

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

The Secretary, United States Department of)
Housing and Urban Development, on behalf of)
XXXX,)
)
Charging Party,)
)
v.)
)
Magnolia Walk Apartments II, Ltd., Magnolia)
Walk Apartments II, Inc., Jotar Management)
Services, Inc. and/or its successor entity)
Jotar Management Services, LLC,)
Barbara Ferrentino, and Tashia Hale,)
)
)
Respondents.)
_____)

HUD ALJ No.
FHEO No. 04-10-0110-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 28, 2009, Complainant XXXX filed a complaint with the United States Department of Housing and Urban Development (“HUD” or “Charging Party”) alleging that Respondents Magnolia Walk Apartments, Ltd., Magnolia Walk Apartments II, Ltd., Jotar Management Services, Inc., Debbie Lloyd¹, and Barbara Ferrentino refused to make a reasonable accommodation in their rules, policies and/or practices in violation of subsection 804(f)(3)(B) of the Fair Housing Act, as amended (“Act”), 42 U.S.C. § 3604(f)(3)(B). The Complaint was amended on September 9, 2011 to add Tashia Hale, Magnolia Walk Apartments II, Inc., and Ocala Leased Housing Corporation, Inc. as respondents. The Complaint was further amended on September 22, 2011 to add Jotar Management Services, LLC as a respondent.

The Act authorizes the issuance of a Charge of Discrimination 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 or is about to occur. 42 U.S.C. § 3610(g)(1)-(2). The Secretary of HUD has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination and to the General Counsel the authority

¹ On September 29, 2011, Office of Fair Housing and Equal Opportunity issued a No Reasonable Cause Determination with regard to Respondents Magnolia Walk Apartments, Ltd., Debbie Lloyd and Ocala Leased Housing Corporation, Inc.

to issue a Charge of Discrimination. 74 Fed. Reg. 62801, 62802 (Dec. 1, 2009). The General Counsel has redelegated the authority to process cases arising under the Fair Housing Act to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice occurred in this case and has authorized the issuance of this Charge of Discrimination. *See* 42 U.S.C. § 3610(g)(2). HUD's efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C. § 3610(b).

II. THE LEGAL AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and the Determination of Reasonable Cause, Respondents Magnolia Walk Apartments II, Ltd., Magnolia Walk Apartments II, Inc., Jotar Management Services, Inc., and/or its successor entity Jotar Management Services, LLC, Barbara Ferrentino, and Tashia Hale are charged with violating 42 U.S.C. § 3604(f)(3)(B) as follows:

A. LEGAL AUTHORITY

1. It is unlawful to refuse to make reasonable accommodations in the rules, policies, practices or services, when such accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.24.
2. The Act defines disability as a physical or mental impairment which substantially limits one or more major life activities, a record of having such impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.21. The ability to breathe is a major life activity. 24 C.F.R. § 100.201(b).
3. General partners are jointly and severally liable for all obligations of a limited partnership unless otherwise agreed by the claimant or provided by law. § 620.1404, Fla. Stat. (2011).

B. PARTIES AND SUBJECT PROPERTIES

4. Complainant XXXX has a physical disability caused by Chronic Obstructive Pulmonary Disease ("COPD"), emphysema and limited eyesight.
5. Respondent Magnolia Walk Apartments II, Ltd. is a limited partnership that owns Magnolia Walk Apartments II. Magnolia Walk Apartments II, a development comprised of 144 apartments, is located at XXXX, Ocala, Florida 34471.
6. The Subject Properties are located within Magnolia Walk Apartments II at XXXX, Ocala, Florida 34471 ("Subject Property # 1") and XXXX, Ocala, Florida 34471

("Subject Property # 2").

7. At all times relevant to this Charge, Magnolia Walk Apartments II was a participant in the low-income housing tax credit program under § 42 of the Internal Revenue Code, 26 U.S.C. § 42 ("LIHTC"), administered through the Florida Housing Finance Corporation ("FHFC").
8. Complainant resided at Subject Property # 1 from January 1, 2006 to December 30, 2009. On December 31, 2009, she moved into Subject Property # 2.
9. At all times relevant to this Charge, Respondent Magnolia Walk Apartments II, Inc. was the general partner of Respondent Magnolia Walk Apartments II, Ltd.
10. At all times relevant to this Charge, Respondent Jotar Management Services, Inc. ("Jotar") managed the daily operation of Magnolia Walk Apartments II.
11. On March 25, 2011, Respondent Jotar was converted into Respondent Jotar Management Services, LLC ("Jotar LLC"). Respondent Jotar LLC has managed the daily operation of Magnolia Walk Apartments I and Magnolia Walk Apartments II since March 25, 2011.
12. At all times relevant to this Charge, Respondent Barbara Ferrentino was the on-site manager of Magnolia Walk Apartments II. Respondent Ferrentino has served in this capacity since March 15, 2004. Respondent Ferrentino is employed by Respondent Jotar. Respondent Ferrentino's duties include the receipt and processing of reasonable accommodate requests, the preparation of leases, and the collection of rent and fees from tenants.
13. At all times relevant to this Charge, Respondent Tashia Hale was the Vice President of Respondent Jotar and Respondent Ferrentino's direct supervisor.

C. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE

14. Magnolia Walk Apartments II is an apartment building subdivided into wings. Some of the wings are indentified by individual tax identification numbers. Respondent Jotar managed the daily operations of Magnolia Walk Apartments II.
15. Residents of Magnolia Walk Apartments II are permitted to smoke in their apartments and outside of the buildings, but are prohibited from smoking in common areas.
16. Subject Property # 1 is located on the second floor of Magnolia Walk Apartments II. During her residency in Subject Property # 1, Complainant advised that the tenants who resided in the apartments adjacent to and above Subject Property # 1 smoked. Complainant stated that smoke from other apartments entered into Subject Property # 1 from underneath the door and through the baseboards.

17. On October 16, 2008, Complainant complained of the inability to breathe and was transported to the Emergency Center of the Munroe Regional Medical Center at TimberRidge ("Emergency Center"). Complainant was diagnosed with chronic bronchitis, emphysema and a persistent cough. Complainant was advised by her physician to avoid any exposure to cigarette smoke because it will exacerbate her medical condition.
18. During early 2009, Complainant informed Respondent Ferrentino that smoke was coming into Subject Property # 1 and causing Complainant to become ill. Complainant requested to be transferred to another apartment. Respondent Ferrentino told Complainant that she must make a request for a reasonable accommodation in writing to Respondent Jotar.
19. On July 10, 2009, Complainant complained of the inability to breathe and was transported to the Emergency Center. Complainant was diagnosed with acute bronchitis and was advised to avoid exposure to second hand smoke.
20. In a letter dated July 17, 2009, Complainant informed Respondent Jotar of her July 10, 2009 visit to the Emergency Center. In the letter, Complainant advised that her neighbors' smoking was a health hazard and requested that Respondent Jotar take immediate action. Complainant suggested that she be moved to another apartment where none of the neighbors smoked. The letter was written by a friend on Complainant's behalf due to Complainant's limited eye sight.
21. In a letter dated July 21, 2009, Complainant informed Respondents Jotar and Hale that cigarette smoke was entering into Subject Property # 1 through the baseboards. Complainant told Respondent about her July 10, 2009 visit to the Emergency Center and that she was instructed to avoid exposure to second hand smoke. Complainant also advised that she previously complained about her neighbors' smoking to Respondent Ferrentino, but was told that residents have "the right" to smoke. Complainant requested that Respondent Jotar take immediate action to provide her with a "safe and healthy environment in which to enjoy [her] apartment." Complainant attached a copy of the discharge papers she received from the Emergency Center on July 10, 2009.
22. In response to Complainant's letters, Respondent Ferrentino informed Complainant that she would be permitted to re-caulk the baseboards of Subject Property # 1 at her own expense.
23. Although Respondent Ferrentino received Complainant's request to transfer apartments due to smoke, Respondent Ferrentino did not inspect Subject Property # 1 nor perform any tests to determine the point of entry or level of smoke in the apartment.

24. Complainant rejected Respondent Ferrentino's offer to allow Complainant to re-caulk the baseboards of Subject Property # 1. Complainant stated that re-caulking would be insufficient in preventing the entry of smoke into Subject Property # 1. Complainant verbally requested to be moved from Subject Property # 1 to Subject Property # 2.
25. Subject Property # 2 is one-bedroom apartment located in a separate wing from Subject Property # 1. Complainant requested to be transferred to Subject Property # 2 because it is located in between an elevator and an apartment occupied by a non-smoking tenant.
26. In August 2009, Respondent Ferrentino verbally denied Complainant's request to transfer to Subject Property # 2. Respondents Ferrentino and Hale informed Complainant that tax regulations prevented Complainant's transfer to Subject Property # 2. Respondent Ferrentino further stated that tax regulations required that Complainant be processed as a new tenant as a prerequisite to move into Subject Property # 2. Respondent Ferrentino also advised that Complainant would be required to pay a \$35 application fee and \$90 in additional security deposit. Additionally, Respondent Ferrentino stated that if Complainant moved to Subject Property # 2 prior to the expiration of her lease of Subject Property # 1, Complainant would be responsible for early termination fees and any additional fees associated with the move to Subject Property # 2.
27. Respondent Ferrentino offered to transfer Complainant to a vacant apartment on the first floor of Complainant's building.
28. Complainant verbally refused to move into the vacant apartment because it had previously been occupied by a tenant who smoked. Complainant again requested to be transferred to Subject Property # 2.
29. Respondent Ferrentino advised that Subject Property # 2 was unavailable and that Complainant had to be placed on a waiting list. Complainant requested to be placed on the waiting list for Subject Property # 2.
30. From July 2009 until December 31, 2009, Subject Property # 2 was unoccupied and utilized as a "model" unit for prospective tenants.
31. On or before December 30, 2009, Complainant paid a \$35 application fee and \$90 in additional security deposit to move into Subject Property # 2.
32. On December 30, 2009, Complainant's lease of Subject Property # 1 expired and Complainant moved into Subject Property # 2.
33. In August 2000, HUD, the U.S. Department of the Treasury, and the U.S. Department of Justice issued a Memorandum of Understanding concerning the Act and the LIHTC program. The Memorandum states that "[i]n accordance with § 1.42-9 of the

