

**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 Complainant [REDACTED],
Charging Party,

v.

HUD ALJ No. _____
FHEO No. 02-16-4261-8

Nolo Contendere, LLC,
Nolo Contendre LLC Trust,
Charles Wallis, and Joseph Barton,
Respondents.

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 3, 2016, [REDACTED] (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“HUD”).¹ The Complainant alleges that Charles Wallis, Joseph Barton, Nolo Contendere, LLC, and Nolo Contendre LLC Trust (collectively, “Respondents”) discriminated against her on the basis of disability² and interfered in the exercise of her fair housing rights in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-19 (“Act”).

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination 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 that authority to the General Counsel, who has re-delegated the authority to the Regional Counsel. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Regional Director of HUD’s Office of Fair Housing and Equal Opportunity for Region I, 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

¹ The complaint was amended on September 28, 2016 to include Charles Jones as a Complainant and add allegations of Respondents’ violations under 42 U.S.C. § 3617. The Complaint was further amended on April 16, 2018 to add Respondent “Nolo Contendere, LLC.”

² This charge uses the term “disability” interchangeably with the term “handicap,” which appears in the Fair Housing Act.

occurred in this case 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 complaints and the Mixed Determination of Reasonable Cause and No Reasonable Cause, HUD hereby charges Respondents Charles Wallis, Joseph Barton, Nolo Contendere, LLC, and Nolo Contendre LLC Trust 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 rental of a dwelling, because of a disability of that person. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
2. For the purposes of § 3604(f)(2), “discrimination” includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
3. The Act defines “handicap” as a physical or mental impairment which substantially limits one or more 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.
4. HUD’s regulations define “physical or mental impairment” to include “[a]ny mental or psychological disorder, such as . . . emotional or mental illness.” 24 C.F.R. § 100.201. HUD’s regulations also define “major life activities” to include “functions such as caring for one’s self,” “learning and working.” 24 C.F.R. § 100.201.
5. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, any right protected by 42 U.S.C. §§ 3603-3606. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

B. Parties and Subject Property

6. The Complainant suffers from mental and emotional disabilities which substantially affect her ability to work, care for herself, concentrate, and maintain a routine. The Complainant is disabled as defined by the Act. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.
7. The Complainant is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

8. Respondent Nolo Contendere, LLC is a domestic limited liability company incorporated in the State of New York. Nolo Contendere, LLC owns 218 Magnolia Street, Syracuse, New York (“subject property”).
9. Respondents Charles Wallis and Joseph Barton acted as agents of Nolo Contendere, LLC when dealing with the Complainant. Both held responsibilities related to operating and managing the subject property. Mr. Wallis has identified himself as a member of Nolo Contendere, LLC.
10. Respondents Charles Wallis and Joseph Barton also claimed to represent the Nolo Contendere LLC Trust (“Trust”) in their communications with the Complainant. Mr. Wallis has identified his position as Legislative Administrator of the Trust and Mr. Barton’s position as Executive Administrator of the Trust.
11. The subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20. The subject property consists of four rental units. Neither Mr. Wallis nor Mr. Barton resided at the subject property at any time relevant to this charge.

C. Factual Allegations

12. On January 1, 2016, the Complainant signed an agreement with Mr. Barton to rent an apartment at the subject property for one year, from January 1, 2016 through January 1, 2017. This agreement included a policy of prohibiting tenants from keeping any pets besides small fish. Around the first week of January 2016, the Complainant moved into the apartment.
13. At the time she moved into the apartment, the Complainant had a Jack Russell terrier dog named Bella. Keeping Bella was medically necessary to ameliorate the effects of the Complainant’s disabilities. Bella helped alleviate the Complainant’s symptoms by keeping her on a routine schedule, requiring her to remain active, providing a sense of comfort and companionship, and alleviating anxiety and preventing panic attacks.
14. On or about January 16, 2016, the Complainant brought Bella from her aunt’s house to the subject property to serve as an emotional support animal.
15. On or about January 17, 2016, Mr. Barton discovered Bella during a visit to the subject property and told the Complainant she was violating the no-pets policy. The Complainant requested an exception to the policy and attempted to present Mr. Barton with a letter from her physician, [REDACTED], dated December 18, 2015. The letter stated that it was medically necessary for the Complainant to keep her dog. Mr. Barton refused to accept the letter, denied permission, and told the Complainant she would be evicted if she kept Bella.
16. On or about January 18, 2016, the Complainant returned Bella temporarily to her aunt’s house, and continued to visit Bella there for emotional support.
17. On or about January 25, 2016, [REDACTED] completed a “Disability Verification

Form” for the Complainant. This form confirmed that the Complainant had a disability as defined by the Act, that it was medically necessary for her to keep Bella because she had psychological and mental health challenges, and that taking Bella away would be detrimental to her health. [REDACTED] also offered to answer any questions by phone.

