

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)
[REDACTED] and [REDACTED])
and their minor children,)
Charging Party,)
v.)
Kacy Grotjan, Creek Point LP,)
Picerne Development Corporation, and)
Picerne Creek Point, LLC,)
Respondents.)

FHEO No. 06-11-0171-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about November 4, 2010, [REDACTED], and [REDACTED] (Complainants) filed a verified complaint with the United States Department of Housing and Urban Development (HUD), alleging that Kacy Grotjan and Creek Point LP violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), by discriminating based on familial status, in violation of 42 U.S.C. § 3604(b). Complainants' children, [REDACTED], and [REDACTED], are identified as aggrieved parties, as defined under the Act. On March 24, 2011, the complaint was amended to identify Kacy Grotjan as the manager of Creek Point Apartments, Creek Point LP as the owner, Picerne Development Corporation as the management company, and Picerne Creek Point, LLC, as the general partner of Creek Point LP. On August 26, 2011, the complaint was again amended to add a violation of 42 U.S.C. § 3604(c). In addition, the August 26, 2011, amendment corrected the spelling of the names of [REDACTED], and [REDACTED], and updated the name of the respondents' counsel, which is James T. Muska at Hoover Slovacek LLP.

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of aggrieved persons 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 retained and redelegated to the Regional Counsel (73 Fed.Reg. 68442) 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.

By determination of reasonable cause on September 23, 2011, the Office of Fair Housing and Equal Opportunity Region VI 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 familial status, 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 Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, are charged with discriminating against Complainants [REDACTED] and [REDACTED] and their two minor children, [REDACTED], and [REDACTED], all aggrieved persons as defined by 42 U.S.C. § 3602(i), based on familial status, in violation of 42 U.S.C. § 3604(b) and (c) as follows:

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status. 42 U.S.C. §3604(b).
2. It is unlawful to make, print or publish any statement or advertisement with respect to the sale or 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).
3. "Familial status" is defined by the Act as one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals. 42 U.S.C. §3602(k).
4. At all relevant times, Complainants [REDACTED], and [REDACTED] were a married couple with two children, a thirteen year old son, [REDACTED], and a twelve year old daughter, [REDACTED]. Beginning on or around January 31, 2010, Complainants and their children resided in apartment [REDACTED] at the subject property, Creek Point Apartments, [REDACTED], McKinney, Texas, 75069.
5. Complainants [REDACTED], and [REDACTED] and their children are "aggrieved persons," as defined by 42 U.S.C. §3602(i), and enjoy familial status protection under the Act.

6. The subject property, Creek Point Apartments, is a 200-unit low-income tax-credit-affordable housing complex, ranging from one- to three-bedroom units.
7. At all relevant times, Respondent Creek Point LP owned Creek Point Apartments. At all times relevant to this Charge, Respondent Picerne Creek Point LLC was the general partner of Respondent Creek Point LP.
8. At all relevant times, Respondent Picerne Development Corporation managed Creek Point Apartments.
9. At all relevant times, Respondent Kacy Grotjan was the on-site manager for Creek Point Apartments and was employed by Respondent Picerne Development Corporation.
10. In or about March 2010, Complainants and all residents of Creek Point Apartments received a notice from Respondents that established a policy wherein children under the age of 16 years could not be outside unsupervised. The notice stated, in part,

NO LONGER ARE CHILDREN UNDER THE AGE OF 16 ALLOWED TO ROAM AROUND PROPERTY BY THEIRSELVES. WE ARE HAVING SEVERAL PROBLEMS WITH THIS ISSUE. THE KIDS ARE WRITING ON THE BUILDING WALLS, CURSING, KISSING BEHIND THE BUILDINGS, FIGHTING, HITTING CARS AND WINDOWS WITH FOOTBALLS, BEING IN THE FITNESS CENTER WITHOUT PARENT SUPERVISION, PLAYING IN THE STREETS WITHOUT MOVING WHEN CARS ARE COMING IN AND OUT OF THE PROPERTY ETC. THIS IS NO LONGER GOING TO BE A PROBLEM HERE AT CREEKPOINT. THIS DOES NOT MEAN THAT CHILDREN CAN BE WATCHED FROM WINDOWS AND BREEZEWAYS YOU MUST BE WITH YOUR CHILDREN AT ALL TIMES OUTSIDE. IF YOUR CHILD IS CAUGHT OUTSIDE WITHOUT A PARENT RIGHT BESIDE THEM YOU WILL BE GIVEN A FINE OF \$50.00 AND RENT WILL NOT BE ACCEPTED IF THIS IS NOT PAID IN FULL ASAP!

