

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)	
Deborah Norton, Christopher Norton,)	
and Diane Norton)	
)	
Charging Party)	FHEO No: 05-02-0478-8
)	
v.)	
)	
Guy Emery and Zellpac, Inc.,)	
)	
Respondents)	
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CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about May 22, 2002, Deborah Norton, an aggrieved person, filed a complaint with the United States Department of Housing and Urban Development (hereafter "HUD") alleging that Guy Emery (hereafter "Respondent Emery") violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (hereafter the "Act"), by discriminating on the basis of disability, in violation of 42 U.S.C. §3604(f). On or about September 3, 2002, Complainant Deborah Norton (hereafter "Complainant Norton") amended her complaint to add Zellpac, Inc. as a respondent. On or about August 10, 2004, Complainant Norton again amended her complaint to add Christopher Norton and Diane Norton as Complainants and to add a 42 U.S.C. §3604(c) allegation.

The 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 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 Director of the Office of Fair Housing and Equal Opportunity for the Midwest 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 Determination of Reasonable Cause, Respondents Emery and Zellpac, Inc. are charged with discrimination against Complainants Deborah Norton, Christopher Norton and Diane Norton, aggrieved persons as defined by 42 U.S.C. §3602(i), on the basis of disability in violation of 42 U.S.C. §§3604(c) and 3604(f) as follows:

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 that indicates any preference, limitation, or discrimination based on disability or an intention to make any such preference, limitation or discrimination. 42 U.S.C. §3604(c); see also 24 C.F.R. §100.75(a); 24 C.F.R. §100.75(b); 24 C.F.R. §§100.75(c)(1) and (2).
2. 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 that buyer or renter. 42 U.S.C. §3604(f)(1)(A) see also 24 C.F.R. §100.202(a)(1).
3. Complainant Deborah Norton is a disabled person as defined by 42 U.S.C. §3602(h). She was born with Spina Bifida and uses a wheelchair.
4. Complainant Deborah Norton's two children, Diane Norton and Christopher Norton are aggrieved persons as defined by 42 U.S.C. §3602(i) because they were injured by Respondent Emery's discriminatory housing practice.
5. At all times relevant to this charge, Respondent Emery, an experienced real estate broker, was employed by Zellpac, Inc. as the manager of the two buildings located at 908-910 N. Bentley, Marion, Illinois 62959 (hereafter "subject property") which consist of 22 two-bedroom units. Complainant applied for apartment B in the 910 N. Bentley building, which consists of eight units (hereafter "subject apartment").
6. At all times relevant to this charge, Zellpac, Inc. owned the subject property.¹ Zellpac, Inc. is incorporated in the State of Illinois.
7. Late in November 2001, Complainant's son, Christopher Norton (hereafter "Complainant Christopher Norton"), responded to an advertisement in the *Southern Illinoisan Newspaper* for an apartment for his mother to rent upon her release from the hospital. During this first contact, Complainant Christopher Norton told Respondent Emery that he was looking for an apartment for his

¹ On or about January 13, 2002, Zellpac, Inc. sold the subject property to Frank Bleyer and Associates.

mother who uses a wheelchair. He specifically asked Respondent Emery if the apartment was all on one level because of his mother's disability.

