

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)	
Terrell Evans, Candra Evans, and)	
their minor children Skylar Evans and)	
and Madison Evans (aggrieved persons))	
)	
Charging Party,)	FHEO Case Number:
)	09-02-0774-8
v.)	
)	
Perma-Bilt, A Nevada Corporation,)	
Zenith of Nevada, Inc., and Ruth Ochoa)	
)	
Respondents.)	
_____)	

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about September 6, 2002, Terrell Evans and Candra Evans (Complainants) filed a verified complaint with the United States Department of Housing and Urban Development (HUD) on behalf of themselves and their minor children Skylar and Madison Evans, aggrieved persons, alleging that the Respondent, Perma-Bilt, A Nevada Corporation (referred hereinafter as “Perma-Bilt” or “Perma-Bilt Corporation”), violated the Fair Housing Act (the Act), by discriminating based on disability. 42 U.S.C. Sections 3601-3619. On October 27, 2004, the complaint was amended to name Zenith of Nevada, Inc. and Ruth Ochoa as Respondents.

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). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has redelegate to the Assistant General Counsel for Fair Housing Enforcement (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.

By Determination of Reasonable Cause of February 2, 2005, the Director of the Pacific/Hawaii HUB, 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 the aforementioned Determination of Reasonable Cause, Respondents Perma-Bilt Corporation, Zenith of Nevada, Inc., and Ruth Ochoa are charged with discriminating against Terrell and Candra Evans, and their minor children Skylar and Madison Evans, aggrieved persons, based on disability in violation of Sections 804(f)(1)(B), 804(f)(2)(B), 804(f)(3)(B), and 805 of the Act, as follows:

1. It is 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 any person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. §3604(f)(1)(B).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling in connection with such dwelling, because of a disability of any person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. §3604(f)(2)(B).
3. It is unlawful to refuse to make a reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. §3604(f)(3)(B).
4. It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of disability. 42 U.S.C. §3605.
5. Complainants Terrell and Candra Evans executed a purchase and sale agreement with Respondent Perma-Bilt for a home to be built and located at 5966 Hopkinsville Lane, Clark County, Las Vegas, Nevada 89148 ("subject property"). The subject property was to include five bedrooms, four bathrooms, and a three-car garage.
6. At all times relevant to this complaint, Respondent Perma-Bilt was a Nevada corporation with its principal place of business located at 7150 Pollock, Suite 104, Las Vegas, Nevada, 89119. At all times relevant to this complaint, Respondent Perma-Bilt was the owner, developer, and builder of the subject property.
7. On information and belief, on or around April 17, 2003, Respondent Perma-Bilt amended its Articles of Incorporation to change its name to Zenith of Nevada, Inc.

8. At all times relevant to this complaint, Respondent Ruth Ochoa was the Vice-President of Sales and Marketing for Perma-Bilt Corporation.
9. Complainants Terrell and Candra Evans are a married couple with two children. Complainant Candra Evans is a licensed real estate agent and acted as the buyer's agent in the sale of the subject property. Complainant Terrell Evans is currently serving in the United States military.
10. Complainants' son, Skylar Evans (age 9 at time of complaint) and daughter, Madison Evans (age 6 at time of complaint) suffer from asthma and other respiratory ailments and are substantially limited in the major life activity of breathing. The children's asthma and respiratory ailments have necessitated numerous doctor/hospital visits and breathing treatments over the years.
11. Complainants' children were exposed to *Stachybotrys* mold in a previous dwelling¹ and are hypersensitive to mold due to their disabilities.
12. On or around June 2002, Complainants decided to purchase a "Knollwood" model home in the Monterey subdivision being developed and constructed by Respondent Perma-Bilt ("subject property"), signed a purchase and sale agreement with Perma-Bilt, and put a downpayment on the property shortly thereafter. Complainants were pre-qualified by a mortgage lender for a loan to purchase the subject property.
13. Prior to executing the purchase agreement for the subject property, Complainants discussed with Respondent Perma-Bilt's Sales Agent, Mr. Ken Mainwal, their previous problems with mold and their children suffering from asthma and respiratory ailments due to the mold. Mr. Mainwal acted as Complainants' sales agent for the subject property.
14. On or around July 2002, construction began on the subject property, and Complainants began visiting the site on a regular basis.
15. On or around August 20, 2002, Complainant Candra Evans drove out to the site where her family's home was being constructed by Respondent Perma-Bilt Corporation and noticed what appeared to be mold growing on two studs in the middle part of the subject property.
16. On or around August 21, 2002, Complainant Candra Evans contacted Respondent Perma-Bilt Corporation to advise it of the apparent mold at the subject property. Complainant Candra Evans spoke with Ms. Holly Arestead-Rue, a Construction Coordinator for Respondent Perma-Bilt Corporation, explained her concerns based on

