

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

| | | |
|---------------------------------------------|---|-----------------------|
| Secretary, United States Department of |) | |
| Housing and Urban Development, on behalf of |) | |
| XXX, |) | |
| |) | |
| Charging Party, |) | |
| |) | |
| v. |) | ALJ No. |
| |) | FHEO No. 05-10-1808-8 |
| Barbara Tremel and David Nowicki, |) | |
| |) | |
| Respondents |) | |
| _____ |) | |

CHARGE OF DISCRIMINATION

I. JURISDICTION

On September 21, 2010, Complainant XXX (“Complainant”) filed a complaint with the U.S. Department of Housing and Urban Development (“HUD”) alleging that Respondent Barbara Tremel and her agent “John Doe” discriminated against her because of disability¹ in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601-19. On January 11, 2011, the complaint was amended to identify David Nowicki, Tremel’s agent and the property manager of the subject property, as a respondent.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination 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 that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has redelegated the authority to the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Deputy Assistant Secretary of Enforcement and Programs of HUD’s Office of Fair Housing and Equal Opportunity, 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 disability and has authorized and directed the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

¹ The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents Tremel and Nowicki are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the rental, or to otherwise make unavailable or deny a dwelling to a person because of disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.60.
2. 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 disability, or an intention to make any such preference, limitation, or discrimination. 24 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

B. Parties and Subject Property

3. Complainant XXX is bipolar and has social phobia, and is a person with a disability, as defined by the Act. 42 U.S.C. § 3602(h). She is also an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).
4. Complainant resides with her two children at her grandmother's residence at XXX, Brown Deer, Wisconsin, 53223.
5. Complainant receives Social Security Disability Insurance ("SSDI") of approximately \$1,445 per month for herself and her two children. In addition, she received unemployment insurance of \$354 per week at the time she sought housing from Respondents.
6. Respondent Tremel and Respondent Nowicki reside at XXX, Waukesha, Wisconsin, 53189. Respondent Tremel owns the subject property, a three-bedroom, single-family home located at 228 N. 62nd Street, Milwaukee, Wisconsin, 53213. The subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b).
7. Respondent Tremel employed Respondent Nowicki, a real estate broker, as the property manager for the subject property. As property manager, Respondent Nowicki was responsible for taking calls from potential tenants, advertising the subject property for rent, making tenant selections, and managing the subject property.

C. Factual Allegations

8. On or about December 4, 2009, Complainant observed a "For Rent" sign

- outside of the subject property. The sign listed XX as the contact number, the number for Respondent Nowicki's personal cellular phone.
9. After observing the sign described in the preceding paragraph, Complainant called the listed phone number to inquire about the subject property. Complainant left a message following a recorded voicemail prompt.
 10. A few minutes later, Complainant received a return phone call from a male. The caller, Respondent Nowicki, inquired about Complainant's income. Complainant replied that she received unemployment compensation and disability benefits. Respondent Nowicki then told Complainant that he would not rent to anyone who is disabled or unemployed, because if they do not pay him, he cannot go after them for the money.
 11. During the December 4, 2009 phone call, Respondent Nowicki also asked Complainant, "what is wrong with [you]."
 12. During the December 4, 2009 phone call, Respondent Nowicki also told Complainant that he has a friend who rents to people with disabilities, but he does not rent to them. He provided the telephone number for his friend and told the Complainant to call that person.
 13. On or about December 8, 2009, Complainant drove by the subject property and observed that the same "For Rent" sign was still outside.
 14. Within a couple weeks after the phone conversation between Complainant and Respondent Nowicki, Complainant contacted the Metropolitan Milwaukee Fair Housing Council ("Council").
 15. On December 21, 2009, a female tester for the Council called XX, the phone number on the sign advertising the subject property as available for rent. Respondent Nowicki answered the phone and asked if the tester could call back within 45 minutes to an hour.
 16. Later on December 21, 2009, the tester called back as directed. The individual who answered the call identified himself as Dave Nowicki. The tester expressed interest in renting the subject property, and Respondent Nowicki inquired about the tester's family income. The tester stated that her family had Social Security disability income.
 17. In response to the tester's disclosure regarding the SSDI, Respondent Nowicki stated, "Okay. That presents a little bit of a problem. I'm in kind of [a] tough shot that way [o]n this particular building because the building does not qualify for rent assistance." In response, the tester asked, "Just to be clear, this is not available because of the income from Social Security?" Respondent Nowicki replied, "You heard the particulars ... I cannot. Let me put it this way. It's an 18-

month lease. If you end up breaking the lease for whatever reason and there's cost involved and all that, I cannot execute a judgment against your source of income...I eat the loss and I just can't do that..."

18. During the December 21, 2009 conversation, Respondent Nowicki also asked the tester, "Are you both permanently disabled, have Social Security Disability Income?" The tester replied, "Well, my husband has chronic asthma and I don't see that getting any better." Respondent then asked, "How about yourself?" The tester replied that "[I]t would be nice if it wasn't permanent clinical depression and panic disorder." Respondent then stated, "Nobody's challenging the fact that this will come to an end?" The tester replied, "No, not right now." Respondent then asked: "How long have you been on this?" The tester stated, "[P]robably, 2009, almost 10 years." Respondent replied, "Ten years...Chronic asthma, clinical depression...Okay. I'll look into exploring that with you. Knew a couple of people who could find a house." Respondent Nowicki then ceased all conversation regarding rental of the subject property and attempted to persuade the tester to consider a home purchase instead.
19. In or about March 2010, Respondents rented the subject property to two non-disabled tenants for \$950 per month.
20. Respondent Tremel owns the subject property and Respondent Nowicki acted as her agent in renting and managing the subject property. She is jointly and severally liable for her agent's violations of the Act.

D. Legal Allegations

21. As described in paragraphs 8-13 above, Respondent Nowicki violated subsection 804(f)(1)(A) of the Act when he denied Complainant the opportunity to rent or otherwise made unavailable the subject property because of disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. §§ 100.60, 100.202.
22. As described in paragraphs 10-12 above, Respondent Nowicki violated subsection 804(c) of the Act when he made statements with respect to renting the subject property that indicated a preference, limitation, or discrimination based on disability. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.75, 100.202.
23. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages, including emotional distress.

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 Respondent Tremel and Respondent Nowicki with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1)(A) and 3604(c), and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, 42 U.S.C. §§ 3604(c) and 3604(f)(1)(A);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of a sale or rental of a dwelling;
3. Awards such monetary damages as will fully compensate Complainant;
4. Assesses a civil penalty against Respondents for violation of the Act, 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 on this 18th day of January, 2012.

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/s/

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/s/

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