11. On May 3, 2010, Respondents fined Complainants \$50.00 for “Child outside without parental supervision¹,” and Complainants paid said fine on May 5, 2010.
12. In a letter dated August 30, 2010, addressed to Creek Point residents, Respondents informed the residents that Creek Point Management was implementing a policy restricting children under the age of 18 years old from being allowed outside without adult supervision, thereby, increasing the minimum age allowed for unsupervised use of the subject property from 16 years to 18 years. Specifically, the pertinent part of the notice states,

¹ It is in dispute whether the child outside without parental supervision was Complainants’ son or daughter. Complainants state they were told the fine was assessed because their son was outside unsupervised, while Respondents state the fine was assessed because Complainants’ daughter was outside unsupervised. Regardless, a fine was assessed because one of Complainants’ children was outside unsupervised.

As you know a few months ago we sent out letters stating that kids were not allowed outside without adult supervision unless they were 16yrs and up, as things mellowed down we were letting kids go back outside. Over the weekend office staff saw several kids nearly get hit by cars driving in etc. **This letter is to inform you that kids are not allowed back outside by themselves without adult supervision unless they are 18 years and older.** We apologize for any inconvenience this may cause you and your family. If children are caught outside unattended there will be a \$50.00 fine.

13. On multiple occasions, Respondent Kacy Grotjan and another staff member told Complainants' children to go inside when they were found to be outside of their apartment without adult supervision. [REDACTED], also stated that a staff member told him that they could not play soccer outside or they would be fined. In one instance, [REDACTED], was sitting in the breezeway in front of his apartment when a staff member instructed him to go inside.
14. From August 13, 2010, through September 17, 2010, at least nine residents received notices of lease violations for unsupervised children.
15. In or about October 2010, Complainant [REDACTED], wrote a letter advising Respondents that the current policy was illegal, citing cases in support of his position. Complainant [REDACTED], requested a retraction of the policy by October 29, 2010. In response to this letter, Respondents' attorney offered Complainants the opportunity to terminate their lease early, and in return, Respondents would refund any deposit owed to them. Respondents did not offer to retract the unsupervised children policy.
16. Complainants did not sign the agreement. However, they did terminate their lease early. On November 2, 2010, Complainants terminated their tenancy 60 days in advance of their lease expiration date. Respondents assessed move-out costs for the early termination totaling \$2,291.75.
17. In the course of the investigation, a HUD investigator observed other restrictive policies for families with children concerning the subject property's amenities. The posted "Pool Rules" state, "No one under 16 years of age permitted in pool area without an adult." The posted "Fitness Rules" state, "Persons under 16 must be accompanied by an adult."
18. By subjecting Complainants to an overly restrictive policy that did not allow their children to leave their apartment without an adult present, and by charging a fine for any violation of said policy, Respondents subjected Complainants to more restrictive terms and conditions than tenants of the subject property who do not reside with minor children, in violation of 42 U.S.C. §3604(b) of the Act.

19. By verbally communicating to Complainants and their children that their children were not allowed outside unless supervised by an adult, Respondents made discriminatory statements that indicated a limitation or discrimination against families with children in violation of 42 U.S.C. § 3604(c).
20. By publishing discriminatory statements in notices and on amenity signs throughout the subject property that indicated a limitation or discrimination against families with children, Respondents violated 42 U.S.C. § 3604(c).
21. As a result of Respondents' discriminatory conduct, Complainants and their children have suffered significant damages, including, but not limited to economic loss, physical and emotional distress, substantial inconvenience, embarrassment and the loss of a housing opportunity.
22. As a result of Respondents' discriminatory conduct, Complainants had to keep their children inside the apartment all summer long during the day. Complainants' children were uncomfortable with the situation and were uncomfortable with being watched and stared at by Respondents' staff members.
23. As a result of Respondents' discriminatory conduct, Complainants lost a housing opportunity and suffered an inconvenience in having to move. Complainants incurred an increase in rent, the expense of a new security deposit, the cost of a refrigerator, and fees for utility transfers. Complainants each lost income for a day and were assessed fines and other fees by Respondents.

III. CONCLUSION

WHEREFORE, the Secretary of the United States 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 Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(b) and (c) of the Act, and prays that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating because of familial status against any person in any aspect of the purchase or rental of a dwelling;

3. Awards such monetary damages as will fully compensate Complainants [REDACTED] and [REDACTED] and their children, [REDACTED] and [REDACTED], aggrieved persons, for any and all damages caused by Respondents' discriminatory conduct; and,
4. Awards a \$16,000 civil penalty against each Respondent for violation of the Act, 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,

/S/

William J. Daley
Regional Counsel
Region VI

/S/

Allyssa D. Wheaton-Rodriguez
Trial Attorney
U.S. Department of Housing
and Urban Development
Office of Regional Counsel
801 Cherry Street
PO Box 2905
Fort Worth, TX 76113-2905
Phone: (817) 978-5994
Fax: (817) 978-5563

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