

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
██████████,

Charging Party,

v.

Amie Kelly,

Respondent.

HUD ALJ No.
FHEO No. 08-15-0186-8

Date: September 14, 2016

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about August 10, 2015, the complainant, ██████████ (“Complainant”), filed a verified Complaint with the United States Department of Housing and Urban Development, alleging that Respondent Amie Kelly (“Respondent”) violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the “Act”), by denying housing and making discriminatory statements on the basis of sex and familial status. On or about June 13, 2016, the Complaint was amended to add an allegation of a discriminatory term or condition, in violation of 42 U.S.C. § 3604(b).

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 that authority to the General Counsel, who has redelegate to the Regional Counsel. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42463, 42465 (July 18, 2011).

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. 42 U.S.C. § 3610(g)(2).

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, Respondent Amie Kelly is charged with discrimination based on sex and familial status in violation of 42 U.S.C. § 3604 of the Act as follows:

A. Legal Authority

1. It is unlawful to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of sex or familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental, or in the provisions of services or facilities in connection therewith, because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).
3. It is unlawful to make, print, or publish any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sex or familial status. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.
4. It is unlawful to represent to any person because of sex or familial status that any dwelling is not available for inspection or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d); 24 C.F.R. § 100.80(b)(5).

B. Subject Property and Parties

5. The subject property is a three-unit residential property located at [REDACTED], Rapid City, South Dakota ("Subject Property").
6. The Subject Property is comprised of three individual rental units consisting of a studio apartment in the upper attic, a two-bedroom unit on the main level, and a one-bedroom unit on the basement level, Unit C. The three units each contain separate bathrooms and kitchens, but share a common laundry space.
7. The Subject Property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
8. At all times relevant to this Charge, Respondent Amie Kelly was the sole owner and manager of the Subject Property.
9. Complainant is a single woman who at all times relevant to this Charge had legal and physical custody of her 17-year-old daughter.
10. Complainant is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).

C. Factual Allegations

11. In or around July 2015, Respondent placed a Craigslist advertisement for the rental of a one-bedroom/one-bathroom basement unit at the Subject Property, Unit C. Respondent also placed a "For Rent" sign on the front lawn of the Subject Property.
12. Rent for Unit C was advertised at \$625 per month for one person; \$100 per month additional rent was to be added for each additional resident.
13. On or around July 20, 2015, Complainant called Respondent in response to the Craigslist advertisement. During the call, Complainant expressed interest in renting Unit C and informed Respondent that both she and her 17-year-old daughter would be occupying the unit if approved.
14. Complainant specifically informed Respondent that the Subject Property's location was ideal for both her and her daughter because of its close proximity to the local school her daughter was planning to attend the following school year, as Complainant did not have a vehicle.
15. Complainant also informed Respondent that her daughter would at times be staying in the unit by herself when she had to travel for work. When asked during her interview with HUD if she would have any concern with Complainant's minor daughter being home on her own, Respondent indicated that she would be concerned about any woman being by herself.
16. Complainant also told Respondent during the initial phone call that she owned and operated her own catering business.
17. On or around July 20, 2015, Respondent sent an email to Complainant with the subject line "lease/rental application." Two files were attached: *Adams Rental Lease.doc* and *Perfect rentals.pdf*.
18. The lease Respondent sent to Complainant on July 20, 2015, included the following term: "No minor under the age of 18 is to be allowed to be on or about the premises without adult supervision."
19. On or around July 20, 2015, Complainant responded to Respondent's email that she had received the attached copy of the blank lease and commented that it seemed "quite reasonable."
20. Complainant also informed Respondent that the additional document attached to Respondent's email was not a rental application, but some type of receipt from Respondent's property listing.

21. Because she did not receive a copy of Respondent's application, Complainant attached her resume to her reply email and supplied Respondent with three personal/business references and two rental references. Complainant also wrote, "I am happy to provide you with my ss# [sic] if you need to do a background check or I do have a friend at the sheriff's office than can pull it for me If you need any thing [sic] else, just let me know." Complainant additionally wrote that she also had a copy of her prior lease, several rent receipts, and the proof of a full return of a prior security deposit.
22. Complainant's resume described her current employment as "Owner/Proprietor" of a food catering business, [REDACTED] ("1999 to present"), and "Online Medical Transcriptionist" as an independent contractor ("2003 to present").
23. On or around July 21, 2015, Complainant verbally offered to supply Respondent with proof of her "taxable income."
24. Respondent neither requested any of the supplementary documents or information offered by Complainant nor did she ever inform Complainant that the information offered was insufficient to help determine her rental qualifications.
25. On or around, July 22, 2015, Respondent sent the following email to Complainant:

