Secretary, United States Department of Housing and Urban Development, on behalf of Complainant

Charging Party,

v.

CATCH Neighborhood Housing, MB Management Company, LLC, & Gerald Walsh,

Respondents.

HUD ALJ No.
FHEO No. 01-12-0391-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On August 17, 2012, Complainant filed a complaint with the United States Department of Housing and Urban Development ("HUD"), alleging that Respondents discriminated against her in violation of the Fair Housing Act ("the Act"), as amended, 42 U.S.C. Sections 3601-3619.

The Act authorizes the Secretary of HUD to issue 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), (2). The Secretary has delegated to the General Counsel, who has redelegated to the Regional Counsel, 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. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity for New England, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case, and she has authorized the issuance of this Charge of Discrimination by the Regional Counsel. 42 U.S.C. § 3610(g)(2).
II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the findings contained in the attached Determination of Reasonable Cause, the Secretary charges Respondents 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 sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of the disability of that person or a person residing in that dwelling after it is so sold, rented, or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

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 such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

B. PARTIES AND SUBJECT PROPERTY

3. Complainant ("Complainant") is a disabled individual under the Act as she suffers from chronic urticarial with autoimmune thyroiditis substantially limiting major life activities, including her ability to work. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

4. Complainant is an aggrieved person under the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

5. At all times relevant to this action, Complainant lived in Concord, New Hampshire. This property constitutes a dwelling under the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

6. Mennino Place is owned by Respondent CATCH Neighborhood Housing ("CATCH"), located at 76 South State Street in Concord, New Hampshire.

7. At all times relevant to this action, CATCH employed Respondent MB Management Company, LLC ("MB Management") to provide property management services for Mennino Place.

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1 Although the term "handicap" appears in the Fair Housing Act, the Charge and Determination will use "disability" in its place.
8. At all times relevant to this action, Respondent Gerald Walsh ("Respondent Walsh") was employed by Respondent MB Management as the Site Manager for Mennino Place.

C. FACTUAL ALLEGATIONS

9. When Respondent CATCH opened Mennino Place in Fall 2011, Respondent MB Management installed one floor air conditioning unit in each apartment in the building.


11. On that occasion, Complainant spoke to Lynn Gamelin, an employee of Respondent MB Management, who told her that she would look into the issue and get back to her.

12. On June 22, 2012, Complainant called Respondent MB Management again and was informed by Ms. Gamelin that window air conditioners violate the development’s rules. Ms. Gamelin told Complainant that she would need to either purchase an additional floor air conditioner or convince a non-profit organization to purchase one for her.

13. On July 2, 2012, in a hand written letter to Respondent Walsh, Complainant stated that she required a second air conditioning unit for her apartment as her disability required a cooler environment. Complainant attached a doctor’s letter, dated June 25, 2012, to the July 2, 2012 correspondence. This letter stated that Complainant’s medical condition was exacerbated by heat and recommended the use of a window air conditioning unit.

14. On July 9, 2012, Respondents provided Complainant with a Reasonable Accommodation form to be filled out by Complainant and two certification forms to be filled out by her medical provider.

15. Complainant returned the Reasonable Accommodation form to Ms. Gamelin on July 10, 2012. On the form, Complainant wrote that she had a medical need for a second air conditioner, that she could not afford to purchase the floor air conditioning unit required by Respondents, and that she already owned a window air conditioning unit she could use.

16. On July 16, 2012, Complainant’s doctor faxed completed copies of Respondents’ certification forms to Respondent Walsh. On the form entitled “Reasonable Accommodation Certification of Need” Complainant’s doctor stated “current air conditioner does not adequately cool her apartment and her medical disability flares and worsens. I suggest a window air conditioner.” Complainant’s doctor also checked a box stating: “I verify that the enclosed request for changes to the apartment or common area or to the rules, policies, and procedures is necessary to the
Applicant/Resident, as a result of his/her disability in order to have an equal housing opportunity.”

17. On the form Management entitled “Certification of Need for Special Reasonable Accommodation: Companion Pet, Changes to Existing Unit or Special Unit,” Complainant’s doctor stated that “The resident needs adequate air conditioning to cool her apartment. Currently, the air conditioning system does not provide adequate cooling. If needed, central air or a window unit should be installed.” The doctor also checked a box on the form indicating that Complainant had a disability and that the “request for changes to the unit or common area or to policies and procedures is necessary for the above named person, as a result of his/her disability to have equal housing opportunity.”

18. On July 23, 2012, Complainant installed the window air conditioning unit in her apartment.

19. On August 2, 2012, Complainant called Respondent Walsh to ask about the status of her reasonable accommodation request.

20. During this conversation, Respondent Walsh informed Complainant that he needed to contact Complainant’s medical provider and that, until a request was granted, Complainant’s use of the window air conditioning unit was in violation of her lease.

21. In a letter dated August 8, 2012, Respondent Walsh wrote to Complainant that the use of a window air conditioning unit was a violation of her lease and that while her request for an additional air conditioner was not being denied, she would need to procure a floor air conditioning unit. The letter suggested that she attempt to buy another floor air conditioning unit from one of her neighbors.

22. In September 2012, Complainant removed the window air conditioning unit.

D. FAIR HOUSING ACT VIOLATIONS

23. Respondents have discriminated in the terms and conditions of the rental of an apartment through their refusal to make a reasonable accommodation to allow Complainant to install and operate a window air conditioning unit. 42 U.S.C. § 3604(f)(2); 42 U.S.C. § 3604(f)(3)(B).

24. Respondent MB Management is vicariously liable for the actions and omissions of its agent, Respondent Walsh.

25. Respondent CATCH is vicariously liable for the actions and omissions of its agents, Respondent Walsh and Respondent MB Management.

26. As a result of the Respondents’ actions, Complainant has suffered actual damages including but not limited to emotional distress and inconvenience.
III. CONCLUSION

WHEREFORE, the Secretary of Housing and Urban Development, through the Office of the Regional Counsel for New England, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of the Fair Housing 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. §§ 3601-3619;

2. Enjoins Respondents from further violations of 42 U.S.C. § 3604(f)(1),(3) of the Act;

3. Awards such damages as will fully compensate Complainant for her economic loss and emotional distress caused by Respondents’ discriminatory conduct;

4. Awards a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3);

5. 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

Christopher C. Ligatti
Attorney

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Date: 2/25/2013
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Charge of Discrimination, Determination of Reasonable Cause, and Important Notice in FHEO Case No. 01-12-0391-8 were sent this 25th of February, 2013, to the following by United Parcel Service overnight delivery:

CATCH Neighborhood Housing
c/o Rosemary Heard, President
76 South State Street
Concord, NH 03301

MB Management Company, LLC
c/o C T Corporation System
9 Capitol Street
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MB Management Company, LLC
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Sybil O'Connell
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