

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 the Fair :
Housing Council of Suburban :
Philadelphia, :

Charging Party, :

v. :

FHEO No. 03-11-0027-8

Breckenridge Plaza, Inc., and Morris :
Zelikovsky, :

Respondents :

CHARGE OF DISCRIMINATION

I. JURISDICTION

The Fair Housing Council of Suburban Philadelphia (“FHCSF” or “Complainant”) submitted a timely complaint with the United States Department of Housing and Urban Development (“HUD”) on or about October 21, 2010, alleging that Breckenridge Plaza, Inc., Johanan Zelikovsky, Morris Zelikovsky, and the Estate of Judith Zelikovsky,¹ committed discriminatory housing practices against families with children on the basis of familial status in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (“the Act”). The Complainant, a non-profit fair housing organization, alleged that the named Respondents made discriminatory statements indicating a preference against families with children, offered different rental terms and conditions to families with children, and discouraged families with children from applying for housing.

¹ The complaint was amended on January 19, 2011, to include the last name of Morris Zelikovsky and to identify Johanan Zelikovsky and the Estate of Judith Zelikovsky as owners of the subject property and additional Respondents. HUD issued a Determination of No Reasonable Cause with respect to Respondents Johanan Zelikovsky and the Estate of Judith Zelikovsky.

The Act authorizes the issuance of a Charge of Discrimination (“Charge”) on behalf of an aggrieved person following an investigation and determination that reasonable cause exists to believe that discriminatory housing practices have occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (74 Fed. Reg. 62802 (Dec. 1, 2009)), who retains and redelegates to the Regional Counsel (74 Fed. Reg. 62804 (Dec. 1, 2009)), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (“the Assistant Secretary”) or his or her designee.

The Fair Housing and Equal Opportunity Director for Region III, the Assistant Secretary’s designee, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and, therefore, has authorized the issuance of this Charge.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD’s investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause and No Reasonable Cause, Respondents Breckenridge Plaza, Inc. and Morris Zelikovsky (“Respondents”)² are charged with discriminating against the Complainant based on familial status in violation of 42 U.S.C. §§ 3604(a), (b) and (c).

A. Statutory and Regulatory Provisions

1. It is unlawful to refuse to rent or negotiate for rental or otherwise make unavailable or deny a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.60(a) and (b)(3) (2011).
2. 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 therewith, because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.65(a) and (b)(1) (2011).
3. It is unlawful to make statements with respect to the rental of a dwelling that indicate any preference, limitation or discrimination based on familial status, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.75(a) and (c)(2) (2011).
4. “Familial status” means one or more individuals under the age of eighteen (18) being domiciled with a parent or legal guardian. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20 (2011).

² HUD’s investigation revealed Breckenridge Plaza, Inc. is the sole owner of the subject property, and that Morris Zelikovsky was the rental agent and property manager responsible for the discriminatory actions outlined in this Charge.

B. *Parties and Properties*

1. At all times pertinent to this Charge, FHCSF is a private, non-profit organization working to eliminate housing discrimination. The organization's stated mission is to educate and advocate for equal access to quality, affordable housing for all persons in Southeast Pennsylvania without regard to race, color, religion, national origin, disability, gender or familial status.
2. The property at issue is Breckenridge Plaza Apartments, which consists of four multifamily buildings containing ninety-one (91) apartments, and is located at 495 Nutt Road, Phoenixville, Pennsylvania ("subject property").
3. At all times pertinent to the Charge, Breckenridge Plaza, Inc. has been the sole owner the subject property.
4. At all times pertinent to the Charge, Respondent Morris has served as the rental agent and manager for the subject property.

C. *Factual Allegations*

October 2009 Advertisements

1. On October 14, 2009, Respondents placed an advertisement on *craigslist.org* which carried the heading "\$740 / 2br – Winter Special – Downtown Close to Hospital" and read as follows:

For a Limited Time only for credit worthy (must have credit score over 650) for SPECIAL. This deal is for a maximum of two persons. The two-bedroom features: 1) walking distance to great taverns and restaurants or boutiques shops in downtown Phoenixville 2) off-street parking 3) w/w carpeting 4) central air/ heating 5) f/t maintenance on premises 6) FIOS or Comcast Cable ready. No pets are allowed.

