

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 Bethesda)	
Lutheran Homes and Services, Inc.,)	
David Emert, Kenneth DeVries, by his)	
legal guardian, Michael Barham,)	
Douglas Conover, by his legal)	
guardian, Betty Conover, Cynthia Kellogg,)	HUD ALJ No.
by her legal guardian, Katherine Dressel,)	FHEO No. 05-04-0572-8
Karen Knoedler, by her legal guardian,)	FHEO No. 05-05-0219-8
Janet Knoedler,)	FHEO No. 05-05-0220-8
)	FHEO No. 05-05-0221-8
)	FHEO No. 05-05-0222-8
Charging Party,)	FHEO No. 05-05-0223-8
)	
v.)	
)	
Fleetwood Capital Development, L.L.C.,)	
John R. Howard, and Linda E. Howard,)	
)	
Respondents.)	
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CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about March 19, 2004, the complainant, Bethesda Lutheran Homes and Services, Inc. (“Complainant Bethesda”), filed a verified complaint with the United States Department of Housing and Urban Development (“Bethesda’s Complaint”), alleging that Respondents Fleetwood Capital Development, L.L.C. and John R. Howard violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by discriminating on the basis of disability, in violation of 42 U.S.C. § 3604(f). On or about March 22, 2005, Bethesda’s Complaint was amended to add Linda E. Howard as a Respondent.¹

On or about December 3, 2004, the individually named Complainants, Douglas Conover, Kenneth DeVries, David Emert, Cynthia Kellogg, and Karen Knoedler each filed a verified

¹ Bethesda’s Complaint was referred to the Illinois Department of Human Rights (the “IDHR”) pursuant to Section 810(f) of the Act. On April 21, 2004, HUD requested a waiver of jurisdiction from the IDHR so that HUD could reactivate the Complaint and process it under the Act. On April 22, 2004, the IDHR approved the waiver of Jurisdiction so that HUD could process Bethesda’s Complaint. On or about April 27, 2004, HUD notified Complainant and Respondents that it had reactivated Bethesda’s Complaint.

complaint with HUD, alleging that Respondents Fleetwood Capital Development, L.L.C. and John R. Howard violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by discriminating against them on the basis of disability, in violation of 42 U.S.C. § 3604(f). On or about March 22, 2005, the above Complainants amended their complaints to add Linda E. Howard as a Respondent.

The Act authorizes the issuance of 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 to the General Counsel (54 Fed.Reg.13121), who has redelegated to the Regional Counsel (67 Fed.Reg. 44234), 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 a discriminatory housing practice has 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 Determination of Reasonable Cause, Respondents Fleetwood Capital Development L.L.C. and John R. and Linda E. Howard are charged with discriminating against Complainant Bethesda, and Douglas Conover, Kenneth DeVries, David Emert, Cynthia Kellogg, and Karen Knoedler, aggrieved persons as defined by 42 U.S.C. § 3602(i), on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1) and (2) as follows:

1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1), see also; 24 C.F.R. §100.202(a), and 24 C.F.R. §100.60.
2. It shall be 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 (A) that person; (B) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or (C) any person associated with that person. 42 U.S.C. § 3604(f)(2), see also; 24 C.F.R. § 100.202(b).
3. On information and belief, Respondent Fleetwood Capital Development, L.L.C. is a limited liability company formed in order to develop and sell the land in the Waterford subdivision located in the Village of Sherman in Sangamon County, Illinois. The Waterford subdivision is to be developed in phases and will ultimately comprise over 100 lots.