¹ In 1996, prior to purchasing the subject property, Complainants and their children abandoned a home that had several health and safety hazards, which were affecting the health of their children. After leaving their previous home, an expert collected samples and later determined that the home was contaminated with *Stachybotrys* mold. Complainants were forced to discard the majority of their belongings in order to avoid contaminating another home with mold.

her children's health condition and past exposure to mold, and requested that the studs be tested for the presence of mold. According to Complainants, Ms. Arestead-Rue offered to have the studs tested for mold. Ms. Arestead-Rue stated she would talk to someone with higher authority at Perma-Bilt and then she would call Complainants back.

17. On or around August 21, 2002, Ms. Arestead-Rue drafted a memorandum detailing Complainant Candra Evan's phone call concerning the moldy studs and copied Respondent Ruth Ochoa. The memorandum states in pertinent part, "L.R. Nelson will walk the house for framing inspection and certification. Then Odor Master will do a mold test. A report will be provided for each inspection."
18. On or around August 22, 2002, Complainant Candra Evans contacted Respondent Perma-Bilt Corporation again about the mold problem, and Ms. Arestead-Rue transferred the call to Ms. Ochoa. Complainant Candra Evans requested again that the applicable studs at the subject property be tested for the presence of mold. According to Complainants, Ms. Ochoa told Complainant Candra Evans that construction of the subject property was going to be completed "as is" without being tested for mold. Ms. Ochoa stated that Complainants could test for mold after construction of the subject property was completed, but would not be allowed to do so when the studs were still exposed. Ms. Ochoa offered to refund Complainants' money, but Complainant Candra Evans stated they did not wish to cancel the contract with Respondent Perma-Bilt Corporation.
19. Complainants contacted a mold eradication service and were told that if the subject property's moldy studs were still exposed, the mold could be treated for approximately \$1000.00.
20. On or around August 23, 2002, Mr. Mainwal advised Complainants that Respondent Perma-Bilt Corporation intended to cancel the contract for the subject property.
21. On or around August 24, 2002, Complainants visited Mr. Mainwal at his office to discuss their contract with Perma-Bilt Corporation being cancelled. According to Complainants, Mr. Mainwal advised them that Respondent Perma-Bilt Corporation did not want to sell the subject property to them, because of their mold concerns and for fear of being sued if Complainants' children became ill again.
22. On or around September 3, 2002, Respondent Perma-Bilt Corporation's attorney sent Complainants correspondence advising them that the contract for the subject property had been cancelled. The correspondence stated that Perma Bilt did not contemplate being required to build a completely mold-free or 'sterile' home to accommodate the hypersensitivity of Complainants' asthmatic children. The correspondence further stated that the sales contract for the subject property was being cancelled because there was "no meeting of the minds, or, alternatively, there was mutual mistake with regard to the subject matter of the Agreement."