Call to make an appointment to see M-F 10:00 to 4:00 610-933-4879

2. After viewing this advertisement, Complainant designed a plan to test Respondents' rental practices to determine whether they were discriminating against families with children in violation of fair housing laws.
3. On October 19, 2009, and October 20, 2009, Respondents placed advertisements on *craigslist.org* which carried the heading "\$740 / 2br – Winter Special – Downtown Close to Hospital" and began, "For a Limited

Time only to credit worthy applicants. This special price is for a maximum of two persons.”

Test 1

4. On October 20, 2009, Tester A called the phone number provided in the *craigslist.org* advertisements and left a voicemail message inquiring about two-bedroom apartments. Later that day, a person who identified himself as Morris (later determined to be Respondent Morris Zelikovsky) returned his phone call. During their conversation, Respondent asked Tester A who the apartment would be for, how old his children were, and who cared for them after school. Tester A explained that he lived with his two school-aged sons who participated in after school programs. Respondent informed Tester A that there was a special for two-bedroom apartments, but that it was only for households of two persons, and that Tester A would have to pay a bit more if he was interested in an apartment. Respondent and Tester A scheduled an appointment to see available apartments the next day.
5. On October 21, 2009, Tester A met with Respondent Morris Zelikovsky at the subject property. Respondent showed Tester A the subject property grounds, and told Tester A that the complex had a nice mix of people and only a few children. Respondent showed Tester A a two-bedroom apartment that had recently been renovated, which he said rented for \$890 per month, and a non-renovated two-bedroom unit, which he said rented for \$800 per month. Tester A inquired about the advertised special offer for two-bedroom units. Respondent explained that that special was only for non-renovated units, and only for households of two persons.
6. On October 21, 2009, Tester B called the phone number provided in the *craigslist.org* advertisements and spoke to Respondent Morris Zelikovsky. She inquired about available two-bedroom apartments. Respondent asked who the apartment was for, and Tester B explained that it was for herself and her husband. When Respondent asked, “No children?” Tester B replied, “No.” Respondent then told Tester B that there was a special on two-bedroom apartments for two-person households for \$740 per month. Respondent and Tester B arranged to meet at the subject property the following morning.
7. On October 22, 2009, Tester B met with Respondent Morris Zelikovsky at the subject property. Respondent showed her a non-renovated two-bedroom apartment and told her that the rent was \$740 per month.

November 14, 2009 Advertisement

8. On November 14, 2009, Respondents placed an advertisement on *craigslist.org* which carried the heading “\$740 / 2br – Winter Special – Downtown Close to Hospital” and began, “For a Limited Time only for credit

worthy (must have credit score over 660) for SPECIAL. This deal is for a maximum of two persons.”

Test 2

9. On November 19, 2009, Tester C called the phone number provided in the *craigslist.org* advertisements and left a voicemail message inquiring about the apartments advertised on *craigslist.org*. She indicated that she was interested in a one- or two-bedroom apartment. Later that day, Tester C received a phone call from a man who identified himself as “Joe”. The man told her that Respondents were offering a special rent of \$675 for one-bedroom apartments and \$740 for two-bedroom apartments. Tester C agreed to view the subject property on November 21, 2009.
10. On November 21, 2009, Tester C met with Respondent Morris Zelikovsky at the subject property. Tester C told Respondent that she was looking for an apartment for her daughter and herself, and that she was moving to Phoenixville to be closer to work. Respondent asked how old her daughter was, who cared for her daughter, and where her daughter’s caretaker lived. When Tester C explained that her mother, who lived in [REDACTED], cared for her daughter, Respondent said, “Well if she is in [REDACTED], who would be watching your daughter if you moved?” When Tester C explained that she was looking into child care in the area, Respondent asked why she didn’t try to find a job closer to home. Respondent told Tester C that one-bedroom apartments rented for \$675 per month, and that there was a special offer on two-bedroom apartments for \$740 per month for those with good credit. Tester C said that she would like to move between November 21, 2009, and January 2010. Respondent told her that he was trying to have someone move in in December, and asked whether Tester C would be able to move in that soon, as she had not yet made child care arrangements. Respondent informed Tester C that the two apartments she had seen were the only ones available, that she should apply quickly because he would not hold the units, and that Respondent did not know if anything would be available after those two units were taken.
11. On November 20, 2009, Tester D called the phone number provided in the *craigslist.org* advertisements. Respondent Morris Zelikovsky answered the phone. Tester D inquired about the *craigslist.org* advertisement for a two-bedroom apartment for \$740 per month. Respondent reminded Tester D that no more than two-people could live in the apartment, and that she needed a credit score of 660 or higher. Tester D and Respondent arranged to meet at the subject property the next day.
12. On November 21, 2009, Tester D met with Respondent Morris Zelikovsky at the subject property. She told Respondent that she was interested in the two-bedroom apartment advertised for \$740 per month on *craigslist.org*.