4. On information and belief, at all times relevant to this Charge, Respondent Fleetwood Capital Development, L.L.C. owned the property located at Waterford Subdivision Lot #28 (“subject property”) located in the Village of Sherman in Sangamon County, Illinois, one of the lots in the first phase of the Waterford subdivision.
5. At all times relevant to this Charge, Respondent John R. Howard was the developer, the manager, and the principal decision maker for Fleetwood Capital Development, L.L.C.
6. At all times relevant to this Charge, a declaration of protective covenants for the Waterford Subdivision First Addition (the “restrictive covenants”) existed. The restrictive covenants required that the “Architectural Control Committee” (the “Architectural Committee”) must review and approve construction plans showing the location of improvements or structures on a lot prior to a dwelling being built in the Waterford Subdivision First Addition.
7. At all times relevant to this Charge, Respondents John R. Howard and Linda E. Howard were the only members of the Architectural Committee. Further, the HUD investigation revealed that John R. Howard admitted that he regards himself and Linda E. Howard as the owners of Fleetwood Capital Development, L.L.C.
8. At all times relevant to this Charge, Complainant Bethesda was a Wisconsin not-for-profit Corporation located in Watertown, Wisconsin. Complainant Bethesda’s mission is to provide benefits and services to individuals who have developmental disabilities, their families and others who support them.
9. At all times relevant to the Charge, Complainant Bethesda was licensed by the State of Illinois to run a Community Integrated Living Arrangements (“CILA”). A CILA is a living arrangement certified by a community mental health or developmental services agency under Illinois Code, 210 ILCS §135, where 8 or fewer recipients with developmental disabilities reside in a residential setting under the supervision of such agency. Complainant Bethesda’s goal through the CILA is to create a community based home environment where developmentally disabled individuals live together and learn skills to live more independent lives.
10. At all times relevant to this Charge, the individually named Complainants, Douglas Conover, Kenneth DeVries, David Emert, Cynthia Kellogg, and Karen Knoedler (the “Individual Complainants”) were developmentally disabled adults who lived in CILAs operated by Complainant Bethesda, and were the intended residents of the lot Complainant Bethesda hoped to acquire.
11. At all times relevant to this Charge, the Individual Complainants were disabled within the meaning of 42 U.S.C. §3602(h) of the Act.
12. In or around fall 2003, the Individual Complainants were living in two smaller homes located in Sherman, Illinois and Springfield, Illinois, both of which were in disrepair, and

required the Individual Complainants to share bedrooms. Complainant Bethesda sought to join these two smaller homes into one single-family home, where the Individual Complainants could each have their own bedrooms and advance Complainant Bethesda's goal of habilitation and independent living for the Individual Complainants.

13. In or around fall 2003, Complainant Bethesda began looking for a tract of land in order to build the Individual Complainants' single-family home. It was Complainant Bethesda's intention that the home would be for six to eight persons with developmental disabilities. It would be staffed at all times.
14. Complainant Bethesda involved the Individual Complainants in the site selection process for their new home so that they could choose where they would live. This process of empowering the Individual Complainants to decide where they would live was also part of Complainant Bethesda's goal of developing the Individual Complainants' independent living skills. Kate Dunbar, Complainant Bethesda's Administrator for Central Illinois, along with the Individual Complainants, visited approximately 10 different sites in the Sherman area before finding the subject property.
15. After viewing these sites, the Individual Complainants were asked to vote on which site they wanted for their new home. They unanimously selected the subject property. Proximity to a small lake at the back of the lot was a deciding factor.
16. Accordingly, on or about December 2, 2003, Complainant Bethesda submitted a cash offer to purchase the subject property to Respondents' real estate agent at the full asking price of thirty eight thousand five hundred dollars (\$38,500). The contract contained a contingency appraisal provision, an "Architectural Committee approval" contingency, and provided that the offer would expire as of December 5, 2003. As of December 5, 2003, Respondents Fleetwood Capital Development, L.L.C. and John R. Howard made no contact with Complainant Bethesda regarding the offer to purchase the subject property, either to accept or deny the offer.
17. In the hopes of receiving a response, on or about December 5, 2003, Complainant Bethesda faxed Respondents' real estate agent an extension of the acceptance date of its December 2, 2003 offer until Tuesday, December 9, 2003.
18. Again, Respondents Fleetwood Capital Development, L.L.C. and John R. Howard made no contact with Complainant Bethesda regarding the offer to purchase the subject property, either to accept or deny the offer.
19. At the time Complainant Bethesda submitted its offer, the subject property was located in a R-1 residential district, according to the Village of Sherman's Zoning Ordinance, which did not specifically allow for a group home such as Complainant Bethesda's. Assuming it was going to buy the subject property, Complainant Bethesda, on or about December 5, 2003, began the process of applying to the Village of Sherman for a conditional permitted use of the zoning ordinance by meeting with the Village of Sherman's attorney. As a

result, the attorney for the Village of Sherman drafted a petition to amend the zoning ordinance for Complainant Bethesda to submit to the Zoning Board of Appeals.