23. On or around September 4, 2002, Respondent Perma-Bilt Corporation received correspondence from Complainants' attorney. The correspondence informed Respondent Perma-Bilt Corporation that molds were present on some of the wood at the subject property and, because Complainants' children suffer from adverse health effects, the Complainants would like the mold cleared up and sealed prior to enclosing those portions of the property. Complainants offered to cooperate to (1) determine whether the mold is of a type, which need concern the purchasers, and (2) negotiate a reasonable resolution of the costs to treat and seal the area. The correspondence reiterated that Complainants were prepared to proceed with the purchase of the subject property and did not wish to cancel the purchase and sale agreement.
24. Shortly after September 4, 2002, Complainants' attorney verbally informed Respondent Perma-Bilt's attorney that the Complainants were willing to pay half of the cost to test the studs at the subject property.
25. Despite Complainants' effort to negotiate a reasonable resolution to treat and seal the mold-affected studs, Respondent Perma-Bilt Corporation proceeded with the cancellation of the purchase and sale agreement.
26. Respondent Perma-Bilt Corporation refused to engage in dialogue with Complainants to discuss a reasonable solution to the mold issue. No one at Perma-Bilt ever asked Complainants for more information related to their childrens' health problems or about the types of mold that may pose a risk to the children.
27. Respondent Ruth Ochoa stated she has never cancelled another sales agreement in her ten years as sales manager.
28. By canceling the purchase and sale agreement for the subject property after Complainants requested the subject property be tested for mold because of their children's asthma and respiratory ailments, Respondent discriminated against Complainants and their minor children based on disability in violation of 42 U.S.C. §§3604(f)(1)(B) and (f)(2)(B).
29. By refusing to grant Complainants' reasonable accommodation request that the suspected mold be tested and treated, if harmful, and by refusing to discuss any other reasonable accommodations, Respondents discriminated against Complainants and their minor children based on disability in violation of 42 U.S.C. §3604(f)(3)(B).
30. By making the subject property unavailable to Complainants, during the course of its business in residential real estate-related transactions, after they requested the subject property be tested for mold because of their childrens' asthma and respiratory ailments, Respondents discriminated against Complainants and their minor children based on disability in violation of 42 U.S.C. §3605.

31. Because of Respondents' discriminatory conduct, Complainants Terrell and Candra Evans and their minor children have suffered damages, including lost equity, out-of-pocket expenses, loss of desired housing amenities, lost housing opportunity, and emotional distress. Additionally, Complainant Candra Evans lost the commission she would have received from the sale of the subject property as a licensed real estate agent. Complainants were particularly interested in the subject property, because it had an unobstructed view of the city, was located in a cul-de-sac where their children would be safe, and had a reasonable association fee that allowed them to use the recreation center including the gym, pool, and playgrounds. Due to Respondents canceling the purchase and sale agreement for subject property, Complainants and their minor children continued to live in an apartment until March 2003.

III. **CONCLUSION**

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to Section 810(g)(2)(A) of the Act, hereby charges Respondents Perma-Bilt, A Nevada Corporation, Zenith of Nevada, Inc. and Ruth Ochoa with engaging in discriminatory housing practices in violation of Sections 804(f)(1)(B), 804(f)(2)(B), 804(f)(3)(B), and 805 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. Sections 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 because of disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainants Terrell and Candra Evans and their minor children, Skylar and Madison Evans, aggrieved persons, for their actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. Sections 3604(f)(1)(B), (f)(2)(B), (f)(3)(B), and 42 U.S.C. § 3605.
4. Awards a \$11,000.00 civil penalty against each Respondent for each violation of the Act committed, pursuant to 42 U.S.C. Section 3612(g)(3).

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

Respectfully submitted,

Linda M. Cruciani
Assistant General Counsel
Fair Housing Enforcement Division

Tenille E. Washburn
Trial Attorney
Fair Housing Enforcement Division

Of Counsel: Harry L. Carey
Associate General Counsel for Fair Housing

Date: _____