

**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 Pamela R.)	
Hebert, Joshua A. Collins, the Fair)	
Housing Center of Nebraska, and others,)	
)	
Charging Party,)	
)	FHEO No: 07-04-0596-8
)	
v.)	FHEO No: 07-05-0115-8
)	
)	
Municipal Housing Agency of Council Bluffs)	
Iowa, D/B/A The Municipal Housing)	
Agency, Municipal Housing Agency of Council)	
Bluffs, Iowa, and/or The Municipal Housing)	
Agency of Council Bluffs; Mark Schultz; and)	
Dee Wentzel)	
)	
Respondents.)	
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CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainants Pamela Hebert and Joshua Collins, aggrieved persons, filed verified complaints with the U.S. Department of Housing and Urban Development (HUD) on or about November 10, 2003, and November 5, 2004, respectively. Complainants allege Respondents committed discriminatory housing practices on the basis of disability (mental) in violation of Sections 804(f)(1)(A) and 804(f)(2)(A) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988, 42 U.S.C. §§ 3601 *et seq.* (2005) (hereafter, the “Act”). On or about August 19, 2004, Complainant Hebert’s complaint was amended to add the Fair Housing Center of Nebraska as an aggrieved party. On or about May 27, 2005, Complainant Collins’ complaint was amended to add the Fair Housing Center of Nebraska as an aggrieved party, to include all proper Respondents, and to clarify the alleged violations.

The Act authorizes the issuance of 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) (2005). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234 (Jul. 1, 2002)), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or her designee.

By Determination of Reasonable Cause of July 25, 2005, the FHEO Region VII 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 (mental) and has authorized and directed the issuance of this Charge.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and as set forth in the aforementioned Determination of Reasonable Cause, Respondents are charged with discriminating against the Complainants and others based on disability (mental) in violation of 42 U.S.C. §§ 3604(f)(1)(A) and 3604(f)(2)(A) (2005) of the Act as follows:

A. Applicable Federal Law

1. It is unlawful to discriminate in the rental, or to otherwise make unavailable or deny a dwelling to any renter because of the handicap of that renter. 42 U.S.C. § 3604(f)(1)(A) (2005); 24 C.F.R. § 100.50(b)(1) and (3) (2005); 24 C.F.R. § 100.60(a), (b)(2), and (b)(4) (2005); 24 C.F.R. § 100.202(a)(1) (2005).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling because of a handicap of that person. 42 U.S.C. § 3604(f)(2)(A) (2005); 24 C.F.R. § 100.50(b)(2) (2005); 24 C.F.R. § 100.65(a) and (b)(3) (2005); 24 C.F.R. § 100.202(b)(1) and (c) (2005).
3. It is unlawful to make an inquiry to determine whether an applicant for a dwelling has a handicap or to make inquiry as to the nature or severity of a handicap of such person, with limited exceptions, provided the inquiry is made of all applicants, whether or not they have handicaps. 24 C.F.R. § 100.202(c) (2005).

B. Background

4. Complainant Pamela Hebert is a 43-year-old unemployed female who currently resides in Columbia Heights, Minnesota. Complainant Hebert, who is disabled as defined in the Act, suffers from a long history of recurrent and severe major depressive disorder.

5. Complainant Joshua Collins is a 22-year-old unemployed male who currently resides in Council Bluffs, Iowa. Complainant Collins, who is disabled as defined in the Act, suffers from mild mental retardation.
6. Complainant Fair Housing Center of Nebraska (hereafter, “Complainant Fair Housing Center”) is an organization that has diverted its organizational resources in response to discovering Respondents discriminated against Complainant Hebert and Complainant Collins. Complainant Fair Housing Center has standing under the Act.
7. Respondent Municipal Housing Agency of Council Bluffs Iowa, D/B/A The Municipal Housing Agency, Municipal Housing Agency of Council Bluffs, Iowa, and/or The Municipal Housing Agency of Council Bluffs (hereafter, “Respondent MHA”) is a public housing authority in Council Bluffs, Iowa.
8. Respondent Mark Schultz is the Executive Director of Respondent MHA and has been in that position since 1983.
9. Respondent Dee Wentzel, a Housing Specialist, has been employed by Respondent MHA since approximately 1995.
10. Carol Grieder is a former employee of Respondent MHA and was employed as a Housing Specialist at the time Complainant Pamela Hebert’s application was processed and denied in 2003.
11. LeAnn Stark, a Housing Specialist and Administrative Assistant, has been employed by Respondent MHA since May 2004 and was employed at the time Complainant Collins’ application was denied in 2004.
12. The property at issue is Regal Towers, a 210-unit low income public housing complex for the elderly and disabled located at 505 South 6th Street, Council Bluffs, Iowa (subject property).

