

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
██████████,)	
)	
)	
Charging Party,)	HUD ALJ No.
)	FHEO No.: 05-12-0832-8
)	
v.)	
)	
)	
Kurt Schimnich,)	
)	
)	
Respondent.)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about April 19, 2012, ██████████ (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“HUD” or “the Department”) alleging that Respondent Kurt Schimnich discriminated against her based on disability, in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* (“the Act”).

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) 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 this authority to the General Counsel (24 C.F.R. §§103.400 and 103.405), who has re-delegated to the Regional Counsel (76 Fed. Reg. 42465), 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.

The Office of Fair Housing and Equal Opportunity Region V Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on disability, 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 complaint and the Determination of Reasonable Cause, Kurt Schimnich ("Respondent") is charged with violating the Act as follows:

A. Legal Authority

1. 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 sale or rental of a dwelling unit, that indicates any preference, limitation, or discrimination based on disability, or an intention to make such preference, limitation or discrimination. 42 U.S.C. §3604(c).
2. It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter. 42 U.S.C. § 3604(f)(1).
3. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person. 42 U.S.C. §3604(f)(2).
4. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. 42 U.S.C. §3604(f)(3)(B).
5. The Act, at 42 U.S.C. §3602(h), defines "handicap"¹ as "(1) a physical or mental impairment which substantially limits one or more of such persons' major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment....."
6. Major life activities include, but are not limited to, "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 24 C.F.R. §100.201(b).

B. Parties and Subject Property

7. Complainant [REDACTED] is both physically and mentally disabled, within the meaning of the Act. Complainant Smith is diagnosed with depression, post-traumatic stress disorder ("PTSD"), and other psychiatric disorders. In addition, Complainant is physically disabled. She is legally blind and has mobility

¹ While federal laws still use the obsolete term "handicap," this Charge uses the term "disability" as interchangeable with "handicap."

problems with her back, such that she sometimes requires the use of a walker. She has been receiving Social Security Income (“SSI”) since 1984.

8. Complainant is an aggrieved person as defined by the Act, 42 U.S.C. §3602(i).
9. At all times relevant to this Charge, Respondent Schimnich owned and managed the property located at 501 8th Avenue North, St. Cloud, Minnesota (“subject property”). The subject property is a three unit residential rental property. Respondent does not live at the subject property and did not live at the subject property at the time of the allegations giving rise to this Charge. On information and belief, Respondent owns other residential real estate properties, including, but not limited to: 3115 31st Street, St. Cloud, Minnesota; 1931 15th Street NE, Sauk Rapids, Minnesota, and other properties in St. Cloud and Sauk Rapids, Minnesota.

C. Factual Allegations

10. Complainant was diagnosed with learning disabilities in 1984; diagnosed with depression and PTSD in 2002, and was determined legally blind in 2005. She has other psychiatric disabilities, including bi-polar disorder. She also has mobility disabilities and sometimes uses a walker. She cannot drive. In or around 2002, Complainant started using support animals to treat the symptoms of her disabilities. Complainant had a support cat but found she was allergic to cats so she changed to a dog.
11. Complainant uses a 19lb dog as an emotional support animal, which she has had for approximately 4 years. On information and belief, at all times relevant to this Charge, Complainant’s emotional support dog wore a pouch with an accessibility symbol on it, and wore tags identifying it as an emotional support animal.
12. On or about March 16, 2011, Complainant registered her dog with the National Service Animal Registry (“NSAR”), who provided her with a support animal certificate, identification tags, a pouch for the dog to wear that identifies the dog as a support animal, information concerning laws that protect support animals, as well as legal limitations upon them, resource information, and inclusion on the NSAR website, where others could search and identify her dog as an emotional support animal.
13. On or about April 25, 2011, Complainant’s physician, Mark Halstrom, M.D., wrote a letter in support of Complainant using an animal in treatment of her PTSD. He wrote, in relevant part, “She has a history of depression and PTSD which has been treated adequately. Part of her treatment for her depression and PTSD is her dog. I think this is medically in her best interest to have a pet....”
14. At all times relevant to this Charge, Respondent Schimnich maintained a “no pet” policy at the subject property.

