, Jr.

23. Complainant reviewed the website and pinpointed several properties located close to the School of Optometry that were within her price range. Her first choice was the property located at 808 East Hunter Avenue because it was the closest to her school and the rent was \$750 per month for a one-bedroom apartment.
24. On November 5, 2019, Respondents emailed Complainant, inviting her to begin the leasing process. In response, on November 5, 2019, at 12:37 p.m., Complainant called Respondents' office and spoke to a woman who answered the phone. Complainant inquired regarding the application process, let them know she had an ESA, a cat, and asked what they needed from her so that she could reside at the subject property with her ESA. Complainant added that she had a doctor's letter of necessity for her ESA that she could provide. She also offered to provide the phone number of her last landlord so that Respondents could verify that the cat was "good."
25. The woman with whom Complainant spoke advised her that she needed to submit the application online through their website and told her to send her doctor's letter to their office email at 011icea@burnhamrentals.com. The female employee offered no more details or direction on what Complainant needed to do to get her ESA approved. She told her nothing about what the letter needed to specifically say about the animal or the disability of Complainant.
26. On information and belief, at all times relevant to this Charge, only two female employees worked in Respondents' leasing offices for the subject properties, Respondents Amanda Burnham and Nancy Slough.
27. On November 5, 2019, after the call with Respondents' female employee, Complainant filled out the application and submitted it as directed.
28. Soon after, on November 5, 2019, at 2:02 p.m., Respondents sent Complainant an email confirming that they received her application.
29. On November 5, 2019, at 2:08 p.m., Complainant sent an email to Respondents at Officefy@burnhamrentals.com. Her email stated that she had spoken to an employee on the phone earlier that day and she was sending information about her ESA. She attached her doctor's letter confirming the animal's necessity and offered to "provide any additional information about the animal."
30. Shortly thereafter, that same day, Complainant called Respondents to confirm whether they got her email, could open the attached letter, and whether they required any more information about her ESA. Complainant spoke to a woman, who transferred her to a different female employee, who treated complainant "rudely." The woman told Complainant that Respondents did not allow pets, and when Complainant tried to explain that her cat was an ESA, the woman repeatedly interrupted Complainant, stating, "We don't allow pets." Complainant asked to speak to someone else but was not permitted to do so.

31. At no time during this call did Respondents' employee indicate that Complainant's documentation for her ESA was deficient or that providing more information would change their decision.
32. Soon after this call, Complainant contacted her father, [REDACTED] Doe, to explain what happened. Mr. Doe offered to assist her by calling Respondents on her behalf.
33. On November 5, 2019, Mr. Doe repeatedly called Respondents, but they did not answer his calls. During HUD's investigation, Respondent John Burnham, Jr., admitted directing Respondent Nancy Slough to block Mr. Doe's calls, which she did.
34. On, November 6, 2019, Complainant attempted to call Respondents three times — at 9:17 a.m., 9:18 a.m., and 9:47 a.m. — but Respondents did not answer her calls.
35. Ten minutes after her last attempted call on November 6, 2019, at 9:57 a.m., Respondent John Burnham, Jr., sent Complainant an email that reaffirmed the decision to deny Complainant's request. The email states, in relevant part:

Thank you for your interest in our Burnham Rentals properties. Burnham Rentals does not allow pets, and this is shown on our website and the application that you completed. We are very clear as to our position with this issue. I have spoken with my attorney concerning this matter and have been advised that we do not have to allow your cat. If you feel that you need to bring the cat to Bloomington, then you should lease at a pet friendly location. There are several near campus. Good luck with your housing search.
36. Respondent John Burnham, Jr.'s email does not offer a reason for Respondents' decision to deny Complainant's ESA (other than their pet policy), nor does it request any additional or clarifying information from Complainant.
37. On November 6, 2019, Complainant reached out to the Bloomington Human Rights Commission ("BHRC") for assistance. She spoke to Barbara McKinney, Director of the BHRC. The BHRC investigates allegations of housing discrimination.
38. Complainant explained to Ms. McKinney what happened in her interactions with Respondents and provided Ms. McKinney with her email correspondence with Respondents and the doctor's letter that she sent them. Ms. McKinney advised Complainant that she would send an email to Respondents to advise them of their obligations under the Fair Housing Act.
39. On November 6, 2019, Ms. McKinney sent an email to Respondents, in which she introduced herself as the Director of BHRC, stated that she had been contacted by Complainant relative to her reasonable accommodation request to live at the property with her ESA cat, and referred Respondents to HUD guidance, FHEO-2013-01, which addresses a housing provider's obligations under the Act when evaluating requests for ESAs.