. . . Sorry about sending you the wrong form. As you can tell, I have been crazy busy with the B&B, vacation rentals (it is tourist season) now a major plumbing issue at another house. To be honest, I haven't had a chance to look at you [sic] stuff, but will do so tonight. If I remember right, you will be here in a few days, and can take care of details then.
Sorry about the delay
26. Respondent attached an electronic copy of a rental application with the file name "*Free_Rental_Application (Handwrite-In).pdf*" to the email.
27. When Complainant was unable to download the attachment to print it or fill it out online, she called Respondent to tell her that she had problems downloading it.
28. On or around, July 22, 2015, Complainant sent Respondent an email and a text indicating that she would be in town that Sunday, July 26, 2015, and that she could have a friend drop off a check for the security deposit if Respondent approved of renting the Subject Property unit to her and her daughter.
29. Respondent neither responded directly to Complainant's email or text message, nor informed Complainant of any outstanding information still required in order to process her application at that time.

30. Complainant tried to call Respondent several times on the morning of July 23, 2015, but Respondent did not answer her calls.
31. At 9:23am on July 23, 2015, Respondent emailed Complainant: "After reviewing all my applications, I decided to go with a bachelor. In the past, I have always rented to bachelors, that has worked best."
32. Contrary to Respondent's email to Complainant, Respondent had not yet approved the eventual tenant, [REDACTED], nor had she received a rental application from him at the time she sent the email.
33. [REDACTED] is a single male without children.
34. [REDACTED] did not tour the Subject Property until sometime after 9:30am on July 23, 2015.
35. [REDACTED] did not submit his application to Respondent until July 24, 2015.
36. Respondent emailed [REDACTED] on Saturday, July 25, 2015, confirming that she received his application. Respondent stated in her email that she would "make a couple of calls on Monday," but that "[i]n all likelihood" she would choose his application—two days after she had told Complainant that she had "decided to go with a bachelor."
37. On or around July 28, 2015, Respondent notified [REDACTED] that he was approved to rent Unit C at the Subject Property.
38. Respondent did not receive [REDACTED]'s deposit check until August 1, 2015.
39. Complainant was upset, offended, frustrated, and angry after receiving the emailed rejection from Respondent, because Respondent indicated she would not rent to her because she was a woman and a mother.
40. Complainant had to make alternative last minute plans for housing before the start of the school year for her daughter. Complainant had to hastily sign a lease at a different significantly more expensive apartment complex, buy a vehicle because the new complex was not on a bus line, and switch her daughter's school.
41. As a result of Respondents' discriminatory acts, Complainant has suffered damages, including economic losses, emotional distress, inconvenience, and loss of a unique housing opportunity.

D. Legal Allegations

42. As described above, Respondent violated the Act by making Unit C of the Subject Property unavailable on the basis of sex and familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.
43. As described above, Respondent violated the Act by offering different terms and conditions at the Subject Property based upon familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).
44. As described above, Respondent violated the Act when Respondent made statements indicating a preference on the basis of sex and familial status. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.
45. As described above, Respondent violated the Act when Respondent sent a lease containing a discriminatory statement on the basis of familial status to Complainant. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.
46. As described above, Respondent violated the Act when Respondent represented to Complainant that she had decided to rent Unit C to a bachelor, when she had not yet received an application or made a final decision on his application. 42 U.S.C. § 3604(d); 24 C.F.R. § 100.80(b)(5).

III. CONCLUSION

THEREFORE, 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) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of Subsections 3604(a), 3604(b), 3604(c), and 3604(d) of the Act, and requests that an order be issued that:

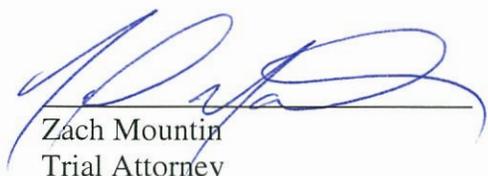
1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate subsections 804(a), 804(b), 804(c), and 804(d) of the Fair Housing Act. 42 U.S.C. § 3604 (a), 42 U.S.C. § 3604(b), 42 U.S.C. § 3064(c), and 42 U.S.C. § 3604(d);
2. Enjoins Respondent, her agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of familial status in any aspect of the rental, sale, use, or enjoyment of a dwelling;
3. Awards such damages as will fully compensate Complainant for her damages caused by Respondent's discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Assesses a \$16,000 civil penalty against Respondent for each violation of the Act she has committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

5. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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