UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, Charging Party, on behalf of: NICOLE WILLIAMS, Complainant, v. QUANG DANGTRAN, HA NGUYEN, and HQD ENTERPRISE, LLC, Respondents.	19-AF-0148-FH-015 October 24, 2019

RULING ON SUMMARY JUDGMENT

The above-captioned matter, set for hearing beginning on March 10, 2020, arises from a *Charge of Discrimination* filed by the U.S. Department of Housing and Urban Development ("HUD") on behalf of Nicole Williams ("Complainant") against Quang Dangtran, Ha Nguyen, and HQD Enterprise, LLC (collectively, "Respondents") pursuant to the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* ("the Act"), as implemented by 24 C.F.R part 180. The matter is currently before the Court upon the parties' competing motions for summary judgment.

BACKGROUND

Respondents are the owners and landlords of a 5-bedroom home in Plano, Texas. Respondents Dangtran and Nguyen reside in the home, but rent some of the bedrooms to other people. The *Charge of Discrimination* alleges that Respondents, as landlords of the subject property, discriminated against Complainant, who is black, by (1) posting a discriminatory housing advertisement, in violation of section 804(c) of the Act; (2) making a discriminatory statement, also in violation of section 804(c) of the Act; and (3) refusing to negotiate a room rental with Complainant because of her race, in violation of section 804(a) of the Act. See 42 U.S.C. § 3604(a), (c).

It is undisputed that, at some point prior to October 3, 2016, Respondent Dangtran placed a housing advertisement on Craigslist pertaining to the subject property. The advertisement stated: "I have 1 room available for rent in a 5 bedrooms [sic] home for professional only ... If you feel you qualify, please response [sic] with your brief description about yourself, race and age; and a recent picture of you."

On October 3, 2016, Complainant viewed the Craigslist advertisement and contacted Respondent Dangtran to express interest. Dangtran asked Complainant to provide a picture of herself, but she declined to do so. Nonetheless, Dangtran later agreed to meet Complainant at the subject property.

Dangtran met Complainant at the subject property on October 5, 2016. However, he refused to allow Complainant to enter the house or view the available room. Complainant alleges that Dangtran told her she could not rent the room because she is black. Respondents deny this allegation, instead asserting that Dangtran refused to show Complainant the room because Complainant said she would cook a lot.

LEGAL FRAMEWORK

Fair Housing Act. As noted above, HUD accuses Respondents of violating sections 804(a) and (c) of the Act. Section 804(a) makes it unlawful to, among other things, "refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race." 42 U.S.C. § 3604(a). Section 804(c) makes it unlawful "[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race ... or an intention to make any such preference, limitation, or discrimination." Id. § 3604(c).

Standard for Summary Judgment. Under the Federal Rules of Civil Procedure, a court may grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also 24 C.F.R. § 180.105(b). Thus, summary judgment is available only where the moving party demonstrates "lack of a genuine, triable issue of material fact" and where "under the governing law, there can be but one reasonable conclusion as to the outcome." Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); see also Int'l Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1265 (5th Cir. 1991) (refusing to grant summary judgment where moving party's evidence was "too sheer" to sway a reasonable factfinder). An issue is "genuine" only if the evidence is such that a reasonable fact finder could rule in favor of either party. Anderson, 477 U.S. at 248. A fact is "material" only if it is capable of affecting the outcome of the case under governing law. Id.

On summary judgment, the court must view the evidence in the light most favorable to the party opposing judgment. Tolan v. Cotton, 572 U.S. 650, 657 (2014); United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Summary judgment is not available where material facts, "though undisputed, are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 637 (D.C. Cir. 1994); see Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970) (requiring consideration of "reasonable inferences" that can be drawn from the facts). However, summary judgment is appropriate against a party who has failed to make a sufficient showing on an essential element as to which he has the burden of proof. Celotex, 477 U.S. at 322-23.

