UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINSTRATIVE LAW JUDGES

The Secretary, United States Department)
of Housing and Urban Development, on)
behalf of Gulf Coast Fair Housing Center,)
)
Charging Party,)
)
V.) HUD ALJ No.
) FHEO No. 04-10-0139-8
James D. Pavolini and Olive D. Pavolini,)
)
Respondents.)
)

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 8, 2009, Complainant Gulf Coast Fair Housing Center ("GCFHC") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD" or "Charging Party") alleging that Respondents James D. Pavolini and Olive D. Pavolini ("Respondents") refused to rent a dwelling, made discriminatory statements, and published discriminatory advertisements in violation of subsections 804(a), 804(b) and 804(c) of the Fair Housing Act ("Act"), 42 U.S.C. § 3604(a), (b) and (c).

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 or is about to occur. 42 U.S.C. § 3610(g)(1)-(2). The Secretary of HUD has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination and to the General Counsel the authority to issue a Charge of Discrimination. 74 Fed. Reg. 62801, 62802 (Dec. 1, 2009). The General Counsel has redelegated that authority to the Regional Counsel. 74 Fed. Reg. 62803, 62804 (Dec. 1, 2009).

The Director of the Office of Fair Housing and Equal Opportunity for Region IV, 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 occurred in this case and has authorized the issuance of this Charge of Discrimination.

II. THE LEGAL AND FACTUAL BASES FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are charged with violating 42 U.S.C. § 3604(a), (b) and (c) as follows:

A. LEGAL AUTHORITY

- 1. It is unlawful to refuse to rent a dwelling to a person who has made a bona fide offer, or to refuse to negotiate with a person for the rental of a dwelling, or otherwise make housing unavailable because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a).
- 2. It is unlawful to impose different terms, conditions or privileges related to the rental of a dwelling or to deny or limit services or facilities in connection with the rental of a dwelling based on familial status. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a).
- 3. It is unlawful to make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(c).
- 4. "Familial status" is defined to include one or more individuals under the age of eighteen (18) years being domiciled with a parent or person having legal custody of such individual(s). 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20.

B. PARTIES AND SUBJECT PROPERTY

- 5. Complainant GCFHC, located at 2218 24th Avenue, Gulfport, Mississippi, is a non-profit organization that strives to promote fair housing on the Mississippi Gulf Coast. Complainant is dedicated to eliminating housing discrimination by furthering equal housing opportunities through education, outreach, advocacy, and enforcement of fair housing laws. Complainant is an "aggrieved person" within the meaning of the Act. 42 U.S.C. § 3602(i).
- 6. Respondents James Pavolini and Olive Pavolini are a married couple who are residents of Gulfport, Mississippi.
- 7. At all times relevant to this Charge, Respondent Olive Pavolini owned a two bedroom house located at 17311 South Boulevard, Gulfport, Mississippi ("Subject Property # 1"), and a tract of land located at 17293 South Boulevard, Gulfport, Mississippi that contained a two bedroom trailer owned by Respondent James Pavolini ("Subject Property # 2"). The subject properties are dwellings as defined by the Act. 42 U.S.C. § 3602(b).

- 8. In addition to the subject properties, Respondent Olive Pavolini owned a house located at 17305 South Boulevard, Gulfport, Mississippi and a vacant lot located at 17360 South Boulevard, Gulfport, Mississippi. Respondent Olive Pavolini also owned a tract of land located at 17304 Yazoo Street, Gulfport, Mississippi that contained a one bedroom trailer owned by Respondent James Pavolini. These properties are also dwellings. 42 U.S.C. § 3602(b).
- 9. At all times relevant to this Charge, Respondent James Pavolini served as an agent of Respondent Olive Pavolini to secure tenants for the subject properties. Respondent James Pavolini submitted newspaper advertisements for the subject properties, answered inquiries from prospective tenants, and showed the subject properties to prospective tenants.

C. FACTUAL ALLEGATIONS

- 10. On or about October 9, 2008, GCFHC became aware of a discriminatory advertisement placed in the Penny Pincher newspaper that stated the following: "2 BEDROOM HOUSE, Long Beach, Couple only, no pet. 877-324-0778." The property described in the advertisement is Subject Property # 1.
- 11. The advertisement erroneously stated that Subject Property # 1 is located in Long Beach, Mississippi. Subject Property # 1 is located in Gulfport, Mississippi which is adjacent to Long Beach, Mississippi
- 12. Respondent James Pavolini, acting as an agent of Respondent Olive Pavolini, submitted the advertisement, described above in Paragraph 9, to the Penny Pincher for publication in its newspaper.
- 13. In response to the advertisement, GCFHC coordinated testing for discrimination on the basis of familial status.
- 14. On October 31, 2008, a female tester employed by GCFHC ("Tester 1") called the telephone number listed in the advertisement. Respondent Olive Pavolini answered the call and informed Tester 1 that the property was small. Tester 1 responded that she planned to occupy the property with her husband and no other persons. Respondent Olive Pavolini provided Tester 1 with Subject Property # 1's address and set up a meeting with the tester and Respondent James Pavolini.
- 15. On or about 4:00 p.m. on October 31, 2008, Tester 1 met with Respondents at Subject Property # 1. Tester 1 inquired about a security deposit and whether Respondents conducted a background or credit check. Respondent James Pavolini responded that he "tried to gauge the deposit amount by the person" and that if he got a "strange feeling" he would "ask him or her to pay \$25 for a credit check and then never hear from that person again." Respondent James Pavolini gave Tester 1 an application to rent the apartment and remarked that "being a nice girl like yourself, you can just call me and that would be enough."

