

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)	
XXXX,)	
)	
Charging Party,)	HUD ALJ No.
)	FHEO No. 08-11-0181-8
)	
v.)	
)	
Fox Point at Redstone Association, Inc,)	
Property Management Systems, Inc, and)	
Derek Peterson.)	
)	
Respondents.)	
)	
)	

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about June 24, 2011, the complainant, XXXX (“Complainant”), filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondents Fox Point at Redstone Association, Inc., Property Management Systems, Inc., and Derek Peterson (collectively “Respondents”), committed discriminatory housing practices on the basis of disability in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”). The Complaint was subsequently amended on August 10, 2011.

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. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121), who has redelegated to the Regional Counsel (76 Fed. Reg. 42465), 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.

The Office of Fair Housing and Equal Opportunity Region VIII Director, 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 has occurred in this case and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents Fox Point at Redstone Association, Inc., Property Management Systems, Inc. and Derek Peterson 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(f) of the Act as follows:

1. It is unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap of that buyer or renter. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(b)(1).
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 with such a dwelling after it is sold. 42 U.S.C. § 3604(f)(2)(A) and (B). 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 an equal opportunity to use and enjoy a dwelling unit. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.
3. The subject property is a condominium unit in the Fox Point at Redstone development, a multifamily condominium complex, located at 1618 W. Redstone Avenue, Unit E, Park City, Utah 84098 ("Subject Property").
4. Complainant XXXX is a disabled veteran of the Gulf War suffering from an agitated form of depression. Complainant has a disability as defined by 42 U.S.C. § 3602(h).
5. Complainant rented the Subject Property from the owners of record, Brad Carter and Julie Ward-Carter (collectively "Owners"). The Owners utilized the services of a property management company and property manager for the rental of the Subject Property.
6. Respondent Fox Point at Redstone Association, Inc. ("Respondent HOA") is the community homeowner association for the Subject Property. At all times relevant to this Charge, Respondent HOA was responsible for the common rules and policies governing the condominium regime at Fox Point at Redstone and the Subject Property.
7. Respondent Property Management Systems, Inc. ("Respondent PMS") is the management agent for the Subject Property and agent of Respondent HOA. At all times relevant to this Charge, Respondent PMS was responsible for the daily management and operations at the Fox Point at Redstone development and the Subject Property.

8. Respondent Derek Peterson (“Respondent Peterson”) is a property manager and real estate sales agent for Respondent PMS. At all times relevant to this Charge, Respondent Peterson was responsible for the day-to-day operations and management of the Fox Point at Redstone development and Subject Property, including the processing of reasonable accommodation requests and the assessment of fines and fees.
9. Respondent HOA has a written pet policy at the Subject Property implemented on May 6, 2010. Respondent’s policy prohibits “outside pets” and requires a one-time \$150.00 registration fee for each pet and proof of liability coverage of at least \$100,000. The policy states in part:

Nothing in this policy shall preclude the ownership and possession of an animal which is required as, or which qualifies as a ‘service animal’ as allowed by the Federal Fair Housing Act: provided however that the Association [Respondent HOA] shall be entitled to require satisfactory evidence of the eligibility and need for any such animal and the Association may require that the service animal otherwise qualify where it is reasonable to do so, with the other provisions of this [pet] policy.
10. Respondent HOA has a 10-step written policy for processing requests for service animals. The process differs depending on whether the request is for an emotional support animal or whether the requestor’s disability is apparent.
11. For an emotional support animal, Respondent HOA’s policy requires a letter from a licensed mental health professional verifying the disability the animal is supporting, explaining how the animal serves as an accommodation, and explaining how the need for the animal relates to the person’s use and enjoyment of the living arrangements. The policy further requires the requestor sign a medical release authorizing their physician/health care provider to speak with a representative of Respondent HOA.
12. Respondent HOA’s service animal and emotional support policy requires the requestor to comply with their “pet policy” and pay a \$150.00 registration fee.
13. In or about May 2010, Complainant brought his emotional support animal¹, a labradoodle², to the subject property to live with him and his wife.
14. On or about May 24, 2010, Respondent Peterson emailed owner Brad Carter and informed him that Complainant had a dog at the Subject Property.

¹ Throughout this charge, the terms “emotional support animal” and “assistance animal” are used interchangeably.

² A labradoodle is a breed of dog that is a hybrid-cross between a Labrador Retriever and a Poodle.

15. On or about May 25, 2010, the Owners' property management company emailed Complainant and informed him that if he had a dog at the Subject Property he needed to remove the dog or be subject to fines and possible eviction.
16. On or about May 25, 2010, Complainant responded by email to the Owners' property management company and informed them that the dog was an emotional support animal under the Act, and not a pet, and the Respondents were required by law to make an exception to its pet policy.
17. On or about May 25, 2010, the Owners' property management company emailed Complainant and informed him he needed to provide medical documentation to support his request, fill out Respondent HOA's pet registration paperwork, and comply with all of Respondent HOA's other requirements, including payment of Respondent HOA's registration fee for pets.
18. On or about May 25, 2010, Complainant forwarded a scanned prescription dated May 14, 2010, from a doctor at the Veterans' Administration that stated "[Complainant] is a Gulf War veteran and is currently under my care. I believe his dog is therapeutic for him."
19. On or about May 25, 2010, the Owners' property management company acknowledged the reasonable accommodation request but maintained that Complainant still needed to fill out the Respondent HOA's registration, sign a lease addendum, and pay the Respondent HOA's registration fee.
20. On or about May 25, 2010, Complainant responded by email that charging a fee for an emotional support animal would violate the Act. Complainant agreed to fill out most of the Respondent HOA's registration form, but steadfastly refused to pay the pet registration fee.
21. On or about May 27, 2010, Complainant provided the Owners' property management company with additional documentation required by Respondent HOA's pet registration policy including the county pet license, a filled-out, but unsigned Respondent HOA pet registration form, and inoculation records for the dog; Complainant did not pay the \$150 pet registration fee. The Owners' property manager provided this information to Respondent Peterson and informed Complainant he needed to work directly with Respondent HOA to process his reasonable accommodation request.
22. On or about June 1, 2010, Complainant provided to Respondent Peterson a letter from Complainant's psychotherapist, dated May 28, 2010. The letter identified Complainant as a person with a disability, identified limitations Complainant confronts as a result of his disability, and opined that an emotional support animal would alleviate these limitations and would enhance Complainant's ability to fully use and enjoy the Subject Property.

23. Complainant informed Respondent Peterson that he did not want Respondent Peterson to share his private medical information with Respondent HOA's Board, as the Board is comprised of his neighbors.
24. On or about June 3, 2010, the attorney for Respondent HOA sent Complainant an email asserting that Respondent HOA had the right to request and receive appropriate medical information in support of the reasonable accommodation request, and that access to such information should not be restricted.
25. On or about June 3, 2010, Complainant responded to Respondent HOA's attorney's email stating that he had adequately substantiated his disability and need for his emotional support animal when he provided Respondent Peterson with the letter from Complainant's psychotherapist. Complainant disputed the need for the Board members, who are his neighbors, to review his private medical information.
26. On or about June 22, 2010, Respondent HOA's attorney responded by email that the Complainant's position was unwarranted and that Complainant had not provided adequate substantiation of the disability or necessity for the animal. Respondent HOA's attorney went on to inform Complainant he would recommend enforcement action be taken.
27. On or about June 22, 2010, Complainant responded to Respondent HOA's attorney and Respondent Peterson, in relevant part:

Once again I have cooperated fully with the request of information. Asking me to share my private medical information with all my neighbors is unreasonable. If you need to substantiate my disability, then [Respondent] Derek Peterson has the contact information to do so. Ask him to contact my provider to substantiate the document with my medical condition. The board hired Mr. Peterson to represent them, so I'm sure they can trust his word on this matter.
28. Respondent PMS and Respondent Peterson were authorized by Respondent HOA to process and handle reasonable accommodation requests at Fox Point at Redstone and the Subject Property.
29. According to Respondent Peterson, the medical documentation provided by Complainant was satisfactory to establish the disability and show necessity, and the sole point of contention between Complainant, Respondent HOA, and Respondent Peterson was the payment of the pet registration fee.
30. On or about July 6, 2010, the Owners' property management company forwarded to Complainant by email a copy of a letter from Respondent HOA dated July 2, 2010, fining the Owners \$150 for an animal being present in the Subject Property and

- barking. Owners' property management company informed Complainant that he would need to pay the fines immediately.
31. On or about July 6, 2010, Complainant refused to pay the fine assessed against the Owners, stating in relevant part that "my dog is not a pet, but a service animal and fees do not apply."
 32. On or about July 8, 2010, Respondent Peterson emailed Complainant, with the Owners, their property manager, and Respondent HOA's attorney all carbon copied, to acknowledge receipt of his pet registration form. Respondent Peterson further requested that Complainant provide a liability insurance certificate for the animal to Respondent HOA and also requested the \$150 registration fee from Owners' property managers.
 33. On or about July 8, 2010, Owners' property manager responded that Complainant would need to pay the registration fee.
 34. On or about July 8, 2010, Respondent Peterson responded to the Owner's property manager that the Owner should take the fee out of Complainant's security deposit.
 35. On or about July 12, 2010, Complainant sent separate identical letters to the Owner's management company and Respondent Peterson requesting they allow the emotional support animal as a reasonable accommodation and to remove any fines and registration fee.
 36. On or about July 29, 2010, Complainant, Complainant's attorney advocate, Owner Brad Carter, Respondent Peterson, and Respondent HOA's attorney held a conference call to discuss the issues that are subject of this Charge. During that conference call, no resolution was reached between the parties on the sole remaining issue, which was payment of the pet registration fee. Complainant continued to assert the registration fee for the assistance animal was illegal and Respondents disagreed. Complainant agreed to purchase the required liability insurance, but refused to pay the required registration fee.
 37. On or about August 2, 2010, Respondent Peterson informed Complainant that he, Respondent HOA's attorney, and Respondent HOA had reviewed Complainant's requested accommodation to rescind the registration fee for Complainant's assistance animal, and that they refused to waive the pet registration fee.
 38. On or about August 23, 2010, Respondent Peterson informed the Owners that Respondent HOA had assessed a \$50 fine against them. The fine letter stated that the fine was being imposed because the Owners, despite previous warnings, were still allowing Complainant to keep an animal at the Subject Property.
 39. On or about September 15, 2010, Respondent Peterson informed the Owners that Respondent HOA had assessed a \$75 fine against them. The fine letter stated that the

fine was being imposed because the Owners, despite previous warnings, were still allowing Complainant to keep an animal at the Subject Property.

40. On or about September 16, 2010, Respondent Peterson informed the Owners that Respondent HOA had assessed a \$100 fine against them. The letter stated that the fine was being imposed because the Owners, despite previous warnings, were still allowing a Complainant to keep an animal at the Subject Property.
41. The assessment and collection of these fines were entrusted to Respondents PMS and Peterson by Respondent HOA. Respondent HOA delegated the assessment and collection of fines and fees to its agents, Respondents PMS and Peterson. Respondent HOA's attorney was also heavily involved in the assessment of fines on the Owners, and, in turn on Complainant.
42. Respondent HOA imposed the first fine on July 2, 2010, after its agent, Respondent Peterson, had sufficient information to establish Complainant's disability and the need for the emotional assistant animal.
43. Respondent HOA imposed the last three fines on, August 23, 2010, September 15, 2010, and September 16, 2010, well after Respondent HOA through its agent, had conceded that the dog was an assistance animal and not a pet.
44. Complainant's lease with the Owners was set to expire on September 30, 2010.
45. On or about September 7, 2010, Complainant emailed the Owners and the Owners' property manager to express Complainant's willingness to extend the lease.
46. On or about September 10, 2010, the Owner's property manager informed Complainant that the Owners were willing to extend the lease if Complainant paid the \$150.00 registration fee, and paid \$200.00 in fines that Respondents imposed on the Owners.
47. Complainant declined the conditional offer to renew the lease and moved out of the Subject Property.
48. On or about October 21, 2010, the Owners' property manager refunded a portion of Complainant's security deposit, but deducted \$150.00 for the "1st Pet violation assessment charged by HOA," and \$98.92 for dry cleaning drapes to remove dog hair from the curtains.
49. In or about September 2010, Respondent Peterson discussed the fines imposed by Respondent HOA on the Owners with them and reassured them that the Owners should seek forgiveness of the fines after the Complainant's departure.

50. Subsequent to Complainant moving out of the Subject Property, Respondents waived all fines and fees assessed against the Owners except for \$150.00, which was taken out of Complainant's deposit.
51. Respondents violated the Act by discriminating against the Complainant in the terms, conditions, or privileges of the rental of a dwelling, by refusing to make a reasonable accommodation to modify their pet policy, when such an accommodation was necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling. 42 U.S.C. §§ 3604(f)(2)(B) and (f)(3)(B); 24 C.F.R. §100.204.
52. Respondents violated the Act by making housing unavailable to Complainant because of his disability. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(b)(1).
53. Respondents violated the Act by imposing a fee for Complainant's assistance animal. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(b)(1).
54. Respondents violated the Act by imposing fines for Complainant's assistance animal. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(b)(1).
55. Respondents violated the Act by maintaining a discriminatory policy in which those with certain disabilities were required to go through additional steps to obtain an accommodation necessary for equal enjoyment of the property. 42 U.S.C. § 3604(f).
56. Respondents violated the Act by insisting that Complainant consent to the release of his private medical information when such a release was not necessary to grant a needed accommodation. 42 U.S.C § 3604(f).
57. As a result of Respondents' discriminatory conduct, Complainant and his wife suffered damages including but not limited to physical and emotion distress, anxiety, and inconvenience.
58. As a result of Respondents' discriminatory conduct, Complainant and his wife suffered economic damages including but not limited to relocation costs, loss of a portion of their security deposit, the cost of a liability insurance policy for the assistance animal, and other miscellaneous costs.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) (2004) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Section 3604(f) and 3618 of the Act, and prays that an order be issued that:

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

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 disability in any aspect of the rental, sale, use, or enjoyment of a dwelling;
3. Awards such damages as will fully compensate the Complainant for his actual damage, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Assesses a \$16,000 civil penalty against each Respondent for each violation of the Act committed pursuant to 42 U.S.C. §3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,

_____/s/_____
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_____/s/_____
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