Income Tax Regulations, 26 C.F.R. § 1.42-9, low income housing income housing tax credit properties are to be rented in a manner consistent with the [Fair Housing] Act.” MEMORANDUM OF UNDERSTANDING AMONG THE DEPARTMENT OF THE TREASURY, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND THE DEPARTMENT OF JUSTICE (2000).

34. Subsection 1.42-9(a) of the Income Tax Regulations states the following:

[i]f a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) (24 CFR subtitle A and chapters I through XX).

26 C.F.R. § 1.42-9(a).

35. FHFC advised that it routinely permits LIHTC properties to transfer tenants to available apartments as a reasonable accommodation. FHFC also advised that it does not require LIHTC properties to charge a lease termination fee, application fee or security deposits to transfer a tenant to another apartment as a reasonable accommodation.
36. Respondents did not contact FHFC for guidance about the LIHTC program requirements or Complainant’s transfer to Subject Property # 2 as a reasonable accommodation.
37. Respondents did not contact HUD for guidance about housing policies governing non-discrimination as referenced in 26 CFR § 1.42-9(a).
38. During HUD’s investigation, FHLC advised that it routinely permits LIHTC properties to transfer tenants to available apartments as a reasonable accommodation. FHLC also advised that it does not require LIHTC properties to charge a lease termination fee, application fee or security deposits to transfer a tenant to another apartment as a reasonable accommodation.
39. Respondents did not contact FHLC for guidance about the LIHTC program requirements or Complainant’s transfer to Subject Property # 2 as a reasonable accommodation.
40. By refusing to transfer Complainant to Subject Property # 2 as a reasonable accommodation, Respondents Ferrentino and Hale violated 42 U.S.C. § 3604(f)(3)(B).

41. By denying and/or unreasonably delaying Complainant's accommodation request and refusing to waive the early lease termination fees and \$35 application fee, and requiring Complainant to pay an additional \$90 in security deposit, Respondents Ferrentino and Hale violated 42 U.S.C. § 3604(f)(3)(B).
42. Respondents Ferrentino and Hale were employed by Respondent Jotar and acted within their scope of employment or authority. Respondents Jotar, and/or its successor entity, Respondent Jotar LLC, is vicariously liable for Respondents Ferrentino and Hale's discriminatory acts.
43. At all times relevant to this Charge, Respondent Magnolia Walk Apartments II, Ltd. employed Respondent Jotar to manage the daily operation of Magnolia Walk Apartments II. Respondent Magnolia Walk Apartments II, Ltd. is vicariously liable for Respondent Jotar, and/or its successor entity Respondent Jotar LLC's, discriminatory acts.
44. At all times relevant to this Charge, Respondent Magnolia Walk Apartments II, Inc. is the general partner of Magnolia Walk Apartments II, Ltd. Magnolia Walk Apartments II, Inc. is vicariously liable for the discriminatory acts of Magnolia Walk Apartments II, Ltd.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Magnolia Walk Apartments II, Ltd., Magnolia Walk Apartments II, Inc., Jotar Management Services, Inc. and/or its successor entity Jotar Management Services, LLC, Barbara Ferrentino, and Tashia Hale with violating 42 U.S.C. § 3604(f)(3)(B) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act;
2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating against any person because of race and/or color, sex, familial status, disability, religion and national origin in any aspect of the rental, sale, occupancy, use, enjoyment, or advertisement of a dwelling;
3. Awards such monetary damages as will fully compensate Complainant XXXX for her economic loss, including but not limited to, out-of-pocket expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, and any and all other damages caused by Respondents' discriminatory conduct in violation of the Act;

4. Assesses a civil penalty against each Respondent for each violation of the Act each Respondent is liable for pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
5. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

_____/s/_____
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_____/s/_____
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_____/s/_____
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_____/s/_____
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Dated: September 29, 2011