8. In or around the middle of December 2001, Complainant Christopher Norton again called Respondent Emery to schedule an appointment to view the subject property. He reminded Respondent Emery that he was looking for an apartment for his mother, who was in a wheelchair and needed a place to live upon her release from the hospital.
9. In or around the middle of December 2001, Complainant Christopher Norton met with Respondent Emery, whom he described as a white male, 85 to 90 years old, about 5'7" tall, with a small frame and "bald on top with gray hair on the sides."
10. Respondent Emery did not recall meeting Complainant Christopher Norton. However, during a November 9, 2004, interview of Respondent Emery, a HUD investigator observed that he is an "elderly white male, estimated to be in his late seventies or early eighties, approximately 5'8" in height, of slight build, and almost entirely bald," which comports with Complainant Christopher Norton's description of Respondent Emery.
11. Complainant Christopher Norton described the configuration of the subject property as a row of apartments. Further, he described the exterior of the subject property as a one-story building with a covered carport located 10 to 15 feet to the left of the subject apartment and concrete pavement right up to the front door of the subject apartment.
12. Complainant Christopher Norton stated that Respondent Emery showed him the subject apartment, which was on the north side of the property. He described the layout of the interior of the subject apartment as follows: upon entering the apartment the living room is on the left and there is nothing to the right. Behind the living room is the kitchen, and there are no walls separating the kitchen from the living room. He further recalled that where the living room ends is a long narrow hallway. The two bedrooms are on the left side of the hallway and the bathroom sits between the two bedrooms.
13. While Complainant Christopher Norton viewed the subject apartment he also took measurements to ensure that the doorways were wide enough for his mother's wheelchair. Complainant Christopher Norton recalled that he borrowed Respondent Emery's tape measure to measure the width of the bathroom door. Complainant Christopher Norton recalled that the bathroom door measured 29" inches, which was two more inches than his mother needed in order to access the bathroom in her wheelchair. Complainant Christopher Norton asked Respondent Emery if he could remove the door if necessary to provide his mother additional clearance Respondent Emery responded affirmatively.

14. Respondent Emery does not recall showing an apartment to Complainant Christopher Norton. However, on or about November 9, 2004, a HUD investigator viewed the subject property and confirmed that the exterior and interior comport with Complainant Christopher Norton's description. The HUD investigator also took measurements of the bathroom doorway. The HUD investigator found that the bathroom doorway measures approximately 30" inches wide from frame to frame, 29" inches wide from jam to jam, 28 ½" inches wide from frame to door face (with the door open to 90 degrees), and 28" inches wide from jam to door face.
15. On or about December 17, 2001, Complainant Christopher Norton called Respondent Emery from his home to arrange to pick up the apartment application on his way to work. Complainant Christopher Norton stated that he picked up the application at Respondent Emery's residence, which was 1603 Smith Drive, Marion, Illinois. He brought the application to the hospital for his mother to complete and then called Respondent Emery again, from his work phone, to notify him that he would be returning the completed application. Complainant Christopher Norton delivered the application and a \$100 check to Respondent Emery's residence, as instructed by Respondent.
16. On or about December 17, 2001, approximately one to two hours after receipt of the completed apartment application and the \$100 check, Respondent Emery called Complainant Christopher Norton and told him that he could not rent to Complainant Christopher Norton's mother because she is in a wheelchair. He explained that it was the beginning of winter, the apartment faces north and with the snow and ice, he felt that she may fall and not have access to and from her apartment because of the snow. Complainant Christopher Norton further stated that Respondent Emery said he felt that Complainant Deborah Norton would be a great liability to him. Complainant Christopher Norton relayed this information to his mother.
17. In response to her son's conversation with Respondent Emery, Complainant Deborah Norton called Respondent Emery in order to allay his fears about renting to her. Respondent Emery again stated that he could not rent to her because she is in a wheelchair and it would be a liability for him.
18. Complainant Deborah Norton asked Respondent Emery if he was aware of the federal and state laws prohibiting him from refusing to rent to her based on her disability. She stated that Respondent Emery replied that he did not care. Complainant Deborah Norton responded that she could hire a lawyer and take him to court. Respondent Emery told her not to try because she would lose and then hung up the phone on her.
19. Respondent Emery returned Complainant Deborah Norton's \$100.00 check to her son Complainant Christopher Norton.

20. Respondent Emery subsequently rented the subject unit to a nondisabled tenant.
21. Complainant Deborah Norton, who was in the hospital at the time and nearing her release date, had to continue to search for housing and have her son assist her in this process. The situation was very stressful both physically and emotionally for Complainant Deborah Norton because she was unsure of whether or not she would find a place to live prior to her release from the hospital and she could not be released from the hospital without a place to stay.
22. Complainant Deborah Norton was released from the hospital on or about December 19, 2001, and because she was unable to secure suitable housing prior to her release, she lived with her daughter, Complainant Diane Norton, for approximately six weeks.