DISCUSSION

On September 5, 2019, Respondents filed a *Motion for Summary Judgement* asking the Court to dismiss this matter on several grounds.[1] Respondents suggest that the Act cannot be enforced against them because doing so would raise constitutional concerns. Respondents further argue that the Court lacks jurisdiction to hear this case pursuant to the so-called "Mrs. Murphy" exemption codified at section 803(b)(2) of the Act. See 42 U.S.C. § 3603(b)(2). Respondents also deny that any discrimination occurred.[2]

HUD timely filed a response in opposition. HUD disputes each of Respondents' arguments and asserts that summary judgment is inappropriate because HUD has not had adequate time and opportunity for discovery and because Respondents have failed to properly support their motion in accordance with the pertinent procedural requirements. On September 13, 2019, HUD further filed a *Motion for Partial Summary Judgment*, which Respondents oppose, asking the Court to grant summary judgment in HUD's favor on its claim that Respondents violated section 804(c) of the Act, 42 U.S.C. § 3604(c), by posting a discriminatory housing advertisement on Craigslist.

After consideration, the Court will deny Respondents' *Motion for Summary Judgement* and grant HUD's *Motion for Partial Summary Judgment*, for the reasons discussed below.

I. This Court lacks authority to deem the Act unconstitutional.

Respondents suggest that enforcing the Act against them in this case would implicate constitutional concerns. In support, Respondents quote at length from a decision in which the Ninth Circuit found that, in order to avoid constitutional concerns relating to privacy, safety, autonomy, and intimate association, sections 804(b) and (c) should be interpreted in a way that excluded "roommate selection" from the reach of the Act. Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216 (9th Cir. 2012). Similarly, in this case, Respondents characterize their interactions with Complainant as part of a roommate selection process and argue that government regulation of their ability to choose a roommate implicates constitutional privacy and safety considerations. They conclude that HUD's authority to enforce the Act "stopped at the door of [their] residence."

HUD disagrees, arguing that Respondents' reliance on Roommate.com is misplaced. HUD also contends that this Court lacks jurisdiction to rule on the constitutionality of the Act.

A ruling on the constitutionality of the Act would exceed the scope of this Court's authority. "Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies." Oestereich v. Selective Serv. Sys.

---

[1] Respondents initially moved for summary judgment on August 30, 2019, but filed an amended version of the motion on September 5. The amended version differs from the original in that it includes a single additional paragraph raising a new defense under 42 U.S.C. § 3603(b)(2).

[2] In their opposition to HUD's *Motion for Partial Summary Judgment*, Respondents raise an additional argument that Complainant lacks standing to bring a complaint against them. Because Respondents do not identify any reason why they believe standing is lacking, this argument is rejected.

Local Bd. No. 11, 393 U.S. 233, 242 (1968) (Harlan, J., concurring in result); see also Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 215 (1994). Accordingly, this administrative Court lacks jurisdiction to declare the Act unconstitutional as applied to Respondents. See Buckeye Indus. v. Sec'y of Labor, 587 F.2d 231, 235 (5th Cir. 1979) ("No administrative tribunal of the United States has the authority to declare unconstitutional the Act which it is called upon to administer."); see also *In re* Navajo Hous. Auth., 2016 HUD ALJ LEXIS 2, at *30-33 (HUD Secretary May 2, 2016) (finding that HUD lacks jurisdiction to decide a constitutional question).

II. *Roommate.com* was wrongly decided and the Court declines to follow it.

To the extent Respondents are asking not for a ruling on the constitutionality of the Act, but merely for this Court to follow the Ninth Circuit's lead in Roommate.com and interpret the Act narrowly to avoid potential constitutional concerns, this Court is not persuaded by the reasoning in Roommate.com and believes the case was wrongly decided.[3]

Roommate.com involved an online service that matched users with potential roommates based on their profiles and preferences and allowed users to search for available rooms meeting their criteria. 666 F.3d at 1218. Two housing organizations sued the service, Roommate.com, alleging that it had violated the Act by requiring users to disclose their sex, sexual orientation, and familial status and by steering and matching users based on those characteristics. Id. The task facing the Ninth Circuit was to determine whether Roommate.com's allegedly discriminatory actions fell within the scope of sections 804(b) and (c) of the Act.