Respondents’ Practices

13. As a matter of practice, and specifically as applied to Complainants Hebert and Collins, Respondent MHA sought personal mental health information only from applicants who were currently seeing, or in the past had seen, a psychiatrist or counselor. They did so by requiring applicants to document on their written application whether they were currently seeing a psychiatrist or counselor or had seen one in the past, and, if so, to provide the name, address, and phone number of the psychiatrist or counselor.
14. After determining from the application a tenant was seeing, or in the past had seen, a psychiatrist or counselor, Respondents required him or her to sign an authorization for release of mental health information. Respondents then used the authorization for

release to obtain the applicant's mental health information by sending the authorization, along with a standard form letter, to the medical provider.

15. Signing an authorization for release of mental health records was a *requirement* for housing, not a voluntary gesture on the part of an applicant who had seen a mental health provider.
16. After receipt of the mental health information, Respondents reviewed it in conjunction with legitimate applicant information such as police reports, former and current landlord references, and drug and alcohol abuse information. Based on the assessment of mental health information, Respondents thereafter denied tenancy to those with the most severe documented mental disabilities, citing their concern that these individuals could cause extreme chaos in a public housing building, could not live independently, could not get along with neighbors or act responsibly, and/or could not maintain a nice apartment.

Rejected Regal Towers Applicants:

17. Between June 2001 and July 2004, Respondent MHA rejected approximately 47 applicants to Regal Towers, not including Complainant Hebert. Of the 47 rejected applicants, 39 of the applicants had indicated on their applications they were currently seeing, or had in the past seen, a psychiatrist or counselor. Eight of the forty-seven rejected applicants indicated they had never seen a psychiatrist or counselor. At least 10 of the 47 rejected applicants were denied housing *primarily* because of the information revealed in their mental health records.
18. Many of the denial letters to those rejected primarily because of mental health information contained the following or similar language as the only explanation for denial of housing: "After reviewing your application and speaking with medical personnel in your case, we do not feel housing at a Municipal Housing Agency property is appropriate at this time. We are strictly an independent living apartment building and do not provide supervision. It is felt that you need more structured living conditions than a Municipal Housing Agency property provides."

Approved Applicants at Regal Towers

19. Respondent MHA approved approximately 68 applications for tenancy at Regal Towers dated between June 2001 and July 2004. Twenty-one approved tenants indicated on their applications they were currently seeing, or had in the past seen, a counselor or psychiatrist. Forty-seven approved tenants indicated no history of seeing a mental health professional.
20. Nine tenants, all of whom indicated they had never seen a counselor or psychiatrist, were approved for tenancy despite having criminal history records on file with the Council Bluffs, Iowa Police Department. At least three of those tenants had criminal history records involving activities occurring since 2001, approximately the same

time period during which Complainant Collins was implicated in several non-violent and non-drug related criminal incidents. One tenant¹, who indicated he had seen a counselor or psychiatrist in the past, but “a long time ago,” and for whom Respondents did not bother to obtain mental health records or consider to be mentally disabled, had an extensive criminal history from 1997-2002. His criminal history included several alleged instances of aggravated and/or serious assault and restraining order violations from 1997-2002, but he was approved for tenancy despite his criminal record.

