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The Secretary, United States Department of
Housing and Urban Development,
Charging Party, on behalf of:
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Delores Walker, Gregory Walker,
by and through Delores Walker, his
legal guardian,
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Complainants,
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v.
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Michael Corey
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Respondent.
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HUDALJ 10-M-207-FH-27

October 4, 2012

ORDER ON MOTION TO STAY

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Order. On September 24, 2012, the Charging Party filed an Opposition to Respondent's Motion for Stay, arguing that the Secretary lacks jurisdiction to stay enforcement of HUD's final decision. After review, I DENY the Respondent's Motion for Stay.

BACKGROUND

On September 29, 2010, the Charging Party filed a Charge of Discrimination on behalf of Delores Walker and Gregory Walker, by and through Delores Walker, his legal guardian ("Complainants"), alleging that Michael Corey ("Respondent") discriminated against the Complainants based on disability in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, by making facially discriminatory statements in violation of 42 U.S.C. § 3604(c); making housing unavailable because of disability in violation of 42 U.S.C. § 3604(f)(1); and imposing discriminatory terms and conditions because of disability in violation of 42 U.S.C. § 3604(f)(2).

On May 16, 2012, the Administrative Law Judge ("ALJ") issued an Initial Decision finding Respondent had not violated the Fair Housing Act. Subsequently, the Charging Party submitted a Petition for Review ("Initial Petition") to the Secretary requesting that the Secretary vacate the Initial Decision and remand the case to the ALJ. On June 15, 2012, the Secretary issued an Order granting the Initial Petition. See Order at 8. The Secretary found that the Charging Party offered evidence sufficient to prove Respondent violated 42 U.S.C. §§ 3604(f)(1)-(2) and (c) of the Fair Housing Act. Id. at 3-4. The Secretary then remanded the proceeding to the ALJ to rule on the issue of damages and civil penalty. See id. at 8.

On July 16, 2012, the ALJ issued an Initial Decision and Order Upon Remand, ordering Respondent to pay \$5,000 in damages to Complainants and assessing a \$4,000 civil penalty. The Charging Party again sought Secretarial Review on July 30, 2012. On August 15, 2012, the Secretary issued a final decision granting the Charging Party's petition for review and ordered Respondent to pay \$18,000 in damages to the Complainants and assessed a \$16,000 civil penalty. See id.

DISCUSSION

The Fair Housing Act provides that the Secretary may review any finding of fact, conclusion of law, or order contained in an ALJ's initial decision, and issue his own final decision in the case as a whole or on any matters therein within 30 days of the ALJ's initial order. See 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680(b)(1). Similarly, HUD's regulations permit parties to petition for Secretarial review following an ALJ's decision. See 24 C.F.R. § 180.675. If, however, a party is adversely affected by a final agency decision¹, that party may obtain review in the judicial circuit in which the discriminatory housing practice is alleged to have occurred. 42 U.S.C. § 3612(i).

A party adversely affected by an administrative decision must ordinarily move first before the agency for a stay pending review of its decision or order. Fed. R. App. P. 18(a)(1).

¹ An agency decision becomes final if issued by the Secretary on review or if 30 days lapses after a an ALJ decision without any further action on the part of the Secretary. See 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680(b)(1).

The motion must include (1) the reasons for granting the relief requested and the facts relied on; (2) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; (3) and relevant parts of the record. Fed. R. App. P. 18(a)(B).² Furthermore, general authority is given to both the agency and the reviewing court to stay agency action pending review. 5 U.S.C. § 705. While the Charging Party argues that the Secretary lacks jurisdiction to stay enforcement of a final agency decision, the Secretary finds, based on the above authority, that he does in fact have authority to rule on Respondent's motion to stay.

In reviewing whether to grant a motion for stay, an agency or court must consider four factors: (1) whether the movant will likely prevail on the merits of the appeal; (2) whether the movant will suffer irreparable injury if the stay is not granted; (3) whether the nonmoving party will be substantially harmed by the stay; and (4) whether the public interest will be served by granting the stay. See Mowbray v. Kozowski, 725 F. Supp. 888, 889 (W.D. Va 1989); see also Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970).

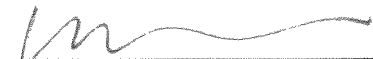
In support of his motion, Respondent argues that "the decision of the agency (Housing and Urban Development) has improperly interpreted the facts [sic] and law of the case before it, as evidenced in the attached Decision of its Chief Administrative Law Judge and the rejection thereof by said agency ..." However, Respondent's argument falls short of the specificity needed for a sufficient request for stay. Instead of providing reasons and facts that support his request for stay, Respondent attached the ALJ's July 16, 2012 decision, a decision that was overruled by the Secretary in the August 15th Order. Furthermore, not only did Respondent fail to offer evidence that he would suffer irreparable injury, he failed to address the other three factors necessary for granting a stay. Therefore, the Secretary denies Respondent's request to stay enforcement of the August 15th Order.

CONCLUSION

Upon review, I DENY Respondent's Motion for Stay because Respondent failed to provide reasons and facts necessary to support a sufficient motion for stay and failed to address the factors necessary for granting a stay.

IT IS SO ORDERED.

Dated this 4th day of October, 2012



Laurel Blatchford
Secretarial Designee

² While this rule has no counterpart in present rules regulating review of agency proceedings, it merely assimilates the procedure for obtaining stays in agency proceedings with that for obtaining stays in appeals from the district courts. The same considerations which justify the requirement of an initial application to the district court for a stay pending appeal support the requirement of an initial application to the agency pending review. See Note accompanying Rule 18.