15. In or around March 2012, Complainant was looking for an apartment to rent; she learned of a vacancy at the subject property from the Place of Hope Ministries in St. Cloud, a ministry outreach center. Following up on this referral, Complainant's cousin, [REDACTED], drove Complainant to the subject property because Complainant is legally blind and cannot drive herself. Viewing the "For Rent" sign posted at the subject property, [REDACTED] wrote down the telephone number 320-252-3070 from the sign.
16. The telephone number 320-252-3070 belongs to Respondent and is answered by him. Complainant called this phone number from her own phone a number of times between March 30, 2012 and April 2, 2012, when Complainant finally spoke with a man later identified as Respondent.
17. During the April 2, 2012 call, Complainant told Respondent that she was looking for a rental for May 1. Respondent told Complainant the available unit rented for \$495 per month, plus utilities. He also told her the available unit at the subject property had a porch type area for storage and was on the main floor. They made an appointment to visit the subject property on April 3, 2012.
18. On April 3, 2012, [REDACTED] and Complainant arrived at the subject property twenty minutes before Respondent. They sat in the car and waited for Respondent. Eventually, Complainant took the dog out of the car to walk him. Respondent arrived as Complainant and her dog were walking back from the dumpster, where she deposited the dog's waste.
19. Arriving for the appointment on April 3, 2012, Respondent went to the door of the house to open it, but when he realized that Complainant was the apartment seeker and that the dog was with her, he said "no pets" and would not allow her to enter the property. In response, Complainant and [REDACTED] both told Respondent that the dog was a support animal, not a pet. In reply, Respondent repeatedly said "no pets."
20. During the April 3, 2012 appointment, [REDACTED] retrieved the dog's support animal certification paperwork, which Complainant had with her, and attempted to show it to Respondent, but Respondent would not take the paperwork from [REDACTED] and told her that he "did not care" what the papers said. [REDACTED] also drew his attention to the dog's support animal tags, to no avail. [REDACTED] asked Respondent's name, but he did not give it to her. Instead, he asked why she needed his name. [REDACTED] responded that they would be "reporting" him. Respondent stated that he would not be "strong-armed" and/or "swindled" into renting to Complainant, or similar words to that effect. [REDACTED] replied to Respondent that they no longer wished to rent the apartment, but that they would be filing a complaint. As Respondent walked around his truck to leave, [REDACTED] noticed the name of the construction company and phone number printed on the truck door and wrote down this information.

21. That same day, Complainant and [REDACTED] called NSAR, who referred them to HUD. Complainant subsequently filed her HUD complaint.
22. When Complainant informed Respondent that her dog was a support animal and not a pet, he knew or should have known that Complainant was disabled and that she was requesting a reasonable accommodation to the “no pet” policy in effect at the subject property.
23. During the HUD investigation, Respondent stated that he asked for documentation that Complainant’s dog was a support animal. Respondent admitted that he is familiar with support animals.
24. During the HUD investigation, Respondent stated that he would not rent a unit at the subject property to Complainant because it had too many stairs; he believed that Complainant would have to carry her dog up the stairs; and he believed that the stairs would be too difficult for Complainant.
25. During the HUD investigation, Respondent stated that he would not show Complainant a unit in the subject property because her dog was an obvious disqualification, as he maintained a “no pet” policy at the subject property.

D. Legal Allegations

26. By repeatedly telling Complainant “no pets” after Complainant told him that her dog was a support animal, not a pet, and refusing to discuss the issue further, Respondent made a statement with respect to the rental of a dwelling unit that indicated preference, limitation or discrimination based on disability, or an intention to make such a preference, limitation or discrimination in violation of 42 U.S.C. §3604(c).
27. By telling Complainant that he would not be “swindled” or “strong-armed” into renting to her, or similar words to that effect, after [REDACTED] asserted Complainant’s rights to live with her support animal, Respondent made a statement with respect to the rental of a dwelling unit that indicated a preference, limitation or discrimination based on disability, or an intention to make such a preference, limitation or discrimination in violation of 42 U.S.C. §3604(c).
28. By refusing to show, rent, or negotiate for the rental of a unit at the subject property with Complainant because she wished to live with her emotional support dog, Respondent refused to rent, and made the subject property otherwise unavailable, to Complainant because of her disability in violation of 42 U.S.C. §3604(f)(1).
29. By refusing to show, rent, or negotiate for the rental of a unit at the subject property with Complainant because the unit had stairs and Respondent believed that Complainant would have difficulty carrying her dog on the stairs, Respondent

refused to rent, and made the subject property otherwise unavailable, to Complainant because of her disability in violation of 42 U.S.C. § 3604(f)(1).

30. By making Complainant prove that she was disabled and that her support animal was, indeed, a support animal before allowing her to view the subject property, but not requiring other prospective renters to show rental qualifications prior to viewing the subject property, Respondent discriminated against Complainant in the terms, conditions, or privileges of rental of a dwelling, because of Complainant's disability in violation of 42 U.S.C. §3604(f)(2).
31. By refusing to waive his "no pet" policy to accommodate Complainant, after she told Respondent her support animal was a support animal, not a pet, or enter into an interactive process concerning her reasonable accommodation request, Respondent refused to provide a reasonable accommodation to rules, policies and practices, to afford Complainant, an individual with a disability, an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. §3604(f)(3)(B).
32. As a result of Respondent's discriminatory conduct, Complainant suffered actual damages, including emotional distress and inconvenience. Complainant moved to a unit that is less convenient than the subject property and more expensive.
33. Complainant suffered emotional distress, after Respondent's discriminatory conduct toward her. At the time of Respondent's discrimination, Complainant believed herself to be in a potentially dangerous housing situation. Respondent removed an opportunity to leave that situation. She felt worried about being able to find new housing, particularly at an affordable price point, as the subject property was affordable.

III. CONCLUSION

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

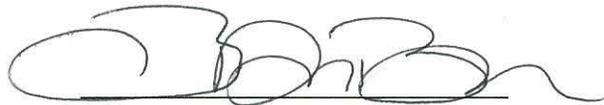
1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §3601, *et seq.*;
2. Enjoins Respondent, his agents, employees, successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant for her actual damages caused by Respondent's discriminatory conduct, pursuant to 42 U.S.C. §3604(c), (f)(1), (f)(2) and (f)(3)(B);

4. Awards a \$16,000 civil penalty against Respondent for his violation of the Act, pursuant to 42 U.S.C. §3612(g)(3); 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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