20. Frustrated by Respondents Fleetwood Capital Development, L.L.C's and John R. Howard's lack of a response to its offer, on or about December 9, 2003, Complainant Bethesda faxed and mailed a letter to Paul E. Presney, Sr., Respondents' attorney. The letter expressed Complainant Bethesda's desire to build a single-family residential home for persons with developmental disabilities on the subject property. The letter further requested a response from Respondents Fleetwood Capital Development, L.L.C. and John R. Howard to its offer to purchase the subject property. Finally, the letter advised, "that a failure to sell the lot under these circumstances or to meaningfully respond in negotiations would be a violation of the Federal Fair Housing Act." The letter also enclosed information on the Act.
21. Still, with no response from Respondents Fleetwood Capital Development, L.L.C. and John R. Howard, on or about December 11, 2003, Complainant Bethesda submitted a second cash offer to Respondents' real estate agent for the same amount as the first, except in this offer the contingency appraisal provision was removed. The second offer expired on December 16, 2003. As of December 16, 2003, Respondents Fleetwood Capital Development, L.L.C. and John R. Howard made no effort to contact Complainant Bethesda regarding their second offer to purchase the subject property, either to accept or reject the offer.
22. On information and belief Respondents' real estate agent conveyed to Complainant Bethesda that Respondents Fleetwood Capital Development, L.L.C. and John R. Howard were concerned that the Village of Sherman's Zoning Ordinance prohibited Complainant Bethesda from building a group home on the subject property. They requested that Complainant Bethesda first obtain zoning approval prior to considering its offers.
23. Conversely, on information and belief, Respondents Fleetwood Capital Development, L.L.C. and John R. Howard sold neighboring Lot 33 of the Waterford Subdivision, 1st Addition to purchasers, who on or about September 16, 2003, requested a zoning variance from the Village of Sherman for reduction in their setback line. The purchasers and Respondent John R. Howard signed the request for the zoning variance. Further, the purchasers had two contract contingencies in their offer, which were as follows: (1) plat plan approval by the Village of Sherman Building and Zoning Department and by the Committee, and (2) construction plan approval by the Committee.
24. Again, on or about December 16, 2003, the date of the second offer's expiration, Complainant Bethesda faxed and mailed another letter to Paul E. Presney, Sr., Respondents' attorney, reiterating Complainant's desire to build a residential home that would be "visually indistinguishable from the other residential homes in the neighborhood" for persons with developmental disabilities on the subject property.² Complainant Bethesda clarified its understanding of Respondents Fleetwood Capital

² Complainant Bethesda's letter specifically informed Respondents that the home would not serve persons with the primary diagnosis of mental illness or drug dependency.

Development, L.L.C.'s and John R. Howard's decision not to entertain any offer from Complainant Bethesda until it first obtained zoning approval for its planned use. Complainant Bethesda advised Respondents that according to the Village of Sherman's zoning code at §§ 5-10-6 through 5-10-8, it could only "make a zoning application when it is either the 'property owner or contract purchaser.'" Complainant Bethesda further stated in its letter that Complainant Bethesda's offer did not contain a zoning approval contingency. Therefore, Complainant Bethesda assumed the risk of obtaining any necessary zoning approvals. Complainant Bethesda informed Respondents Fleetwood Capital Development, L.L.C. and John R. Howard that they had put it in a "catch-22" position because it was unable to apply for zoning approval until Respondents Fleetwood Capital Development, L.L.C. and John R. Howard accepted its offer and a contract to purchase existed.

25. Also, on numerous occasions, in order to allay Respondents Fleetwood Capital Development, L.L.C.'s and John R. Howard's concerns, Complainant Bethesda offered Respondents an opportunity to speak with Kate Dunbar, Complainant Bethesda's Administrator for Central Illinois, about its plans for the home or to visit Complainant Bethesda's other homes in the area. Respondents did not accept any of these offers.
26. Finally, on or about December 16, 2003, Complainant Bethesda submitted its third cash offer, identical to the first offer except that it expired on December 19, 2003. As of December 19, 2003, Respondents Fleetwood Capital Development, L.L.C. and John R. Howard made no effort to contact Complainant Bethesda regarding the offer to purchase the subject property, either to accept or reject the offer.
27. Ultimately, on or about December 19, 2003, when Respondents Fleetwood Capital Development, L.L.C. and John R. Howard failed to respond to Complainant Bethesda's third offer, the process to obtain a conditional permitted use for Complainant Bethesda's home on the subject property necessarily ended.
28. On or about December 21, 2003, Respondents' attorney, Paul E. Presney, Sr., finally responded to Complainant Bethesda's letters, stating that the Respondents' rejection was because Complainant Bethesda's home did not comply with correct zoning, "the basic intent of the restrictive covenants," and was not acceptable to the Architectural Committee.
29. On or about May 12, 2004, Lots 27 and 28 were ultimately sold to a Robert E. Roth and Roth Home Construction, Inc, a single-family home developer. Respondents Fleetwood Capital Development, L.L.C. and John R. Howard sold Lot 28 to the buyer for thirty five thousand dollars (\$35,000), three thousand five hundred dollars (\$3,500) less than Complainant Bethesda's offers to purchase the property.
30. Upon becoming the contract purchaser on another property in Sherman, Illinois, Complainant Bethesda applied for conditional use permit to allow for its group home. On or about March 16, 2004, the Zoning Board of Appeals of the Village of Sherman, Illinois not only granted Complainant Bethesda a conditional permitted use for a group

