

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

Secretary, United States	:	
Department of Housing and Urban	:	
Development, on behalf of	:	
Southwestern Pennsylvania Legal	:	
Services, Inc.	:	
	:	
	:	ALJ No.
Charging Party,	:	
	:	
v.	:	FHEO No. 03-19-3198-8
	:	
Perry Homes, Inc.; Whittington &	:	
Whittington d/b/a/ Perry Homes;	:	
Allyson Whittington; and Robert	:	
Whittington	:	
	:	
Respondents	:	
	:	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On August 27, 2019, Complainant Southwestern Pennsylvania Legal Services, Inc. (Complainant) filed a complaint with the United States Department of Housing and Urban Development (HUD), alleging that Perry Homes committed discriminatory acts on the basis of disability. The complaint was amended on December 9, 2020 to add Respondents Allyson Whittington and Robert Whittington, and to clarify that “Perry Homes” refers to Perry Homes, Inc. and Whittington & Whittington d/b/a Perry Homes (Respondents). Complainant alleges that Respondents discriminated against Complainant’s testers and violated the Fair Housing Act (the Act) with their discriminatory refusal to rent; by imposing discriminatory terms, conditions, or privileges of rental; by making discriminatory statements; and by failing to grant a reasonable accommodation. Complainant alleges that the Respondents’ discriminatory acts were based on disability.¹

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

¹ Although the term “handicap” appears in the Fair Housing Act and its implementing regulations, the Charge and Determination of Reasonable Cause use the terms “disability” and “handicap” interchangeably.

§§ 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel, who has re-delegated the authority to the Regional Counsel. 24 C.F.R. §§ 103.400 and 103.405; 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region III, 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 in this case and has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF THE 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 Fair Housing Act (the Act) as follows:

A. Statutory and Regulatory Provisions

1. 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 based on disability, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(c)(1).
2. It is unlawful to discriminate in the rental, or to otherwise make unavailable or deny, a dwelling to any renter because of disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a)(1).
3. It is unlawful to discriminate against a 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 disability. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
4. Discrimination under 42 U.S.C. § 3604(f)(1) and (f)(2) includes denying a person with a disability a reasonable accommodation when such accommodation may be necessary to afford such person equal opportunity to enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
5. A reasonable accommodation is a change in a rule, policy, practice or service when such accommodation may be necessary to afford a person with a disability the equal opportunity to enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
6. "Disability" is defined as a physical or mental impairment which substantially limits a person's major life activities, a record of having such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

B. Parties and Properties

7. The subject properties are located at 322 German Street, Harmony, Pennsylvania 16037; 312 McKim Street, Zelienople, Pennsylvania 16063; and Old Towne Rentals, 236 Lexington Dr, Cranberry Township, Pennsylvania 16066.
8. Respondents Perry Homes, Inc.; Whittington & Whittington d/b/a/ Perry Homes; Allyson Whittington; and Robert Whittington own and manage the subject properties.
9. Complainant Southwestern Pennsylvania Legal Services, Inc. is a non-profit legal aid organization. Complainant's mission is to improve and stabilize families, housing, and economic security for low-income and other vulnerable southwestern Pennsylvania residents with legal advice and representation. Complainant's Fair Housing Law Center works to promote fair housing rights through testing, legal advice, counsel, and representation. Its mission is to ensure everyone has access to housing free from discrimination.
10. Complainant is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i).

C. Factual Allegations

11. Complainant conducted a series of disability discrimination tests involving the subject properties between October 19, 2018 and February 19, 2019.
12. On or around October 19, 2018, Complainant's Tester #1 called Respondents' rental office and spoke to an agent of Respondents' regarding the availability of an apartment unit located at 322 German Street. The agent told Tester#1 that pets were not allowed. Tester #1 told the agent that her husband had an emotional support dog. The agent stated that Respondents would make an exception for service animals, which she described as animals that had been specifically trained, like a seizure-detecting dog. Tester #1 explained to the agent that she had documentation from a psychologist for the emotional support animal, but the animal had not been specifically trained. Respondents' agent said that Respondents would only accept service dogs with specific training.
13. On or around January 28, 2019, Complainant's Protected Tester #2 called Respondents to inquire about a unit on McKim Street. When asked by Respondents' agent if she had any pets, Tester #2 stated that she and her husband had "an emotional support animal, a dog, for my husband's PTSD." Respondents' agent then asked if the dog "was registered as a service dog." Tester #2 said that she would check and call back. When she called back, Tester #2 stated that she had done some research and found that for an emotional support animal, only a letter documenting the need for the animal was required. Respondents' agent replied that Respondents would only accept registered service animals that had been trained for a specific duty. Tester #2 offered to supply a letter, but Respondents'

agent said that unless it was a registered service animal, Respondents “would not be open to accepting the emotional support animal.”