III. DAMAGES

23. During Complainant Deborah Norton's stay at Complainant Diane Norton's home, Complainant Deborah Norton's ability to enter and leave the home was restricted due to stairs. As a result, she was dependent on her son, Complainant Christopher Norton, for access in and out of her daughter's home because of the steps. Additionally, Complainant Deborah Norton was unable to use the bathroom at her daughter's home because the doorway was too narrow for her wheelchair. Complainant Deborah Norton had to rely on her daughter to help her bathe and tend to her catheter. Complainant Deborah Norton prides herself on her independence, but was forced to depend on her children. Complainant Deborah Norton did not want to burden her children with having to care for her. This put a stress on her relationship with her children.
24. Complainant Christopher Norton was frustrated in his efforts to find his mother accessible housing and frustrated in his attempts to assist her in securing the subject property. Further, once Respondent Emery denied the rental to his mother, Complainant Christopher Norton spent his free time trying to locate another apartment for her. Additionally, Complainant Christopher Norton had to drive to his sister's house and carry his mother out of the home before his work shift everyday and back into the home after his work shift in order for Complainant to get herself to work and to other necessary appointments, because his sister's home was not accessible. This additional obligation disrupted Christopher Norton's schedule and inconvenienced him.
25. Additionally, Complainant Deborah Norton's stay at her daughter's home was a disruption to her daughter's family by interfering with their schedules and living arrangements. Complainant Diane Norton tended to her mother's catheter and other sanitary needs because the bathroom in her home was not accessible to her mother. Complainant Diane Norton, who was pregnant at the time, gave up her bedroom for her mother and was forced to sleep on the couch in the living room with her son and his father until her mother rented an apartment. Also,

Complainant Deborah Norton worked from 4:00 p.m. until 12:00 a.m. As a result, when she returned to her daughter's home after work, she would disturb their sleep.

26. As a result of Respondents' discriminatory conduct, Complainant Deborah Norton suffered damages in the form of emotional and physical distress. Complainant Deborah Norton became nervous which caused anxiety attacks and exacerbated her existing stomach problems. Her situation depressed her because she was trying to find a place to live while in the hospital and she felt she was burdening her children. Further, Complainant Deborah Norton suffered economic loss and inconvenience damages. Because of Respondents' discriminatory conduct, Complainant Deborah Norton's interim housing situation negatively impacted Complainant Deborah Norton and her family.
27. As a result of Respondents' discriminatory conduct, Complainants Christopher Norton and Diane Norton suffered damages in the form of emotional distress, economic loss, and inconvenience.
28. By refusing to rent, or otherwise making unavailable or denying a dwelling to Complainant Deborah Norton because of her disability, Respondents violated 42 U.S.C. §3604(f)(1)(A).
29. By stating to Complainants Deborah and Christopher Norton that he would not rent an apartment to Complainant Deborah Norton because she is in a wheelchair, it is the beginning of winter, the apartment faces north and with the snow and ice he felt that she might fall, not have access to and from her apartment because of the snow, and be a great liability to him, Respondent Emery committed unlawful discrimination by making statements to Complainants that indicated discrimination based on disability, in violation of 42 U.S.C. §3604(c).

IV. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Regional Counsel for the Midwest, and pursuant to 42 U.S.C. §3610(g)(2)(A) of the Act, hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§3604(c) and (f)(1)(A) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the 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, 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 of or rental of a dwelling;

3. Award such damages as will fully compensate Complainants Deborah Norton, Christopher Norton and Diane Norton, aggrieved persons, for their actual damages caused by the Respondents' discriminatory conduct pursuant to 42 U.S.C. §§3612(g)(3); and
4. Award civil penalties against each Respondent for violations 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 pursuant to 42 U.S.C. §3612(g)(3).

Respectfully submitted,

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