40. Specifically, Ms. McKinney's letter advised that landlords must allow tenants to have assistance animals if the tenant provided medical documentation of the disability and disability-related need for the animal. In her email, Ms. McKinney confirmed her understanding that Complainant, in fact, furnished Respondents with such documentation and recommended that Respondents share the HUD guidance with their attorney.
41. Respondents did not reply to Ms. McKinney's November 6, 2019 email.
42. On November 11, 2019, Complainant sent an email to Respondents following up on Ms. McKinney's November 6, 2019 email. Referencing her rights under the Act, Complainant asked for another opportunity to apply to lease an apartment from Respondents. Respondents did not respond to this email.
43. On or about November 12, 2019, [REDACTED] Doe contacted Respondents *via* telephone to follow up on Respondents' denial. After calling from a phone number he had not previously used to call Respondents, Mr. Doe's call was accepted and he was transferred to Respondent John Burnham, Jr. During the call, Respondent John Burnham, Jr., advised Mr. Doe that he was not required to rent to Complainant because she has a cat, and he disputed that the cat was an ESA or that he was in violation of the law. Finally, he indicated that Complainant could rent the property, but only without her cat.
44. At no time during this call with Mr. Doe did Respondent John Burnham, Jr., provide a reason for the denial, aside from their pet policy, or request any additional or clarifying information regarding Complainant's reasonable accommodation request.
45. At all times relevant to this Charge, Respondents published leasing applications and sample lease agreements, and "Basic Leasing Conditions for Burnham Rentals," on their website, burnhamrentals.com, which leasing agreements and conditions include, "**No pets or visiting pets allowed. No exceptions to this policy**" in more than one place on their rental application website. (emphasis in original)
46. At all times relevant to this Charge, nowhere in Respondents' application, website, or lease was there a reasonable accommodation policy, nor exceptions for disability related needs for assistance or service animals at the subject properties.
47. Complainant requested a reasonable accommodation to Respondents' "no pet" policy. Complainant's assistance animal is not a "pet."
48. At no time did Respondents request additional documentation regarding Complainant's ESA or engage in an interactive process with Complainant regarding her ESA.
49. Nowhere in HUD guidance, FHEO 2013-01, was there a requirement that a treating professional's letter must indicate the specific species of animal or prohibit a tenant or prospective tenant from identifying his or her own disability; nor does recent HUD guidance regarding assistance and support animals.

50. At all times relevant to this Charge, Complainant and her father repeatedly advised Respondents that Complainant's ESA was a cat; and Respondents were aware that the ESA for which Complainant sought a reasonable accommodation to the no-pet policy was a cat.
51. In or around 2017, Respondents allowed a former tenant to reside at the subject property with her ESA cat even though her medical documentation did not identify the animal as a cat. Respondents relied upon assurances from the former tenant's attorney that her ESA was a cat.
52. Respondents did not accept assurances from Complainant that her ESA was a cat because she did not have an attorney representative to identify the animal as a cat.
53. As a result of Respondents' denial of her reasonable accommodation to reside with her ESA, Complainant was forced to look for alternative housing and traveled back to Bloomington two more times to search for acceptable housing.
54. As a result of Respondents' denial of her reasonable accommodation request and refusal to rent to Complainant, she had difficulty locating housing and ultimately leased an apartment in Bloomington in early January 2020 at a higher rent than the Redacted Name Redacted Name. The rented apartment was less desirable than the subject properties, affecting her personal safety, and ultimately, forcing her to move in the middle of her first semester of graduate school during a global pandemic further away from campus, not within walking distance of the IU School of Optometry, and with added expense and stress.
55. As a result of Respondents' discriminatory actions, Complainant felt shocked and embarrassed after Respondent denied her housing because of her ESA. She felt like Respondents treated her "lesser than," and had no regard for her. This discriminatory treatment has made her more guarded and affected her self-esteem. As a result of the events leading up to this Charge, Complainant, felt distracted and sad and she suffered increased stress. She also experienced physical symptoms as a result of this incident such as crying, nightmares, and trouble sleeping.
56. As a result of Respondents' discriminatory acts, Complainant has suffered harm including, but not limited to, loss of a housing opportunity, emotional distress, inconvenience, and monetary costs, including, but not limited to, those associated with securing alternative housing.

D. LEGAL ALLEGATIONS

57. Respondents made housing unavailable to Complainant on the basis of disability in violation of the Act when they denied Complainant's reasonable accommodation request to reside with her assistance animal in the subject property. 42 U.S.C. §§ 3604(0(1), 3604(0(3)(B).

58. Respondents subjected Complainant to less favorable terms and conditions of rental on the basis of disability in violation of the Act when they refused to accept her medical documentation of reasonable accommodation because her treating doctor did not identify her cat as the specific ESA, and because she did not have an attorney to provide assurances that ESA was a cat, while allowing similarly situated tenants to reside with their ESAs that were not specifically identified in medical documentation. 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(B).

59. Respondents interfered with Complainant's exercise or enjoyment of on account of her having exercised or enjoyed a right granted or protected by 42 U.S.C. § 3604' when after she requested a reasonable accommodation to reside in a unit with her ESA, a cat, Respondents denied her application and accommodation request in less than 24 hours, closing quickly the window to provide additional documentation, to the extent that any was required or requested; refused to communicate with Complainant by ignoring her calls after denying her reasonable accommodation request; intentionally blocked and refused to answer her father's numerous calls made on her behalf; and ignored emails from both Ms. McKinney at BHRC and Complainant.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the Regional Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(0(1), 3604(0(2), 3604(f)(3)(B) and 3617 of the Act, and prays that an order be issued that:

60. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;

61. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating because of disability against any person in any aspect of the rental, occupancy, use, or enjoyment of a dwelling;

62. Mandates Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

63. Awards such monetary damages as will fully compensate Complainant for her economic losses and emotional distress, including but not limited to, all out-of-pocket expenses, medical expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, the loss of a housing opportunity, and any and all other damages caused by Respondents' discriminatory actions;

64. Awards a civil penalty against each Respondent for 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

65. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

COURTNEY MINOR
Digitally signed by COURTNEY MINOR ON, CN = COURTNEY MINOR C = US U S Government of nim OU = Department
Date: 2021.04.22 17:23:31 -0500



COURTNEY B. MINOR
Regional Counsel, Region V

M. DANNA-BRENNAN
Associate Regional Counsel for Litigation
Region V



Dana Rosenthal
Trial Attorney
U.S. Department of Housing and
Urban Development
Office of the Regional Counsel-Region V
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard, Suite 2636
Chicago, Illinois 60604-3507
Tel: (312) 913-8614
Fax: (312) 886-4944

Date: np-(1)