As discussed above, section 804(c) proscribes discriminatory notices, statements, or advertisements made "with respect to the sale or rental of a dwelling." 42 U.S.C. § 3604(c). Section 804(b) prohibits discrimination in "the sale or rental of a dwelling." Id. § 3604(b). Notably, neither subsection contains any limitations or exceptions based on the identity or status of the person accused of engaging in the discriminatory conduct.

Nonetheless, an accused person's status as a "roommate" was crucial to the holding in Roommate.com. According to the Ninth Circuit, the pivotal question in that case was "whether the FHA applies to roommates." Id. at 1219. In resolving that question, the Ninth Circuit mistakenly posited that the reach of the Act must turn on the meaning of the word "dwelling," as used in sections 804(b) and (c). Id. The Court then reasoned that Congress could not have intended a "dwelling" to include portions of single-family homes or apartments in which living space is shared by roommates. Id. at 1220-22. The Court proclaimed that "[i]t would be difficult ... to divide a single-family house or apartment into separate 'dwellings' for purposes of the statute," and thus it "makes practical sense to interpret 'dwelling' as an independent living unit

[3] As an aside, even if this Court agreed with the reasoning in Roommate.com, Respondents have not established that it applies to the facts of the instant case. The Ninth Circuit limited its holding to situations involving "roommates" who share space within living units, implicating concerns about privacy, safety, autonomy, and intimate association. In this case, HUD argues that Respondents' arrangement with their tenants more closely resembles a pure business transaction than the sort of intimate roommate relationship at issue in Roommate.com. Because the applicability of Roommate.com hinges on the nature of Respondents' relationship with their tenants, which remains in dispute, Respondents have not shown that the facts of Roommate.com are sufficiently analogous to apply here.

and stop the FHA at the front door," thereby avoiding the constitutional concerns raised by shared living arrangements. Id. at 1220.[4]

However, contrary to the Ninth Circuit's suggestion that it would be unduly difficult to divide a single-family home into separate "dwellings," the Act contemplates this exact circumstance. First, the Act expressly defines a "dwelling" as including "any building, structure, *or portion thereof* which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. § 3602(b) (emphasis added). A "family" can consist of a single individual. Id. § 3602(c). Thus, while a single-family house qualifies as a dwelling, so does a bedroom within that house that is rented to an individual tenant. In that case, the bedroom constitutes a "portion [of a building] occupied as ... a residence by" a one-person family, bringing it squarely within the Act's definition of a "dwelling." Id. § 3602(b).

If the Act's definition of "dwelling" were not clear enough, the existence of the "Mrs. Murphy" exemption unambiguously shows that Congress contemplated that a "dwelling" might consist of a single bedroom within a larger home. The Mrs. Murphy exemption is codified in section 803(b)(2) of the Act, which states: "Nothing in section 3604 of this title (other than subsection (c)) shall apply to ... rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence." 42 U.S.C. § 3603(b)(2). In other words, if a property contains four or fewer housing units and the owner lives in one of them, the property is exempt from some of the requirements of section 804.

Congress premised the Mrs. Murphy exemption on "the metaphorical 'Mrs. Murphy's boardinghouse.'" United States v. Space Hunters, Inc., 429 F.3d 416, 425 (2d Cir. 2005) (citing 114 Cong. Rec. 2495, 3345 (1968)). Traditionally, the proprietor of a boardinghouse rents out bedrooms in her own home, and may even provide meals for her tenants. Thus, the exemption was intended to provide a shield for "those who, by the direct personal nature of their activities, have a close personal relationship with their tenants." 114 Cong. Rec. 2495, 2495 (1968). The provision's congressional sponsors were very clear as to their intent to "exempt the rental or leasing of a portion of a single-family dwelling, which means in practical terms the letting of a room or rooms in a person's home." Id. Thus, Congress must have believed the Act was broad enough to apply to an individual room in a single-family home; otherwise, an exemption would not have been necessary.