Respondent asked whether Tester D would be living alone, and she explained that she would be living with her husband. Respondent told Tester D that a non-renovated one-bedroom rented for \$675 per month, and a non-renovated two-bedroom would be \$740 per month. Tester D said that she was looking to move in late November, December or January. Respondent confirmed that the apartments she had viewed would be available during that time frame.

November 24, 2009 – January 18, 2010 Advertisements

13. On November 24, 2009, and December 3, 2009, Respondents placed advertisements on *craigslist.org* which carried the heading “\$740 / 2br – Winter Special – Downtown Close to Hospital” and began, “For a Limited Time only for credit worthy (must have credit score over 660) for SPECIAL. This deal is for a maximum of two persons.”
14. On December 10, 2009, Respondents placed an advertisement on *craigslist.org* which carried the heading “\$765 / 2br – Winter Special – Downtown Close to Hospital” and began, “For a Limited Time only for credit worthy (must have credit score over 660) for SPECIAL. This DEAL is for a maximum of TWO PERSONS.”
15. On January 4, 2010, Respondents placed an advertisement on *craigslist.org* which carried the heading “\$775 / 2br – Winter Special***Downtown Close to Hospital” and began, “For a Limited Time only for a maximum number of Two Persons with a good credit score of at least 660.”
16. On January 11, 2010, Respondents placed an advertisement on *craigslist.org* which carried the heading “\$740 / 2br – Winter Special - Downtown Close to Hospital” and began, “For a Limited Time Only for credit worthy (over 660 credit score). This SPECIAL PRICE is for a maximum of two people (slightly higher for a family of three or four).”
17. On January 18, 2010, Respondents placed an advertisement on *craigslist.org* which carried the heading “\$740 / 2br – Winter Special - Downtown Close to Hospital” and began, “For a LIMITED TIME only for Two People (slightly higher for more than two) with GOOD credit score.”

Test 3

18. On January 21, 2010, Tester E called the phone number provided in the *craigslist.org* advertisements. Respondent Morris Zelikovsky answered the phone. Tester E inquired about the apartments advertised on *craigslist.org*. Respondent asked who the apartment was for, and Tester E replied that it was for herself and her son. Respondent asked what her son did during the day, and she explained that he was in preschool while she worked. Respondent and Tester E arranged to meet at the subject property on January 23.

19. On January 23, 2010, Tester E met with Respondent Morris Zelikovsky at the subject property. Respondent showed Tester E a non-renovated two-bedroom apartment, which he told her cost \$775 per month, and a one-bedroom apartment, which rented for \$675 per month. Tester E said that she wanted to move in in February 2010. Respondent told her that there were several vacancies. After returning to her car, Tester E called Respondent and said that she had a copy of a *craigslist.org* advertisement which stated that the rent for a two-bedroom apartment was \$740. Respondent then agreed to honor the advertised rental rate.
20. On January 22, 2010, Tester F called the phone number provided in the *craigslist.org* advertisements and spoke with Respondent Morris Zelikovsky. Tester F told Respondent that she was interested in renting an apartment for herself and her husband. Respondent asked Tester F if she had children, and she said she did not. Respondent and Tester F arranged to meet at the subject property the following day.
21. On January 23, 2010, Tester F met with Respondent Morris Zelikovsky at the subject property. Respondent asked how many people would be living in the apartment and whether Tester F had children, and Tester F replied that it would just be her and her husband. Respondent showed Tester F a two-bedroom apartment which he said rented for \$745 per month, and a one-bedroom apartment which rented for \$675 per month.

January 29, 2010 Advertisement

22. On January 29, 2010, Respondents placed an advertisement on *craigslist.org* which carried the heading "\$740 / 2br - Downtown Close to Hospital" and began, "Winter Special Price for Two Adults with good credit score (over 660)."