- 16. On or about November 3, 2008, a female tester hired by GCFHC ("Tester 2") called the telephone number listed in the advertisement to inquire about renting the property. Respondent James Pavolini answered the call and informed Tester 2 of a trailer that was available to rent. The trailer described by Respondent James Pavolini is Subject Property # 2. Respondent James Pavolini asked Tester 2 if she would reside in Subject Property # 2 with her husband or boyfriend. Tester 2 responded that she would reside in the property with her husband and two children. Respondent James Pavolini replied "oh no, it's not big enough for kids." Tester 2 asked Respondent James Pavolini if the property had two bedrooms. Respondent James Pavolini advised that although Subject Property # 2 had two bedrooms, the advertisement stated for "couples only" because it was too small for children. Respondent James Pavolini gave Tester 2 the telephone numbers of other housing providers with larger trailers.
- 17. On or about November 6, 2008, two additional advertisements were published in the Penny Pincher newspaper. The first advertisement stated: "2 BEDROOM TRAILER. Couple only, close to I-10 and 49, \$600. 877-324-0778." The second advertisement stated "2 BEDROOM HOUSE, couples only, close to I-10 and 49, \$650 monthly, 877-324-0778." Respondent James Pavolini, acting as an agent of Respondent Olive Pavolini, submitted the advertisements to the Penny Pincher newspaper for publication.
- 18. From September 2006 to October 2007, Subject Property # 2 was leased to a couple with two children. From January 2008 to July 2008, Subject Property #2 was leased to a couple with one child. In July 2008, Respondent James Pavolini terminated the couple's lease and advised that he was retiring from the rental business. The couple vacated Subject Property # 2 in the summer of 2008. Contrary to their claim that they were retiring from the rental business, Respondents rented Subject Property # 2 to a couple without children from December 2008 to April 2009 and Subject Property # 1 to a couple without children until March 2009.
- 19. By refusing to rent the subject property based on familial status, Respondent James Pavolini violated 42 U.S.C. § 3604(a). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.
- 20. By steering Complainant's tester to other housing providers, Respondent James Pavolini made a dwelling unavailable based on familial status in violation of 42 U.S.C. § 3604(a). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.
- 21. By terminating the lease of tenants with children and then renting the dwellings to tenants without children, Respondent James Pavolini made a dwelling unavailable based on familial status in violation of 42 U.S.C. § 3604(a) and (b). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.

- 22. By failing to process Complainant's tester's offer to rent, Respondent James Pavolini imposed different terms or conditions based on familial status in violation of 42 U.S.C. § 3604(b). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.
- 23. By stating to Complainant's tester that the subject property was too small for children, Respondent James Pavolini stated a discriminatory limitation based on familial status in violation of 42 U.S.C. § 3604(c). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.
- 24. By publishing the discriminatory advertisements in the Penny Pincher newspaper that limited or otherwise restricted housing choice based on familial status, Respondent James Pavolini violated 42 U.S.C. § 3604(c). Respondent Olive Pavolini is vicariously liable for the discriminatory acts of Respondent James Pavolini.
- 25. Respondents James and Olive Pavolini's actions injured Complainant by frustrating Complainant's mission to ensure equal access to housing and housing services free from discrimination. Due to the Respondents' discriminatory actions, the Complainant has had to divert resources away from its other services, including but not limited to education, outreach, and referrals.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents James D. Pavolini and Olive D. Pavolini with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a), (b), and (c), and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondents James Pavolini and Olive Pavolini, as set forth above, violate the Act;
- 2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating against any person because of race, color, sex, national origin, familial status, religion, and disability in any aspect of the rental, sale, occupancy, use or enjoyment of a dwelling;
- 3. Awards such monetary damages as will fully compensate Complainant Gulf Coast Fair Housing Center for its economic loss due to its diversion of resources and frustration of its mission caused by Respondents' discriminatory conduct in violation of the Act;
- 4. Assesses a civil penalty against each Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612 (g)(3) and 24 C.F.R. § 180.671(a)(1); and

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

Respectfully submitted,

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