18. On January 28, 2016, Katie Frawley-Clark of CNY Fair Housing (“CNYFH”) called Mr. Barton on the Complainant’s behalf and spoke with him twice over the telephone. Ms. Frawley-Clark explained that she was calling on Complainant’s behalf to seek a reasonable accommodation for an emotional support animal. Mr. Barton admitted that the Complainant had attempted to provide him with medical documentation, but insisted that she would not be permitted to keep a dog at the subject property regardless of her request. Ms. Frawley-Clark requested Mr. Barton’s contact information to send him a written request with supporting documentation, but he did not provide it.
19. On January 29, 2016, Ms. Frawley-Clark spoke with Mr. Wallis by telephone on behalf of the Complainant. Ms. Frawley-Clark explained that she was calling about the Complainant’s emotional support animal and would be sending Mr. Wallis a written request for reasonable accommodation with supporting documentation. Mr. Wallis denied that the Complainant had a right to a reasonable accommodation and told Ms. Frawley-Clark three separate times not to send a written request because it was “not important” and did “not matter.” Mr. Wallis suggested that he would consider granting the request if the Complainant provided an extra security deposit and obtained an insurance policy, but insisted that he was not required to grant the request and that he had the right to evict the Complainant.
20. On February 2, 2016, CNYFH sent written requests for reasonable accommodation to Mr. Barton and Mr. Wallis. The request identified the Complainant as a person with a disability and stated: “Please consider this letter a formal request for a reasonable accommodation allowing [the Complainant’s] jack russell emotional support dog, Bella, to live with her in her apartment. [The Complainant] has previously attempted to provide you with documentation proving her medical need for the accommodation. However, you refused to accept it. Therefore, I am providing a copy of that documentation now.” The letter went on to note that it is unlawful to “charge an extra fee or require an additional deposit from tenants with disabilities as a condition of granting [a] reasonable accommodation.” CNYFH enclosed a copy of [REDACTED] [REDACTED] signed January 25, 2016 Disability Verification Form.
21. On February 8, 2016, the Complainant’s request for reasonable accommodation was denied in a letter signed by Mr. Wallis as “Legislative Administrator” of the “Nolo Contendre LLC Trust.” The letter stated that the reasonable accommodation request would be considered if the Complainant provided a \$600 security deposit, an insurance policy with coverage in the range of \$500,000 to \$1,000,000, and records of licensing and shots for the dog. The letter further stated that “we are under no obligation to even consider the ‘Reasonable Accommodation Request.’”

22. About a month or two after returning her dog to her aunt's house, [REDACTED] brought the dog back to the subject property.
23. On or about April 27, 2016, Nolo Contendere, LLC filed for the Complainant's eviction in Syracuse City Court. Mr. Wallis signed a sworn statement in his capacity as a member of Nolo Contendere, LLC, verifying the contents of the eviction petition to be true. The basis for the eviction identified in the petition was:
 - (i) Keeping a Pet in Violation of the Tenant Rental Agreement; (ii) Failing to abide by the Tenant Rental Agreement by keeping a pet (dog) and then refusing to failing to abide by the Pet Accommodation offered by the Landlord despite being given the opportunity to cure the Rental Agreement Violation.
24. On or about May 26, 2016, the Complainant's representative requested that the Syracuse City Court stay the eviction action during HUD's investigation of this matter. The request for a stay was granted.
25. On or about June 20, 2016, Wallis sent CNYFH a letter stating that he was seeking additional medical information about the Complainant. The Complainant's attorney again provided copies of the December 18, 2015 letter and January 25, 2016 Disability Verification Form previously completed by [REDACTED]. He declined to provide additional medical information on the basis that the information already provided was sufficient under the Act.
26. In August 2016, the Complainant gave birth to a child. On or about September 30, 2016, the Complainant, her boyfriend, and their minor child moved out of the subject property.
27. As a result of the Respondents' actions, the Complainant suffered actual damages including but not limited to out-of-pocket expenses, lost housing opportunity, emotional distress, inconvenience, and frustration.

D. Fair Housing Act Violations

28. Respondents violated Section 3604(f)(2)(A) by imposing discriminatory terms and conditions on the Complainant based on her disability by refusing to grant the Complainant's reasonable accommodation request and demanding unfavorable conditions as a prerequisite to considering her request. 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(b); 24 C.F.R. § 100.202(b).
29. Respondents violated Section 3617 by interfering with the Complainant's right to a reasonable accommodation by threatening her with eviction and filing an eviction action against her in retaliation for her request. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the Regional Counsel for New England, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f) and 3617 and prays that an order be issued that:

- A. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. Sections 3601-3619;

- B. 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 purchase or rental of a dwelling, and from further violations of 42 U.S.C. §§ 3604(f) and 3617;

- C. Awards such monetary damages as will fully compensate the Complainant for any and all injuries caused by Respondents' violations of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. §§ 180.670(b)(3)(i);

- D. Awards 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; and

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

Respectfully submitted,

Miniard Culpepper
Regional Counsel for New England

Eric Levin
Associate Regional Counsel for Litigation

Hillary Harnett Trial Attorney
Office of Regional Counsel
Department of Housing and Urban
Development
10 Causeway St., Rm. 310
Boston, MA 02222
(617) 994-8253
hillary.h.harnett@hud.gov

Date: