

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

Housing Opportunities Made Equal,

Charging Party,

v.

HUDALJ No.:
FHEO No.: 05-10-0849-8

William A. Moore, Jr., Cincinnati Capital Partners
LXXIII, LLC., and Paula Wisham,

Respondents.

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about March 25, 2010, Complainant Housing Opportunities Made Equal ("Complainant HOME") filed a verified complaint with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondents William Moore, Cincinnati Capital Partners LXXIII, LLC., and Paula Wisham (collectively referred to as "Respondents"), violated the Fair Housing Act as amended in 1988, 42 U.S.C. §3601 *et seq.* (the "Act"), by discriminating based on race (African American), specifically, in violation of 42 U.S.C. §3604(a), and (d).¹

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 retained and re-delegated to the Regional Counsel (73 Fed.Reg. 68442) 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 V Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that

The Ohio Civil Rights Commission waived jurisdiction over the complaint to HUD's Office of Fair Housing and Equal Opportunity on or about March 31, 2010.

reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on race (African American), and has authorized and directed the issuance of this Charge of Discrimination ("Charge").

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 are charged with discriminating against Complainant HOME, an aggrieved person as defined by 42 U.S.C. §3602(i), based on race, in violation of 42 U.S.C. §3604(a) and (d) as follows:

1. It is unlawful to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604(a).
2. It is unlawful to represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available. 42 U.S.C. §3604(d).
3. Complainant HOME is a private nonprofit fair housing agency serving the greater Cincinnati area. HOME's stated mission is to eliminate illegal housing discrimination, especially racial discrimination, and to promote balanced living patterns. HOME offers a range of services which include but are not limited to, assisting persons who believe they have suffered housing discrimination, investigating claims of housing discrimination, taking actions to enforce fair housing laws, providing training and community outreach on fair housing laws and issues, and providing other housing-related services.
4. At all times relevant to this Charge, Cincinnati Capital Partners LXXIII, LLC., owned Valley Woods Apartments, the property located at 2156 to 2175 Karla Drive, Cincinnati, Ohio 45211 (the "subject property"). The subject property consists of multiple apartment buildings, containing 63 rental units.
5. At all times relevant to this Charge, Respondent William A. Moore, Jr. ("Respondent Moore") and Respondent Paula Wisham ("Respondent Wisham") were responsible for the management and daily operation of the subject property. On information and belief, Respondent Moore is the only partner in Cincinnati Capital Partners LXXIII, LLC and identifies himself as the "owner" of the subject property.
6. At all times relevant to this Charge, Respondent Moore's duties included collecting rent, showing prospective tenants available units, when Respondent Wisham was not available, handling maintenance requests, repairing and rehabbing the subject property, approving rental applications, and conducting limited background checks of prospective tenants.

7. At all times relevant to this Charge, Respondent Paula Wisham was a 15-year resident at the subject property and, for 5 of those years, the onsite property manager, until her termination on March 31, 2010.
8. At all times relevant to this Charge, Respondent Wisham's duties included serving as the contact person for tenants and prospective tenants, receiving maintenance requests, screening calls from prospective tenants and showing available units to prospective tenants, a duty she shared with Respondent Moore.
9. During Respondent Wisham's tenure as onsite property manager, Respondent Moore advertised available units for rent at the subject property with two yard signs that contained Respondent Wisham's cell phone number, specifically, [REDACTED]. Respondent Moore's telephone number was [REDACTED].
10. In or around 2010, Complainant HOME was contacted by an anonymous caller who identified herself as an African American tenant of the subject property, who had lived there for many years. The anonymous caller expressed concern that the demographics of the subject property were rapidly changing from predominantly African American to predominantly Hispanic.
11. As part of its investigation and enforcement programs, Complainant HOME conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices. In response to the complaint it received about the subject property from the anonymous caller, Complainant HOME organized a test of Respondents' rental practices, to examine the treatment of African American and Hispanic prospective tenants.
12. In or around February and March of 2010, Complainant HOME conducted two matched tests of the subject property, each employing an African American male tester and a Hispanic male tester, who posed as prospective tenants inquiring about available rentals at the subject property.
13. On or about Tuesday, February 23, 2010, African American Tester 1 called [REDACTED], Respondent Wisham's telephone number, and spoke to a woman who identified herself as "Paula," on information and belief, Respondent Paula Wisham. In response to his inquiry about an available unit, Respondent Wisham replied that the available unit may be rented and advised him to call back that Thursday.
14. On or about Thursday, February 25, 2010, African American Tester 1 again called [REDACTED], Respondent Wisham's telephone number, and was told that the unit was still available but that he would have to call back on Friday, February 26, 2010 to set up an appointment for Saturday, February 27, 2010.
15. On or about February 26, 2010, African American Tester 1 again called [REDACTED], Respondent Wisham's telephone number, as instructed, and spoke to a woman who identified herself as "Paula," on information and belief, Respondent Paula Wisham. This time, Respondent Wisham told him that she was waiting for an

applicant to pay a deposit for the available unit at the subject property sometime that weekend. She requested that African American Tester 1 call back the following Wednesday or Thursday after 3:00 p.m. to find out if the unit was rented or not.

16. African American Tester 1 did not call Respondent Wisham's telephone number again. Instead, he called Complainant HOME, who instructed him to terminate contact with Respondents.
17. The very next day, on or about Saturday, February 27, 2010, Hispanic Tester 2 called [REDACTED], Respondent Wisham's telephone number. The call was answered by a recorded voice mail message. Later in the day on February 27, 2010, Hispanic Tester 2 again called [REDACTED], Respondent Wisham's telephone number, and spoke to a woman who identified herself as "Paula," on information and belief, Respondent Paula Wisham. Immediately upon hearing Hispanic Tester 2's voice, Respondent Wisham asked, in Spanish, whether Hispanic Tester 2 wanted to see an available unit. In contrast to her conversation with African American Tester 1, Respondent Wisham did not mention that she was waiting for an applicant to deliver a deposit to hold the available unit at the subject property. In fact, Respondent Wisham offered to show the available unit at the subject property to Hispanic Tester 2 that day. When Hispanic Tester 2 told Respondent Wisham that he was unavailable to see a unit that day, she then offered to show the unit to him on Sunday, February 28, 2010.
18. Respondent Wisham told Hispanic Tester 2 that the available unit at the subject property rented for either \$425 or \$435.
19. On or about Sunday, February 28, 2010, Hispanic Tester 2 called [REDACTED], Respondent Wisham's telephone number. When he reached Respondent Wisham, she spoke to the tester in Spanish and scheduled a showing for March 1, 2010. Respondent Wisham recalled speaking with Hispanic Tester 2 previously. She said she asked if he was coming that day to view the unit or if he preferred to come the next day. They agreed he would call the next day to see the apartment.
20. On or about March 2, 2010, Hispanic Tester 2 again called [REDACTED], Respondent Wisham's telephone number, and asked whether a unit was still available. Respondent Wisham confirmed that the two bedroom unit was still available. She also told him that the rent was about \$425 or \$435. Hispanic Tester 2 asked if he could see the unit that day after 5:30 p.m. or the next day at noon. Respondent Wisham responded affirmatively and instructed the tester to call "Bill," the owner, at [REDACTED]—Respondent Moore's phone number—one hour before coming to see the unit.
21. On or about March 3, 2010, Hispanic Tester 2 called [REDACTED], Respondent Wisham's telephone number, and confirmed his appointment to see the rental unit. Respondent Wisham offered to call the owner and call Hispanic Tester 2 back. Shortly thereafter, Respondent Wisham called Hispanic Tester 2 back and told him it was okay for him to see the available unit later that day. Respondent Wisham again

advised Tester 2 that he needed to call "Bill," the owner, at [REDACTED]— Respondent Moore's telephone number—before going to the property. She told him that the two bedroom unit was still available, and that if he liked the unit, he could put down \$50 or \$100. She said, that way, if someone else was interested in the unit, it would be reserved for him. Respondent Wisham told Hispanic Tester 2 that a deposit was not necessary, just a little money down to reserve the unit, or words to that effect. She also told him that it was a "very good" unit. Before concluding the call, Respondent Wisham asked Hispanic Tester 2 whether he was from Honduras, Guatemala, or Mexico. Hispanic Tester 2 responded that he was from Mexico. Respondent Wisham disclosed that there were many people at the subject property from Guatemala, Mexico and Honduras, and that they spoke Spanish. She again invited him to call and to come that day to view the unit.

22. Later that same day, Hispanic Tester 2 called Respondent Moore, as directed by Respondent Wisham. They agreed to meet at the subject property at 6:00 p.m. that day. Respondent Moore showed Hispanic Tester 2, unit #9 in building 2160. The unit had two bedrooms and rented for \$435. Respondent Moore told Hispanic Tester 2 that the only rental criteria was to fill out the application and pay the deposit. Respondent Moore provided Hispanic Tester 2 an application. On the application he wrote, "[REDACTED], 3-3-10, 2160 Karla #9, \$435, 2 bedroom."
23. On or about March 15, 2010, African American Tester 3 called [REDACTED], Respondent Wisham's phone number. The call was directed to a voice recorded message. Shortly thereafter, African American Tester 3 received a return call. African American Tester 3 was told that the available unit at the subject property was a 2 bedroom unit, renting for \$425, but that it had been rented and was no longer available. African American Tester 3 was told that it was unknown when another unit would be available and he was advised to call back in two weeks.
24. On or about March 16, 2010, the very next day, Hispanic Tester 4 called [REDACTED], Respondent Wisham's phone number, and spoke to a woman later identified as Respondent Paula Wisham. When Respondent Wisham heard Hispanic Tester 4's voice, she spoke to him in Spanish. She offered Hispanic Tester 4 a showing of the available unit at the subject property that day.
25. On or about March 16, 2010, Hispanic Tester 4 met with Respondent Wisham at the subject property. Hispanic Tester 4 was shown a 2 bedroom unit in building #2160. Respondent Wisham told Hispanic Tester 4 that the unit was the only 2 bedroom unit then available, that it was immediately available, and rented for \$425 per month. Respondent Wisham asked Hispanic Tester 4 where he was from and what he did for a living. Although she did not give him an application, she told him that there were no criteria required to qualify to rent the apartment.
26. On information and belief, Hispanic Tester 4 was shown the same unit as Hispanic Tester 2, unit #9 in building #2160.

27. On information and belief, at all times relevant to this Charge, the only available rental unit was unit #9 in building #2160. While there were other vacant units at the subject property at relevant times to this Charge, on information and belief, those units were not then habitable.
28. On or about March 25, 2010, Complainant HOME filed its housing discrimination complaint with HUD, jurisdiction over which was waived to HUD by the Ohio Civil Rights Commission. Respondent Moore received notice of the fair housing complaint on or about March 29, 2010. Respondent Wisham was terminated on or about March 31, 2010.
29. In or around April of 2010, Respondent Moore showed unit #9 in building #2160 at the subject property to an African American male, [REDACTED], who gave Respondent Moore a deposit to hold the unit. On or about May 1, 2010, [REDACTED] and his African American roommate took possession of the unit. Prior to [REDACTED] taking possession, the unit had been vacant for at least four months.
30. Respondents do not require tenants to enter into written leases or disclose their telephone numbers to Respondents. Respondents do take rental applications, but failed to produce more than 2 rental applications during the course of the HUD investigation.
31. Evidence submitted by Respondent Moore during the HUD investigation demonstrates that a majority of tenants at the subject property are of Hispanic national origin.
32. It is the policy and practice of Respondents to hold a unit for a prospective tenant for up to five days upon either the tendering of a deposit or a verbal request, depending on demand for the unit. However, at no time relevant to this Charge did Respondents receive a deposit for unit #9 in building #2160 at the subject property, nor did they receive a verbal request to hold the unit for a prospective tenant.
33. Respondent Moore admits that unit #9 in building #2160 was available at the time of the testing, was vacant for at least four months and that he was anxious to get it rented.
34. Respondent Moore admits that he was aware that, during the time that he has owned and/or managed the subject property, the tenant population has changed from predominantly African American to predominantly Hispanic.
35. Respondent Wisham admits that when she moved into the subject property, now approximately 17 years ago, the tenant population was predominately African American.
36. During the investigation, African American tenant [REDACTED] told a HUD investigator that Respondent Wisham was reluctant to enforce quiet enjoyment rules against her Hispanic neighbors at the subject property. Specifically, [REDACTED]

stated that when her Hispanic neighbors were playing their music too loudly and she complained, Respondent Wisham didn't want to address the issue. When [REDACTED] insisted, Respondent Wisham addressed the complaint, but treated [REDACTED] with "attitude." [REDACTED] stated that because Respondent Wisham was reluctant to address concerns with Hispanic tenants, [REDACTED] circumvented Respondent Wisham, bringing her complaints directly to Respondent Moore. [REDACTED] also stated that Respondent Wisham had a reputation for going "against her own color." [REDACTED] also states that Respondent Wisham once claimed to be of Honduran national origin.

37. During the investigation, African American tenant [REDACTED], a tenant of approximately 12 years at the time of his interview, stated that the population of the subject property had shifted from predominantly African American to predominantly Hispanic in the "last few years," during which time Respondent Wisham was the property manager.
38. During the investigation, African American tenant [REDACTED], a tenant of approximately 22 years at the time of her interview, stated that Respondent Wisham admitted to her that she would not rent to black prospective tenants when they called.
39. Respondents unlawfully denied and/or made housing unavailable based on race in violation of 42 U.S.C. § 3604(a) when Respondent Wisham refused to negotiate for and/or otherwise made unavailable or denied a dwelling to Complainant HOME's African American testers.
40. Respondents unlawfully represented that the subject property was not available for inspection when it was, in fact, so available, in violation of 42 U.S.C. §3604(d) when Respondent Wisham told African American Tester 1 that an available unit at the subject property may have been rented when it was not rented and that she was waiting for a deposit when she was not waiting for a deposit; while the next day encouraging Hispanic Tester 2 to view the same available unit.
41. Respondents again unlawfully represented that the subject property was not available for inspection or rental when it was, in fact, so available, in violation of 42 U.S.C. §3604(d) when Respondent Wisham told African American Tester 3 that the available unit at the subject property had been rented when it had not, and that it was unknown when another unit would be available, or similar words to that effect, while the next day encouraging Hispanic Tester 4 to view the available unit.
42. Complainant HOME is an aggrieved person within the meaning of 42 U.S.C. §3602(i). As a result of Respondents' discriminatory conduct, Complainant HOME has suffered frustration of its mission and diversion of its resources away from other fair housing activities, including advocacy services, education and outreach, testing, enforcement activities and counseling in order to address Respondents' discriminatory conduct.

43. As a result of Respondents' discriminatory conduct, an unknown number of prospective African American tenants were discouraged or refused rental at the subject property. In addition, Complainant HOME was forced to divert some of its scarce resources away from its other activities in order to investigate Respondents' discriminatory conduct by testing the subject property and investigating the allegations made by the anonymous caller.
44. In addition, Respondents' discriminatory policies frustrated Complainant HOME's mission and interfered with its ability to ensure that its constituents are able to seek and obtain housing without being subject to discrimination, or seek and obtain housing of their choice regardless of their race.

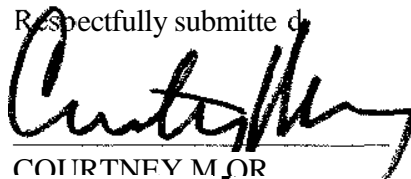
III. CONCLUSION

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

1. Declares that the discriminatory housing practices of 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 any of them from discriminating because of race against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such monetary damages as will fully compensate Complainant HOME, an aggrieved person, for any and all other damages caused by Respondents' discriminatory conduct; and
4. Awards a \$16,000 civil penalty against each Respondent for violations 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).

Respectfully submitted



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