21. At least four tenants who had indicated they had never seen a counselor or psychiatrist were approved despite unfavorable comments from current or past landlords. One couple, whose only recorded mental health issue was that the wife had seen a mental health provider over five years ago, and for whom Respondents were unable to obtain any mental health records because they were no longer in the system, was approved for tenancy despite a reference from their current landlord stating they were late with rent, needed improvement on maintaining proper condition of their apartment, made noise at 2 a.m., and would not have their lease renewed.
22. Though Respondent MHA approved approximately 21 applicants who admitted on their applications to visiting a mental health provider, at least 17 were approved only after a doctor or other health care provider contacted Respondent MHA verbally or in writing providing a good or adequate medical reference and/or indicating, for instance, the applicant was doing well, could live independently, would not be disruptive to other tenants, or would not be a problem living around the elderly. The remaining four tenants were approved because Respondents concluded, on their own and after reviewing all records, that, generally, the applicant was not mentally disabled or the applicant’s mental health issues were not of such a serious nature to them to warrant denial of residency.²
23. Respondents treated applicants who had sought or were seeking mental health treatment differently than other applicants by requiring them to sign an authorization for release of their mental health records. After Respondents improperly inquired into the nature and severity of the applicants’ mental health status, they then unlawfully used that information to determine the applicant’s eligibility for a unit and, thereafter, systematically and deliberately denied applicants a unit based on the information obtained.

¹ Eugene L. applied for tenancy on October 20, 2004, *after* the approximately three-year period between June 2001 and July 2004 set out above and, therefore, is not included in the 68 approved applications. According to records provided by Respondents, he was the first person approved for tenancy after Complainant Collins was rejected.

² For instance, tenant Mary E.’s mental health records revealed she was a churchgoer and was “cooperative” and “pleasant.” She was approved for tenancy without a verbal or written reference from a doctor or other health care provider, even though she had two unfavorable landlord references.

Complainant Joshua Collins

24. On or about July 12, 2004, Complainant Collins, through his case manager, Richard Heininger, submitted an application for housing with Regal Towers.³ On the application, Complainant Collins indicated he was disabled, and, as requested on the application, that he was not currently seeing a psychiatrist or counselor but had seen a mental health provider in the past.
25. On or about September 4, 2004, the Council Bluffs, Iowa Police Department sent Complainant's criminal history to Respondent MHA. The document submitted indicated Complainant Collins had been implicated in several incidents during 2000-2001 in which police were involved, though none of the incidents involved drugs or violence.
26. On or about September 8, 2004, *after* receiving Complainant Collins' criminal history, Respondent Wentzel sent Complainant Collins a letter asking him to sign an authorization for release of mental health information for his former mental health provider. After being notified by Complainant Collins of the letter, Mr. Heininger went to Regal Towers to discuss the matter with Respondent MHA personnel. Respondent Wentzel indicated to him Complainant Collins was required to sign the authorization to release his mental health records, and they required the information because they wanted to get a "quality tenant." Though Mr. Heininger told Respondent MHA personnel he did not think Complainant Collins would sign the authorization, he indicated he would visit with Complainant Collins about the authorization.
27. On or about September 13, 2004, Respondent MHA received a written reference from Complainant Collins' former landlord indicating he paid his rent on time, he needed some prodding to maintain his apartment in the proper condition, and one complaint had been made but it was "vague and hard to track down."
28. On or about September 16, 2004, Respondent MHA received a written reference from Complainant Collins' then current landlord indicating he paid his rent on time, maintained the apartment in the proper condition, and she would rent to him again. The reference indicated there had been one complaint of loud music but the problem ended once discussed with Complainant Collins.
29. On an undetermined date, Respondent MHA received the unsigned authorization for release of mental health information from Complainant Collins on which the patient signature and date had been crossed out and the word "Refused" was placed at the bottom of the document.

³ Mr. Heininger had previously sent a disability verification form to Respondent MHA on or about June 28, 2004, in anticipation of Complainant Collins applying for a unit. Mr. Heininger, who had worked with Complainant Collins for 39 months, had signed the verification form. The form established Complainant Collins had a disability which substantially limited one or more of his major life activities.

30. Despite that he was qualified to rent from Respondents, on or about September 28, 2004, Respondent Wentzel sent Complainant Collins a letter denying him a unit at Regal Towers. In the letter, Respondent Wentzel stated as follows: “Due to your lack of cooperation in signing the Authorization for Disclosure of Mental Health Information we are going to have to reject you from our waiting list for an apartment. We need all information requested in order to determine eligibility for all applicants. We hope you find affordable housing elsewhere.”
31. Instead of renting to Complainant Collins, Respondents offered an apartment to Eugene L., a person without a severe mental disability, on or about November 23, 2004. Mr. LeBaugh’s criminal history indicated several alleged instances of aggravated and/or serious assault and restraining order violations from 1997 through 2002.

