

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)	
Harry Tyus,)	
)	HUD ALJ No.
Charging Party,)	FHEO No. 05-05-0775-8
)	
v.)	
)	
Nicole Morbach, Benchmark Management)	
Corporation, Fairway Trails Limited, L.P.,)	
and Benchmark Michigan Properties, Inc.,)	
)	
Respondents.)	
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CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about April 18, 2005, the complainant, Harry Tyus (“Complainant”), filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondent Nicole Morbach violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by retaliating in violation of 42 U.S.C. §3617. On January 31, 2006, the HUD Complaint was amended to add Benchmark Management Corporation, Fairway Trails Limited, L.P., and Benchmark Michigan Properties, Inc. as respondents and to include a 42 U.S.C. 3604(f)(1) allegation.

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 (67 Fed.Reg. 44234), 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 reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on retaliation and disability, 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 Nicole Morbach, Benchmark Management Corporation, Fairway Trails Limited, L.P., and Benchmark Michigan Properties, Inc. (collectively referred to as Respondents) are charged with discriminating against Complainant Harry Tyus, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability and by retaliating against him in violation of 42 U.S.C. §§3604(f)(1) and 3617 of the Act as follows:

1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (C) any person associated with that buyer or renter. 42 U.S.C. §3604(f)(1); see also 24 C.F.R. §100.202.
2. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title. 42 U.S.C. §3617; see also 24 C.F.R. §100.400.
3. At all times relevant to this Charge, Respondents were Nicole Morbach ("Respondent Morbach"), Property Manager for Fairway Trails Apartments; Fairway Trails Limited, L.P. ("Respondent Fairway"), the owner of Fairway Trails Apartments; Benchmark Michigan Properties, Inc., the general partner of Fairway Trails Limited, L.P.; and Benchmark Management Corporation, the management company that employs Nicole Morbach, and manages the Fairway Trails Apartment building.
4. At all times relevant to this Charge, James Hendricks was the leaseholder of the apartment located at Fairway Trails Apartments with an address of 130 South Hewitt Road, Apt. #101, Ypsilanti, Michigan (the "subject property"). Fairway Trails Apartments is comprised of 231 units.
5. At all times relevant to this Charge, Complainant occupied the apartment leased by James Hendricks, Complainant's pastor, with the consent and knowledge of Respondents. Mr. Hendricks leased the subject property for Complainant's benefit. Complainant was listed on the rental application and the lease agreement as an occupant of the apartment and was the sole occupant of the apartment during his tenancy. Further, Complainant paid all rent and utilities during his tenancy. Respondents knew of and consented to this arrangement.
6. Complainant is a disabled person as defined by 42 U.S.C. §3602(h) of the Act. Complainant is limited in his ability to walk, has congenital heart failure, high blood pressure, and diabetes.

7. On or about February 1, 2004, Complainant moved into the subject property.
8. The lease agreement provided that the tenant shall pay rent on the first day of each month, and that the tenant shall pay a late fee of \$50.00 for each monthly installment received by Respondent Fairway on or after the fourth day of the month.
9. In or about May 2004, after an extended hospital stay, Complainant verbally requested from Respondent Morbach a reasonable accommodation of the lease agreement. Complainant requested that he be allowed to pay his rent on the third Wednesday of each month as opposed to the first day of each month, as he did not receive his Social Security Disability payment until then. Respondent Morbach sought an answer from “corporate” and about a week later verbally denied Complainant’s reasonable accommodation request.
10. In or around Spring 2004, in order to obtain some help with securing a reasonable accommodation from Respondents, Complainant contacted the Fair Housing Center of Southeastern Michigan.
11. On or about June 30, 2004, Pamela Kisch, Executive Director of the Fair Housing Center of Southeastern Michigan (“the Fair Housing Center”), sent Respondents a reasonable accommodation request on behalf of Complainant. The request was addressed to Respondent Morbach. The letter notified Respondents that Complainant was disabled, and as a reasonable accommodation requested that Complainant be given until the 20th of each month to pay his rent without being assessed a \$50.00 late fee. The letter explained that Complainant needed this accommodation because he did not receive his Social Security Disability payment until the third Wednesday of each month. The letter further requested that Respondent Fairway reimburse Complainant for all late fees assessed since February 2004.
12. On or about July 8, 2004, Respondent Fairway responded to the Fair Housing Center’s written reasonable accommodation request by declining to provide the accommodation, as doing so “would result in extending a preference” to Complainant and not an “equal opportunity.” Further, Respondent Fairway’s letter asserted that granting Complainant a waiver of the late fee would cause Respondent Fairway an undue hardship because “all residents would insist on a waiver of the late fee if there is any reason whatsoever that rent could not be paid on time.”
13. On or about July 4, 2004, because the July rent was not paid on time, Respondent Fairway issued a seven-day demand for possession of the subject property to Complainant.¹ Subsequently, on July 21, 2004, Respondent Fairway filed a complaint for summary proceedings against James Hendricks for possession of the

¹ While the Demand for Possession Non-Payment of Rent was addressed to James Hendricks it was sent to the subject property and Complainant received it. Oddly, the demand for possession reads that it was issued by Nicole Morbach on July 6, 2004, but served on James Hendricks on July 4, 2004, two days before its issuance. Finally, it was not notarized until July 21, 2004.