home, it amended its zoning ordinance so that a group care facility became a conditional permitted use in all residential districts in the Village of Sherman.

31. The HUD investigation further revealed that Respondent John R. Howard told a local clergyman about Complainant Bethesda's offers, in or around winter 2004, stating he did not want to sell "to people like that."
32. By refusing to sell or negotiate with Complainant Bethesda after it made an offer on December 2, 2003 to purchase a lot in Respondents' subdivision, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. otherwise made unavailable or denied a lot to Complainant Bethesda because of disability. Accordingly, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. discriminated against Complainant Bethesda and the Individual Complainants in violation of 42 U.S.C. § 3604(f)(1)(B) and (C).
33. By refusing to sell or negotiate with Complainant Bethesda after it made an offer on December 11, 2003 to purchase a lot in Respondents' subdivision, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. otherwise made unavailable or denied a lot to Complainant Bethesda because of disability. Accordingly, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. discriminated against Complainant Bethesda and the Individual Complainants in violation of 42 U.S.C. § 3604(f)(1)(B) and (C).
34. By refusing to sell or negotiate with Complainant Bethesda after it made an offer on December 16, 2003 to purchase a lot in Respondents' subdivision, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. otherwise made unavailable or denied a lot to Complainant Bethesda because of disability. Accordingly, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. discriminated against Complainant Bethesda and the Individual Complainants in violation of 42 U.S.C. § 3604(f)(1)(B) and (C).
35. By rejecting Complainant Bethesda's Architectural plans because it was a group home, Respondents Fleetwood Capital Development, L.L.C., John R. Howard and Linda E. Howard otherwise made unavailable or denied a lot to Complainant Bethesda because of disability. Accordingly, Respondents Fleetwood Capital Development, L.L.C. John R. Howard and Linda E. Howard discriminated against Complainant Bethesda and the Individual Complainants in violation of 42 U.S.C. § 3604(f)(1)(B) and (C).
36. By requiring Complainant Bethesda to obtain a zoning variance prior to negotiating with it for purchase of the subject property when it was not a contract contingency, but not requiring the purchasers of Lot 33 to first obtain a zoning variance prior to negotiating, and selling them property, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. discriminated against Complainant Bethesda and the Individual Complainants because of disability by subjecting them to different terms, conditions or privileges of the sale of a dwelling in violation of 3604(f)(2)(B) and (C).