Complainant Pamela Hebert

32. On or about August 13, 2003, Complainant Hebert submitted an application for housing with Regal Towers. On the application, Complainant Hebert indicated she was disabled, and, as requested, that she was currently seeing a psychiatrist and a therapist and provided their names and phone numbers.
33. On or about August 26, 2003, Respondent MHA received Complainant Hebert’s criminal history search from the Council Bluffs, Iowa Police Department. The search indicated Complainant Hebert had no criminal record on file.
34. On August 29, 2003, Respondent MHA received a positive written reference from one of Complainant Hebert’s former landlords. On an unknown date prior to September 2, 2003, Respondent MHA received an unfavorable verbal reference from Complainant Hebert’s then current landlord.
35. On September 2, 2003, *after* receipt of the unfavorable landlord reference, Ms. Wentzel sent Complainant Hebert a letter stating they had failed to have Complainant Hebert sign a release of information for her psychiatrist and requested she sign an authorization for release of information by September 13, 2003. The letter went on to provide if she did not sign the form and supply the address of her mental health provider, Respondent MHA “will have to file your application and if you’re still interested you will have to fill out a new application.” Complainant Hebert signed the release and provided it to Respondents.
36. On or about September 10, 2003, Ms. Grieder sent Complainant Hebert’s mental health provider a letter asking for verbal and written medical information pertaining to Complainant Hebert to include: intake assessment, diagnosis and progress reports, a history and physical report, and any applicable discharge summary. Ms. Grieder, citing that Respondent MHA needed to make an informed decision on Complainant Hebert’s application for federally funded housing, also asked

Complainant's mental health provider for answers to the following questions: 1) Is there any paranoia or suicidal tendencies? 2) Has there been any anti-social behavior or behavior that would be disruptive to other tenants? 3) Has there been any violence or any need for police intervention? 4) Has there been or is there now any drug or alcohol abuse? 5) Would there be a problem that you can foresee for this person to live in a building where a majority of the tenants are elderly? 6) Would there be a problem with this person living independently?

37. On an unknown date, Complainant Pamela Hebert's mental health provider sent Respondent MHA a summary of Complainant Herbert's medical history detailing her history of depression, anger outbursts, insomnia, problematic social relationships, passive suicidal and homicidal ideations, and several hospitalizations.
38. Despite that Complainant Hebert was qualified to rent from Respondents, on or about October 1, 2003, she received a letter dated September 25, 2003, from Respondents denying her a unit at Regal Towers. The letter stated: "After reviewing your application and other records, it would appear that you would not be an appropriate candidate for housing at a Municipal Housing Agency property. In our screening process, we have determined that there are several factors that would prohibit you from gaining housing at Municipal Housing Agency. We regret this outcome, but thank you for your cooperation. We do hope you find suitable housing elsewhere."
39. On or about October 20, 2003, at Complainant Hebert's request, Respondent Schultz conducted an informal telephonic appeal review with Complainant Hebert to discuss his decision to deny her a unit. During the course of the review, Respondent Schultz discussed Complainant Hebert's history of significant psychosocial disorder. Respondent Schultz also discussed Complainant Hebert's problems with her current housing situation.
40. On or about October 27, 2003, Respondent Schultz sent Complainant Hebert a letter affirming his initial decision to deny her a unit. In the letter, Respondent Schultz cited two reasons for denial of housing: 1) Complainant Hebert's history of significant psychosocial disorder; and 2) Complainant Hebert's current housing situation.
41. Despite Respondents' contention the denial of Complainant Hebert's application was based, in part, on her "current housing situation" (i.e., unfavorable landlord reference), the primary reason for her denial was her mental health history, not the landlord reference. Instead of immediately denying Complainant Hebert housing based on her unfavorable landlord reference, as Respondents were free to do, they proceeded to improperly inquire into Complainant Hebert's mental health history. Though Respondents had already received the unfavorable landlord reference, it was only after receiving Complainant Hebert's private mental health information that Respondents determined Complainant Herbert was unfit for tenancy.

42. Instead of renting to Complainant Hebert, Respondents offered an apartment to Wilma W., an applicant without a mental disability, on or about October 9, 2003.

