

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 Vanessa Shepard, South Suburban)
Housing Center, and Le'Jon Shepard,)

Complainants,)

v.)

W. Russell Smith, Bonnie Smith, and)
W. Russell and Bonnie Smith d/b/a)
JDS Rentals,)

Respondents.)

FHEO Nos. 05-02-0009-8
05-02-0008-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 22, 2001, Vanessa Shepard and Le'Jon Shepard ("Complainants") filed a verified complaint of discrimination with the Department of Housing and Urban Development ("HUD"), alleging that Respondents W. Russell Smith and Bonnie Smith ("Respondents") discriminated against them on the basis of race. On October 22, 2001, the South Suburban Housing Center ("SSHC"), filed a verified complaint alleging that Respondents Smith discriminated against it on the basis of race and familial status.

The Fair Housing 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 occurred. 42 U.S.C. §3601(g)(1) and (2). The Secretary has delegated to the General Counsel, (54 Fed. Reg. 13121) 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. This authority has been redelegated to the Assistant General Counsel for Fair Housing Enforcement. (67 Fed. Reg. 44234, July 1, 2002).

The Director of the Midwest Office HUB, on behalf of the Assistant Secretary of Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge of Discrimination.

II. ALLEGATIONS

Based on HUD's investigation of the allegations, Respondent W. Russell Smith, Respondent Bonnie Smith and Respondents W. Russell and Bonnie Smith d/b/a JDS Rentals are charged with discriminating against Vanessa Shepard, Le'Jon Shepard, and South Suburban Housing Center based on race and familial status in violation of the 42 U.S.C. §§3604 (a), (b), (c) and (d) of the Act. The allegations that support this charge are as follows:

1. Complainant Vanessa Shepard is a Caucasian female. Complainant Le'Jon Shepard is an African American male. At the time of the alleged discrimination, they were married.
2. Complainant South Suburban Housing Center is a not-for-profit organization whose mission is to promote diversity by working to eliminate all forms of discrimination and exploitation in the housing market.
3. The subject property is comprised of six buildings, numbers 817, 820, 841, 865, 880, and 889 Lindsey Lane in Bourbonnais Illinois 60914. The complex has 32 rental units.
4. At all times relevant to the allegations, Respondents W. Russell and Bonnie Smith were the owners and managers of the subject property and engaged in the business of renting apartment and townhouse units under the name of JDS Rentals.
5. In March 2002, Respondent W. Russell Smith was interviewed by a HUD investigator in his lawyer's office. At the time of the interview, Respondents did not rent to African Americans at the subject property. At the time of the interview, Respondents provided the familial composition for 26 of the 32 units. Respondents rented 11 of the 26 units to families with children. Ten of the 11 units were three bedroom units rented to families with one to three children. One of the 11 units was a two bedroom unit rented to a family with two children. The 15 remaining two and three bedroom units did not have families with children.
6. On March 9, 2001, Complainant Vanessa Shepard telephoned about an advertisement in the Kankakee Daily Journal. The advertisement listed a two-bedroom apartment for rent in Bourbonnais, Illinois. She left a message and a number where she could be reached.
6. On March 10, 2001, Complainant Vanessa Shepard called again about the advertised apartment and spoke with Respondent Bonnie Smith. Respondent Bonnie Smith apologized for not returning Complainant's phone call and scheduled an appointment for the Shepards to see the apartment the next day, March 11, 2001, at noon.
7. Complainant Vanessa Shepard and Complainant Le'Jon Shepard arrived for that appointment at approximately 12:15 p.m. on March 11, 2001. Respondent W. Russell Smith told

Complainants that they were the first persons to see the apartment. This meeting was Respondents' first contact with Complainant Le'Jon Shepard.

8. After Complainants viewed the apartment, Respondent W. Russell Smith gave them an application, which they completed and returned the next day, March 12, 2001. Respondent W. Russell Smith did not tell Complainants that a \$100 deposit must accompany the application and the Shepards did not include a deposit with their application.

9. On March 13, 2001, Complainant Vanessa Shepard called Respondent W. Russell Smith to inquire about the status of the application. Respondent W. Russell Smith said, "I have to be totally honest with you. I showed the apartment to someone else before you and I am going to see how things work out."

10. Respondents rented the apartment to a Caucasian couple.

11. Believing that Respondents discriminated against them based on Le'Jon Shepard's race, Complainant Vanessa Shepard and Complainant Le'Jon Shepard sought counseling from Complainant South Suburban Housing Center (SSHC).