Consistent with the Act's broad definition of "dwelling" and Congress' understanding that the Act extends to the letting of individual rooms within a single-family home, courts outside the Ninth Circuit have routinely applied the Act to housing arrangements involving the rental of individual rooms within a larger home where some living spaces are shared. For example, in Ho v. Donovan, the Seventh Circuit found that the Act applied to a condo unit in which bedrooms were rented out separately. 569 F.3d 677, 682 (7th Cir. 2009); see also Marya v. Slakey, 190 F. Supp. 2d 95 (D. Mass. 2001) (applying Act to single-family house where

[4] Although the Ninth Circuit professed its desire to avoid a constitutionality analysis, the Court did, in fact, spend several pages thoroughly analyzing the constitutional issue. See 666 F.3d at 1220-23. Arguably, the Court could have avoided both the constitutional question and the question of how broadly to interpret "dwelling" by finding that no dwellings of any sort were involved, if Roommate.com was simply introducing compatible users to each other so they could then search for housing together.

bedrooms were rented out individually). Other circuits have applied the Act to shared living facilities such as boardinghouses, halfway houses, and drug and alcohol treatment centers. E.g., Schwarz v. City of Treasure Island, 544 F.3d 1201, 1213 (11th Cir. 2008); Lakeside Resort Enters., LP v. Bd. of Supervisors, 455 F.3d 154, 160 (3d Cir. 2006); Samaritan Inns v. District of Columbia, 114 F.3d 1227 (D.C. Cir. 1997). And in applying the Act to a homeless shelter, the Ninth Circuit itself, in seeming contradiction to its later opinion in Roommate.com, cited with favor a HUD regulation stating that "rooms in which people sleep" can constitute individual dwelling units in situations where toileting and cooking facilities are shared. Cmty. House, Inc. v. City of Boise, 490 F.3d 1041, 1048 n.2 (9th Cir. 2007) (citing 24 C.F.R. § 100.201).

Against the weight of this caselaw, and in apparent disregard of the fact that Congress already crafted an exemption to address the privacy, safety, and autonomy concerns involved in shared living arrangements (namely, the Mrs. Murphy exemption), the Ninth Circuit's Roomate.com decision attempted to carve out a broad new exemption that is inconsistent with the language and structure of the Act. Specifically, the Ninth Circuit held that the Act "doesn't apply to the sharing of living units." Roommate.com, 666 F.3d at 1222. The Ninth Circuit reached this result by reinterpreting "dwelling" to exclude all housing arrangements involving the sharing of living units. This means that no residence in which occupants share living space—neither the condo at issue in Ho v. Donovan, nor the homeless shelter in Community House, nor a boardinghouse run by a "Mrs. Murphy" landlord—would meet the definition of a "dwelling" under the Act. Thus, the Ninth Circuit's approach unavoidably leads to results inconsistent with the existing caselaw.[5]

---

[5] According to HUD, the Ninth Circuit's holding is limited to "roommate arrangements that d[o] not include the landlord-tenant relationship." Similarly, a U.S. District Court has "decline[d] to extend Roommate.com's holding to relieve landlords of their Fair Housing Act obligations," on the reasoning that an individual who is protected by the Act should not lose her protections against discrimination merely because she resides in a shared living unit, as this would exempt all landlords who rent shared living units from the coverage of the Act. Haws v. Norman, No. 2:15-cv-00422-EJF, 2017 U.S. Dist. LEXIS 154589, at *10 (D. Utah Sept. 20, 2017).