- subject property. On August 5, 2004, Complainant received a summons to appear in court on August 18, 2004 in the eviction action.
14. Even though Complainant paid the overdue rent plus a late fee in the amount of \$790.00 on July 22, 2004, Respondent still sought to have Complainant evicted from his apartment.
 15. Consequently, on or about October 6, 2004, a hearing was held in Michigan State Court, 14B Judicial District, for possession of the subject property.
 16. As a result of the October 6, 2004 bench trial and a hearing on Complainant's Motion for Summary Disposition, Judge John B. Collins ruled, "it is a reasonable accommodation of [Complainant's] disability under the Federal Fair Housing Act to reset the date that his rent is due each month to several days after his Social Security check arrives." Also, Judge Collins ruled that Respondent Fairway was not entitled to a late fee for the months of August or September 2004, and that from the date of the entry of the judgment onward, Complainant's rent would be due the third Friday of each month.
 17. After the judge's ruling in favor of Complainant, Respondents' attorney insinuated on the record that Complainant's lease would not be renewed.
 18. In Respondent Fairway's May 11, 2005 Answer to the HUD Complaint, Respondent Fairway admits that at the hearing on October 6, 2004 "Judge Collins ruled (incorrectly, we believe) that Fairway Trails was required to accept Complainant's late payment of rent without penalty" as a reasonable accommodation.
 19. Instead of appealing the Court's ruling, on or about October 8, 2004, just two days after Judge Collins' ruling in favor of Complainant and far in advance of the lease's actual expiration, Respondent Fairway sent a letter to Complainant stating that Respondents declined to renew the lease upon its expiration on January 31, 2005.
 20. On November 23, 2004, Complainant received a new lease from Respondents, which he signed and returned to Respondent Fairway. On January 10, 2005, however, Respondent sent a letter to Complainant stating that they inadvertently sent him a new lease and that the December 29, 2004 Notice to Quit Termination of Tenancy was still effective.
 21. On or about December 29, 2004, Respondent Fairway served another Notice to Quit Termination of Tenancy because Complainant's tenancy was coming to an end as of January 31, 2005.
 22. On or about January 28, 2005, Complainant vacated his unit at the subject property.
 23. On information and belief, Respondents rented Complainant's unit to a non-disabled person.

24. When Respondents (1) sent the October 8, 2004 non-renewal of Complainant's lease, (2) served the December 29, 2004 demand for possession of the subject property, and (3) sent the January 10, 2005 letter, they retaliated against Complainant for his participation in a court proceeding concerning his tenancy, where Complainant successfully asserted his right to a reasonable accommodation, a protected activity under the Act.
25. When Respondents (1) on October 8, 2004 refused to renew Complainant's lease, (2) on December 29, 2004 demanded possession of the subject property, and (3) on January 10, 2005 wrote a letter reiterating their intent to terminate Complainant's tenancy, Respondents otherwise made unavailable or denied a dwelling to Complainant because of his disabilities in violation of 42 U.S.C. §3604(f)(1)(B).
26. When Respondents (1) on October 8, 2004 refused to renew Complainant's lease, (2) on December 29, 2004 demanded possession of the subject property, and (3) on January 10, 2005 wrote a letter reiterating their intent to terminate Complainant's tenancy, Respondents interfered with Complainant's residency because he exercised his fair housing rights by reason of his disabilities in violation of 42 U.S.C. §3617.
27. As a result of Respondents' discriminatory conduct, Complainant has suffered damages, including economic loss, emotional distress, inconvenience, and loss of a housing opportunity. Complainant incurred moving costs, application fees, a higher security deposit, fees for the transfer of utilities, and increased transportation costs because of Respondents' non-renewal.
28. Complainant suffered loss of housing opportunities because the location and layout of the subject property were more convenient for Complainant. The location of the subject property was better for Complainant than his new apartment, because it was on the main traffic route and easier for Complainant to get to public transportation. Also, Complainant has mobility issues and the subject property was more accessible for Complainant. The subject property was all on one level, whereas his new apartment is not. Complainant was closer to his mailbox and laundry room at the subject property, unlike at his new apartment. The location of Complainant's current apartment requires him to walk further and maneuver steps that he did not have at the subject property. Additionally, Complainant felt more secure at the subject property than at his new apartment.
29. As a result of Respondents' discriminatory conduct, Complainant was inconvenienced. Complainant does not have a car, so looking for a new apartment was difficult for him. Also, because of the location of his new apartment, Complainant has more difficulty getting access to transportation.
30. The situation was emotionally stressful for Complainant, as well. The discriminatory conduct caused Complainant to panic. He felt that he may be homeless and this caused him anxiety.

31. Complainant's disability was aggravated by Respondents' actions. Complainant experienced higher blood pressure for a period during this time. Also, Complainant's emotional distress manifested itself physically. He experienced a loss of appetite, an inability to sleep, anxiety, discomfort, stress, irritability, and depression.

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 42 U.S.C. §3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§3604(f)(1) and 3617 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, successors, and all other persons in active concert or participation with them from retaliating and discriminating on the basis of disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant, an aggrieved person, for his actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§3604(f)(1) and 3617; and
4. Awards a 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).

Respectfully submitted,

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