12. Complainant SSHC engaged three testers (two Caucasian, one African American) to telephone about the availability of the advertised apartment. The Caucasian testers spoke with Respondent Bonnie Smith on March 14, and March 16, 2001. Respondent Bonnie Smith told them that an application was under consideration, but that the apartment was still being shown. Both Caucasian testers made appointments to see the property.¹ The African American tester left messages on March 16 and 19, 2001, but his calls were not returned.

13. In August 2001, Complainant SSHC engaged three Caucasian and three African American testers to inquire about the availability of a townhouse that Respondents advertised for rent.

14. Two Caucasian testers called on August 9, 2001. They spoke with Respondent Bonnie Smith and made appointments to view the townhouse. One of these testers had a family profile consisting of husband, wife and a four-year-old child and the other Caucasian tester profiled as a married couple with no children. A third Caucasian tester, profiling as a married couple with no children, called Respondent Bonnie Smith on August 10, 2001, and made an appointment to view the townhouse.

15. The three Caucasian testers were queried either over the telephone by Respondent Bonnie Smith or while onsite by Respondent W. Russell Smith about the number of persons who would live in the unit, whether any of the persons were children and, if so, their ages. Respondent W. Russell Smith told a tester that Smith discouraged teenagers. Respondent W. Russell Smith told another tester that it was "good" that he had no children because they (Respondents) did not want three or four kid families.

¹ On March 17th, during a showing to one of the Caucasian testers, Respondent W. Russell Smith told the tester that the townhouse rentals were limited to families with two children.

16. An African American tester also called about the townhouse on August 9, 2001, and two additional African American testers called on August 10, 2001. All of the African American testers were told by Respondent Bonnie Smith either that the unit was probably rented or that so many appointments had already been scheduled that they did not want to make any additional appointments at that time. Respondent Bonnie Smith took their numbers and promised to call if the previously scheduled appointments cancelled or if the townhouse remained available. Respondent Bonnie Smith did not subsequently call any of the African American testers and did not invite any of them to view the advertised property.

17. Respondents' limitations on the number of children in the townhouses and virtual exclusion of children from the apartments and discriminatory statements violate 42 U.S.C. §3604 (a), (b) and (c) on the basis of familial status.

18. Respondent W. Russell Smith informed Caucasian testers that a deposit was required to accompany the application for tenancy. Respondent Russell Smith did not inform Complainant Vanessa Shepard and Complainant Le'Jon Shepard about the deposit requirement during their on-site visit. Respondents' difference in treatment violates 42 U.S.C. §3604 (a) on the basis of race.

19. Respondents invited the Caucasian testers and Complainant Vanessa Shepard to view the properties. Respondents did not invite any of the African American testers to view the properties and did not negotiate for the rental of a dwelling with the African-American testers. Respondents' difference in treatment violates 42 U.S.C. §3604 (a) on the basis of race.

20. Respondents represented to African Americans that dwelling units were not available for inspection or rental when such dwellings were available in violation of 42 U.S.C. §3604 (d).

21. Because of Respondents' discriminatory conduct, Complainant Vanessa Shepard and Complainant Le'Jon Shepard have been subjected to feelings of humiliation, worthlessness, and shame and other emotional distress. In addition, they lost a housing opportunity and desired housing amenities.

22. Because of Respondents' discriminatory conduct and statements, Complainant South Suburban Housing Center provided assistance to Complainants Vanessa Shepard and Le'Jon Shepard and conducted testing. But for Respondents' discrimination, Complainant SSHC would have been able to develop and conduct fair housing training, meet with community groups and review other matters for SSHC. SSHC's resources were diverted, and its mission frustrated as a result of Respondents' discrimination. SSHC suffered compensable out-of-pocket financial costs when it undertook the testing activities to verify whether discrimination was occurring at the subject property.

III. PRAYER FOR RELIEF

Pursuant to Section 810(g)(2)(A) of the Act, the United States Department of Housing and Urban Development charges the Respondents with engaging in discriminatory housing practices in violation of Sections 804(a), (b), (c), and (d) of the Act and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating on the bases of race and familial status in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainant Vanessa Shepard and Complainant Le'Jon Shepard for their emotional distress and loss of a housing opportunity and desired housing amenities;
4. Awards such damages as will fully compensate Complainant SSHC for its actual damages caused by Respondents' discriminatory conduct; and
5. Awards a civil penalty against each Respondent for each violation of the Act pursuant to 42 U.S.C. §3612(g)(3).

Respectfully submitted,

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