However, the Ninth Circuit did not, in fact, limit its Roommate.com holding to exclude landlords, which is precisely the problem, in this Court's view. As explained above, the Ninth Circuit reached its result by reinterpreting "dwelling," which fundamentally changes the scope of the Act's coverage. This is problematic for the very reason identified by the District Court in Haws v. Norman: it creates a coverage gap whereby any individuals who occupy shared living spaces will be excluded, by definition, from the Act's protections.

At least one court has already followed the Ninth Circuit's approach to reach a problematic result. In Kaeo-Tomaselli v. Butts, the plaintiff sued the owner and manager of a facility called the Pi'ikoi Clean and Sober House for Women after she was denied residence there. Civ. No. 11-00670 LEK/BMK, 2013 U.S. Dist. LEXIS 132917 (D. Haw. Sept. 17, 2013). The plaintiff, who had been born a hermaphrodite, alleged that she that was denied entry to the home because existing residents did not want her to live there for discriminatory reasons. Id. at *2. The District Court, citing the "roommate exception" of Roommate.com, held that the Pi'ikoi Clean and Sober House was exempted from the Act because it was a "privately owned group home where residents share rooms and/or living quarters and vote on accepting new residents." Id. at *9-10. In other words, based on Roommate.com, an entire multi-unit property was found to be exempt from the Act and the owner and manager were given a license to discriminate against prospective tenants on behalf of existing tenants.

This result runs counter to the Act's remedial purpose. The Act does not permit a landlord or property owner to engage in otherwise prohibited discrimination at the whim of his existing tenants or on behalf of a third party. Courts have never allowed a neighbor's preferences to excuse a property owner's discriminatory conduct. See, e.g., Robinson v. 12 Loft Realty, Inc., 610 F.2d 1032 (2d Cir. 1979) (allowing case to proceed against cooperative where residents had voted to block another resident's sale of his apartment unit to a black family). Likewise, courts have declined to find that an existing tenant's discriminatory roommate preferences justify the landlord's exercise of such preferences. See, e.g., Laflamme v. New Horizons, Inc., 605 F. Supp. 2d 378, 393 (D. Conn. 2009) (rejecting argument that owners of assisted living facility should enjoy leeway under the Act because they lease "shared rental housing" where tenants live in such close quarters that one tenant's residency may adversely affect another); Marya

In support of its reasoning, the Ninth Circuit cited various constitutional cases establishing a right to privacy in one's home. See Roommate.com, 666 F.3d at 1220-21. But the only actual housing case it cited was one in which HUD investigators declined to file a charge of discrimination against a woman in Michigan who had posted on her church bulletin board: "I am looking for a female christian roommate." Id. at 1222 (citing Fair Hous. Ctr. of W. Mich. v. Tricia, No. 05-10-1738-8 (Oct. 28, 2010) (Determination of No Reasonable Cause)). It may have been appropriate for HUD to exercise its prosecutorial discretion not to pursue a charge against the Michigan woman under the circumstances. But it was a substantial leap for the Ninth Circuit to look at HUD's decision not to prosecute in that particular case and conclude, as a matter of law, that anyone searching for a roommate is excused from the requirements of the Act due to constitutional privacy concerns. This holding is so broad that it would allow blatant discrimination of the sort the Act was intended to combat.

Contrary to Roommate.com's overbroad approach, Congress has indicated, in the context of the Mrs. Murphy exemption, that even a close personal relationship between occupants of a shared living space does not warrant a complete exemption from the Act's requirements. The Mrs. Murphy exemption is limited in several key ways. For one thing, Congress restricted its application to properties occupied by four or fewer families. 42 U.S.C. § 3603(b)(2). Moreover, the exemption applies not to any landlord, but only to an owner-occupant of the subject property. Id.; see, e.g., Marya v. Slakey, 190 F. Supp. 2d at 104 (declining to apply Mrs. Murphy exemption to occupant who acted as landlord's agent, but did not actually own the property).