37. By requiring Complainant Bethesda to first satisfy the Architectural Committee's review of its architectural plans prior to negotiating or accepting its offer, and not requiring the same of the purchasers of Lot 33, who had a similar provision in their offer, Respondents John R. Howard and Fleetwood Capital Development, L.L.C. discriminated against Complainant Bethesda and the Individual Complainants because of disability by subjecting them to different terms, conditions or privileges of the sale of a dwelling in violation of 3604(f)(2)(B) and (C).
38. As a result of Respondents' refusal to negotiate or sell the subject property to Complainant Bethesda, it was forced to search for and select another property. On or about September 24, 2004, the Individual Complainants moved into their current home. Complainant Bethesda incurred a three-month delay in moving the Individual Complainants into a single-family home and would have been able to move into the subject property in June 2004.
39. As a result of Respondents' discriminatory conduct, Complainant Bethesda's goal of placing the Individual Complainants in one single-family home to live together and operate as a "family" based on its assessment of the Individual Complainants' compatibility to live with each other was frustrated and delayed for approximately three months.
40. Complainant Bethesda suffered economic loss because the alternate home that was chosen for the Individual Complainants could not be a manufactured home, as intended at the subject property, but required a more expensive stick-built home. Therefore, Complainant Bethesda's costs on the alternate home were higher than they would have been if it purchased the subject property.
41. The delay required a significant expenditure of administrative time to be diverted from other work matters, and the cost of running the two smaller homes that the Individual Complainants lived in prior to their move cost Complainant Bethesda more to run than one single-family home would have cost to run.
42. Complainant Bethesda was inconvenienced by Respondents' refusal to sell to it by the effort it expended in having to find an alternate home, and reorganize its plan to move the Individual Complainants in a specified time frame.
43. As a result of Respondents' discriminatory conduct, Complainant Douglas Conover has suffered damages, including emotional distress and inconvenience by having to remain in housing that was in disrepair, by having to continue to share a room, by being denied unique features of the subject property, such as the lake, and by having to search for alternate housing. Specifically, it was understood that the lake was fishable. Mr. Conover, who likes to fish, is denied the opportunity to fish at the subject property. Also, by delaying the Individual Complainants move to their new home, Mr. Conover was deprived his privacy as he had to continue to share a room, and as such he was denied the freedom of controlling his own schedule without interruptions.

44. As a result of Respondents' discriminatory conduct, Complainant Kenneth DeVries has suffered damages, including emotional distress and inconvenience by having to remain in housing that was in disrepair, by having to continue to share a room, by being denied unique features of the subject property, such as the lake, and by having to search for alternate housing. Complainant DeVries recalled that the subject property was his favorite because of the lake in the backyard and that he wanted to build a sidewalk down to the lake. He also stated that he was "mad" when he found out that he would not be able to live at the subject property. Kate Dunbar, Complainant Bethesda's Administrator for Central Illinois, stated that having to look for another home and delaying Kenneth DeVries' move, created anxiety for Mr. DeVries because he was anxious to move into his new home. Also, by delaying the Individual Complainants' move to their new home, Mr. DeVries was deprived his privacy as he had to continue to share a room, and as such he was denied the freedom of controlling his own schedule without interruptions.
45. As a result of Respondents' discriminatory conduct, Complainant David Emert has suffered damages, including emotional distress and inconvenience by having to remain in housing that was in disrepair, by having to continue to share a room, by being denied unique features of the subject property, such as the lake, and by having to search for alternate housing. Kate Dunbar, Complainant Bethesda's Administrator for Central Illinois, stated that having to look for another home and delaying David Emert's move, created anxiety for Mr. Emert because he was anxious to move into his new home. Specifically, it was understood that the lake was fishable. Mr. Emert, who likes to fish, is denied the opportunity to fish at the subject property. Also, by delaying the Individual Complainants' move to their new home, Mr. Emert was deprived his privacy as he had to continue to share a room, and as such he was denied the freedom of controlling his own schedule without interruptions.
46. As a result of Respondents' discriminatory conduct, Complainant Cynthia Kellogg has suffered damages, including emotional distress and inconvenience by having to remain in housing that was in disrepair, by having to continue to share a room, by being denied unique features of the subject property, such as the lake, and by having to search for alternate housing. Also, by delaying the Individual Complainants' move to their new home, Ms. Kellogg was deprived her privacy as she had to continue to share a room, and as such she was deprived the freedom of controlling her own schedule without interruptions.
47. As a result of Respondents' discriminatory conduct, Complainant Karen Knoedler has suffered damages, including emotional distress and inconvenience by having to remain in housing that was in disrepair, by having to continue to share a room, by being denied unique features of the subject property, such as the lake, and by having to search for alternate housing. Kate Dunbar, Complainant Bethesda's Administrator for Central Illinois, stated that having to look for another home and delaying Karen Knoedler's move, created anxiety for Ms. Knoedler because she was anxious to move into her new home. Also, by delaying the Individual Complainants' move to their new home, Ms. Knoedler was deprived her privacy as she had to continue to share a room, and as such she was denied the freedom of controlling her own schedule without interruptions.

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 Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(1) and (2) 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, as amended, 42 U.S.C. § 3601, *et seq.*;
2. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating on the basis of familial status against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant Bethesda and the Individual Complainants, aggrieved persons, for their actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3604(f)(1) and (2); and
4. Awards a civil penalty against each Respondent for each violation of the Act committed 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,

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