Test 4

23. On February 1, 2010, Tester G called the phone number provided in the *craigslist.org* advertisements. She inquired about the two-bedroom apartments advertised on *craigslist.org*, and was told that there were apartments available. Tester G noted that the advertisement stated that the special was for two adults, and that she was looking for an apartment to share with her child. She asked if that would be a problem, and was told, "It's just going to be higher at \$775 a month."
24. On February 1, 2010, Tester H called the phone number provided in the *craigslist.org* advertisements and spoke to Respondent Morris Zelikovsky. She inquired about the two-bedroom apartments advertised on *craigslist.org*. Respondent asked who would be living in the apartment, and Tester H

explained that it would be herself and her husband. Respondent asked, “No children?” and Tester H said that she did not have children. Respondent confirmed that the rent for the advertised apartment was \$740.

Rentals of Subject Property

25. During the time period that the above-referenced advertisements were placed on *craigslist.org*, Respondents rented one two-bedroom apartment. The apartment was rented on November 13, 2009, to two adults for \$740 per month.
26. Because his household, which included himself and two children, had more than two people, Tester A was not offered Respondents’ special two-bedroom apartment rate of \$740 per month.
27. Because her household included a child, Tester G was told that she would have to pay a higher monthly rent than a household with two adults.
28. Tester C, who identified herself as a single mother of one child, was told that the apartments she had viewed might not remain available during the time frame in which she wanted to move, while Tester D, who did not have children, was told that the same apartments would remain available for move-in during the same time frame.

Complainant’s Injury

29. As a result of Respondents’ discriminatory actions, Complainant expended significant time and resources. Complainant conducted a thorough investigation of Respondents’ housing advertisements, which required strategic planning, regular monitoring of *craigslist.org* advertisements, and testing. The resources expended in this investigation were diverted from Complainant’s other fair housing advocacy and educational programs.
30. Complainant launched education and outreach efforts specifically designed to counteract the damage caused by Respondents’ discriminatory actions. Complainant devoted staff time and monetary resources to develop a campaign, which included a newspaper advertisement, to inform Delaware County residents about familial status protections under the Act.

D. Fair Housing Act Violations

1. By imposing different rental charges on families with children, and discouraging families with children from applying for housing at the subject property, Respondents made a dwelling unavailable based on familial status, in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. §§ 100.60(a) and (b)(3) (2011).

2. Respondents' facially neutral policy of imposing different rental charges on households of more than two people disparately impacts families with children. The majority of families with children live in households of three or more people, and the majority of three-or-more-person households contain families with children. By enforcing such a policy, Respondents made dwellings unavailable based on familial status, in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. §§ 100.60(a) and (b)(3) (2011).
3. By charging higher rental rates for families with children, and offering less favorable rental terms to families with children, Respondents discriminated in the terms and conditions of rental based on familial status, in violation of 42 U.S.C. § 3604(b) and 24 C.F.R. §§ 100.65(a) and (b)(1) (2011).
4. Respondents' facially neutral policy of imposing different rental charges on households of more than two people disparately impacts families with children. The majority of families with children live in households of three or more people, and the majority of three-or-more-person households contain families with children. By enforcing such a policy, Respondents discriminated in the terms and conditions of rental based on familial status in violation of 42 U.S.C. § 3604(b) and 24 C.F.R. §§ 100.65(a) and (b)(1) (2011).
5. By publishing an advertisement which contained the language "Winter Special Price for Two Adults", Respondents indicated a preference against, limitation on, and discrimination against potential renters based on familial status, in violation of 42 U.S.C. § 3604(c) and 24 C.F.R. §§ 100.75(a) and (c)(2) (2011).

III. CONCLUSION

WHEREFORE, the Secretary of HUD, 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(a), (b) and (c), and prays that an order be issued that:

1. Declares that Respondents' discriminatory housing practice, as set forth above, violates the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
2. Pursuant to 42 U.S.C. § 3612(g)(3), enjoins Respondents and all other persons in active concert or participation with them, from discriminating against any person based on familial status in any aspect of a rental transaction;
3. Pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1), assesses a civil penalty against each Respondent for each violation of the Act;
4. Pursuant to 42 U.S.C. § 3612(g)(3), awards such damages as will fully compensate FHCSP for the diversion of its resources and out-of-pocket

expenses devoted to investigating and addressing the matter and frustration of its organizational mission.

The Secretary further prays for such additional relief as may be appropriate.

Respectfully submitted,

/S/

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/S/

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/S/

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