Congress also made clear that a "Mrs. Murphy" landlord is not excused from *all* of the Act's requirements. Even where the exemption applies, a covered landlord is still bound by section 804(c)'s blanket prohibition on discriminatory statements, notices, and advertising. 42 U.S.C. § 3603(b)(2). This signals a Congressional judgment that requiring a person to refrain from posting discriminatory advertisements or making discriminatory statements is not overly burdensome or intrusive, even when that person is a "Mrs. Murphy" landlord who maintains a close personal relationship with her tenants. Such a relationship does not engender a positive right to discriminate. See United States v. Hunter, 459 F.2d at 213 ("While the owner or landlord of an exempted dwelling is free to indulge his discriminatory preferences in selling or renting that dwelling, neither the Act nor the Constitution gives him a right to publicize his intent to so discriminate."); Morris v. Cizek, 503 F.2d 1303, 1304 (7th Cir. 1974) (explaining that Mrs. Murphy exemption does not confer a positive right to discriminate).

The new exemption the Ninth Circuit sought to create in Roommate.com is inconsistent with the language and structure of the Act and with existing precedent. It is so broad that it leads to results that undermine the Act's remedial purpose, as it creates a coverage gap by stripping the Act's protections from any person who resides in housing where living spaces are shared. The exemption is also inconsistent with the limitations Congress placed on the existing Mrs. Murphy exemption and is so broad that it renders the Mrs. Murphy exemption largely redundant, in contravention of the canon against surplusage. See Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 669 (2007) (cautioning against "reading a text in a way that makes part of it redundant"); TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (noting "cardinal principal"

---

v. Slakey, 190 F. Supp. 2d at 104 (refusing to grant exemption from Act where landlord allowed existing tenant to veto a prospective roommate for an allegedly discriminatory reason).

that statute should be construed such that "no clause, sentence, or word shall be superfluous, void, or insignificant"). For these reasons, Roommate.com was wrongly decided, and this Court declines to follow it.

Respondents have cited no other precedent that would support dismissing the claims against them based on any purported constitutional concerns. Accordingly, Respondents' *Motion for Summary Judgement* must be rejected to the extent it is based on constitutional concerns.

III. Respondents have not established that they are entitled to summary judgment based on the Mrs. Murphy exemption.

Respondents assert that the Court lacks jurisdiction to hear this case based on the Mrs. Murphy exemption. This argument is rejected. The Mrs. Murphy exemption is "an affirmative defense having no bearing on subject matter jurisdiction." United States v. Space Hunters, Inc., 429 F.3d at 425-27.

Further, by its plain language, the exemption does not apply to one of the two statutory provisions Respondents are accused of violating, section 804(c). 42 U.S.C. § 3603(b)(2); see United States v. Hunter, 459 F.2d 205, 213-14 (4th Cir. 1972) (stating that exemption does not apply to discriminatory advertising under 804(c)), cert. denied, 409 U.S. 934 (1972); Gonzalez v. Rakkas, No. 93 CV 3229 (JS), 1995 U.S. Dist. LEXIS 22343, at *13 (E.D.N.Y. July 25, 1995) (stating that exemption does not apply to discriminatory statements under 804(c)); HUD v. Dellipaoli, No. 02-94-0465-8, 1997 HUD ALJ LEXIS 22, at *12-20 (HUDALJ Jan. 7, 1997) (same). Thus, the Mrs. Murphy provision cannot exempt Respondents from HUD's claims that they violated section 804(c) by posting a discriminatory advertisement and making a discriminatory statement.

The Mrs. Murphy exemption may be available as a defense against HUD's allegation that Respondents violated section 804(a) by refusing to negotiate a room rental with Complainant because of her race. However, the exemption applies only to "dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other." 42 U.S.C. § 3603(b)(2). In this case, the parties dispute the number of bedrooms that Respondents were renting out to other families. This fact is material to the determination of whether the subject dwelling was "occupied or intended to be occupied" by four or fewer independent families such that the Mrs. Murphy exemption applies. Because a material dispute of fact exists as to whether the exemption applies, Respondents are not entitled to summary judgment based on the exemption at this time.