14. On or around February 17, 2019, Complainant’s Protected Tester #3 called and left a voicemail with Respondents inquiring about the property on McKim Street. An agent of Respondents’ returned Tester #3’s call the next day, and after discussing the details of the unit, the agent stated that Respondents did not allow pets. Tester #3 informed the agent that her son had autism and that they had recently gotten an emotional support animal - a female golden retriever - who was very well trained. Tester #3 asked if Respondents could make an exception to the no-pets policy in this case, stating that she had all the necessary documentation from her son’s physician for the animal. In response, the agent explained to Tester #3 that the no-pets policy was waived only if the animal was a service animal, and that an emotional support animal was a different story and Respondents were not obligated to permit emotional support animals.
15. On or around February 18, 2019, Complainant’s Protected Tester #4 called Respondents to inquire about the availability of a unit at Old Towne Homes and spoke to Respondents’ agent. The agent asked Tester #4 if she had any pets, to which Tester #4 responded that her son had an emotional support animal because he had autism. Tester #4 asked if that would be allowed. The agent replied that no pets were allowed, but service animals were. Tester #4 reiterated that the dog was an emotional support animal with documentation from her son’s psychologist. The agent replied that there are differences between service animals and other animals, so it would all depend on the wording of the information. If it was a service animal, then it would be okay, but other animals would not be permitted.
16. On or around February 18, 2019, Complainant’s Protected Tester #6 called Respondents about a unit at Old Towne Homes and spoke to Respondents’ agent. After discussing the apartment, Tester #6 told the agent that his wife had had a stroke two years prior and had an emotional support animal and asked if that would be a problem. The agent replied that she could not prohibit a “service specific function support animal.” Tester #6 reiterated that he needed to know whether his wife’s emotional support animal would be permitted before he would consider the apartment. The agent again said that she could not prohibit a “service specific function support animal.” When Tester #6 asked if there would be any increase in rent, assuming the emotional support animal was allowed, the agent replied that Tester #6 would know when he submitted his application.
17. Complainant’s mission was frustrated by Respondents’ actions and Complainant diverted resources to address Respondents’ actions. Complainant investigated and monitored Respondents and engaged in targeted education, outreach, and assistance to counteract Respondents’ discriminatory acts. If not for Respondents’ actions, Complainant would have conducted other testing and outreach in its service area and updated a service area-wide email directory.

D. Fair Housing Act Violations

1. By denying Testers' reasonable accommodation requests for emotional support animals for prospective tenants with disabilities, Respondents made rental housing unavailable based on disability in violation of the Act. 42 U.S.C. § 3604(f)(1); 42 U.S.C. § 3604(f)(3); 24 C.F.R. § 100.202(a).
2. By denying Testers' reasonable accommodation requests for emotional support animals for prospective tenants with disabilities, Respondents discriminated in the terms, conditions, or privileges of rental because of disability in violation of the Act. 42 U.S.C. § 3604(f)(2); 42 U.S.C. § 3604(f)(3); 24 C.F.R. § 100.202(b).
3. By informing testers that emotional support animals were not permitted at the subject properties, Respondents discriminated by making statements indicating a preference against persons with disabilities requiring emotional support animals in violation of the Act. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

III. CONCLUSION

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

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate Sections 3604(c), (f)(1), (f)(2) and (f)(3)(B) of the Fair Housing Act, 42 U.S.C. §§ 3604(c), (f)(2) and (f)(3)(B);
2. Enjoins Respondents and all other persons in active concert or participation with Respondents from discriminating against any person based on disability in any aspect of the sale or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant;
4. Assesses a civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671;
5. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 10th day of February 2021.

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