C. Fair Housing Act Violations

43. By rejecting Complainant Hebert's, and others' applications because they were mentally disabled, Respondents denied them units in violation of 42 U.S.C. § 3604(f)(1)(A) (2005); 24 C.F.R. § 100.50(b)(1) and (3) (2005); 24 C.F.R. § 100.60(a) and (b)(2) (2005); and 24 C.F.R. § 100.202(a)(1) (2005).

44. By using different qualification criteria for Complainant Hebert (i.e., improperly requiring her to provide her mental health records as a condition of tenancy) and others during the application process, Respondents made housing unavailable based on their mental disabilities in violation of 42 U.S.C. § 3604(f)(1)(A) (2005); 24 C.F.R. § 100.50(b)(3) (2005); and 24 C.F.R. § 100.60(a) and (b)(4) (2005).

45. By inquiring into the nature and severity of Complainant Hebert's and others' disabilities in requesting their personal mental health history, Respondents applied different terms and conditions to them based on their mental disabilities in violation of 42 U.S.C. § 3604(f)(2)(A) (2005); 24 C.F.R. § 100.50(b)(2) (2005); and 24 C.F.R. § 100.202(b)(1) and (c) (2005).

46. By demanding Complainant Hebert's and others' personal mental health records as a requirement for application and using the medical information as the primary reason for denying them housing, Respondents applied different terms and conditions to them based on their mental disabilities in violation of 42 U.S.C. § 3604(f)(2)(A) (2005); 24 C.F.R. § 100.50(b)(2) (2005); and 24 C.F.R. § 100.202(b)(1) (2005).

47. By rejecting Complainant Collins' and others' applications because they were mentally disabled, Respondents denied them units in violation of 42 U.S.C. § 3604(f)(1)(A) (2005); 24 C.F.R. § 100.50(b)(1) and (3) (2005); 24 C.F.R. § 100.60(a) and (b)(2) (2005); and 24 C.F.R. § 100.202(a)(1) (2005).

48. By using different qualification criteria for Complainant Collins (i.e., improperly requiring him to provide his mental health records as a condition of tenancy) and others during the application process, Respondents made housing unavailable to them based on their mental disabilities in violation of 42 U.S.C. § 3604(f)(1)(A) (2005); 24 C.F.R. § 100.50(b)(3) (2005); and 24 C.F.R. § 100.60(a) and (b)(4) (2005).

49. By failing to process Complainant Collins' application because he refused to sign an authorization to release his mental health records, Respondents applied different terms and conditions to him based on mental disability in violation of 42 U.S.C. § 3604(f)(2)(A) (2005); 24 C.F.R. § 100.50(b)(2) (2005); and 24 C.F.R. § 100.65(a) and (b)(3) (2005).

50. As a result of Respondents' actions, Complainants Hebert and Collins and others, aggrieved persons, suffered damages, including emotional distress, embarrassment, humiliation, inconvenience, and economic loss. As a result of Respondents' actions, Complainant Fair Housing Center, an aggrieved party, suffered diversion of organizational resources and incurred out-of-pocket expenses.

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 42 U.S.C. § 3610(g)(2)(A) (2005) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(f)(1)(A) and (f)(2)(A) of the Act, and prays an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Act, 42 U.S.C. §§ 3601 *et seq.* (2005);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of disability against any person in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainants Hebert and Collins and others for their emotional distress, embarrassment, humiliation, inconvenience, and economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2005);
4. Awards such damages as will fully compensate Complainant Fair Housing Center for their diversion of organizational resources and out-of-pocket expenses caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2005); and
5. Awards an \$11,000 civil penalty against Respondent MHA and Respondent Schultz and a \$1,000 civil penalty against Respondent Wentzel for each violation of the Act Respondents are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) (2005).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2005).

Respectfully submitted,

Thomas J. Coleman
Regional Counsel, Region VII

Gayle E. Bohling
Deputy Regional Counsel, Region VII

Katherine A. Varney
Associate Regional Counsel, Region VII
U.S. Department of HUD
Office of Counsel
400 State Avenue, Room 200
Kansas City, KS 66101-2406
Telephone: (913) 551-5549
Fax: (913) 551-5857

Date: _____