IV. Respondents are not entitled to summary judgment on HUD's claims that Respondents made a discriminatory statement and refused to negotiate a room rental with Complainant because of her race.

Respondents argue that they are entitled to summary judgment on all of HUD's claims because no discrimination occurred in this case. With respect to HUD's claims that Respondents made a discriminatory statement to Complainant, in violation of 804(c), and refused to negotiate

a room rental with Complainant due to her race, in violation of 804(a), Respondents deny making discriminatory statements or refusing to negotiate due to Complainant's race. Instead, Respondents allege that they simply did not want a roommate who would cook a lot.

However, according to Complainant, Respondent Dangtran told Complainant she could not rent the room because she is black, Dangtran's wife would not like it, and it would make Respondents' three other Asian tenants uncomfortable. Because material disputes of fact exist as to whether Respondents made a discriminatory statement and/or refused to negotiate with Complainant because of her race, summary judgment is not appropriate on these two claims.

V. HUD is entitled to summary judgment on its claim that Respondents posted a discriminatory housing advertisement.

Section 804(c) of the Act states, in pertinent part, that it is unlawful "[t]o make, print, or publish, or cause to be made, printed, or published, any ... advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race ... or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c). A housing advertisement violates section 804(c) if it "suggests to an ordinary reader that a particular [protected group] is preferred or dispreferred for the housing in question." Jancik v. Dep't of Hous. & Urban Dev., 44 F.3d 553, 556 (7th Cir. 1995); see also Inclusive Cmtys. Project v. Lincoln Prop. Co., 920 F.3d 890, 912 (5th Cir. 2019).

Respondents do not dispute that their Craigslist housing advertisement asked prospective tenants to disclose their race. However, Respondents argue that they are entitled to summary judgment because it was lawful for them to inquire about race, asserting:

> [T]he question of race is used in job applications and on government forms and is therefore lawful. The respondent was simply attempting to gather as much information as possible to find the candidate that best suited the living arrangements. The respondent and his wife were renting rooms in their five-bedroom family home and did not want someone who would disrupt the household.

In their opposition to HUD's *Motion for Partial Summary Judgment*, Respondents further argue that an ordinary reader would not perceive their advertisement as discriminatory because their use of the word "race" did not convey that any particular race would be singled out.

Contrary to Respondents' argument, asking applicants to disclose their race indicates an intent to consider race as a preference or limitation when selecting a tenant. Thus, inquiring about prospective tenants' race in a housing advertisement is facially discriminatory under subsection 804(c). See Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 824 (2d Cir. 1992) (agreeing with HUD, in passing, that "there is simply no legitimate reason for considering an applicant's race"); Sec'y, U.S. Dep't of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990) (affirming finding that inquiring about race of potential buyer violated subsection 804(c)); HUD v. Roberts, 2001 HUD ALJ LEXIS 86, at *13 (HUD ALJ Jan. 19,

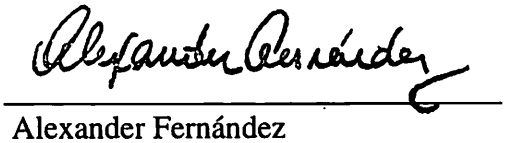
2001) (finding that inquiries about race are not reasonably related to qualification for housing and would lead a reasonable person to assume that race was being used a factor to determine eligibility).

Because Respondents posted a discriminatory housing advertisement on Craigslist, and because no material facts remain in dispute, HUD is entitled to partial summary judgment against Respondents with respect to its claim that they caused the publication of a discriminatory housing advertisement in violation of subsection 804(c).

ORDER

For the reasons discussed above, Respondent's *Motion for Summary Judgement* is hereby **DENIED** and HUD's *Motion for Partial Summary Judgment* is **GRANTED**.

So **ORDERED**,



Alexander Fernández
Administrative Law Judge