

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)	
Melody Sue Rachels,)	
)	HUD ALJ No.
Charging Party,)	FHEO No. 05-03-0916-8
)	
v.)	
)	
Cletus R. Kaemmerer, Sr. and)	
Billie J. Kaemmerer,)	
)	
<u>Respondents.</u>)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about July 9, 2003, the complainant, Melody Sue Rachels (“Complainant Rachels”) filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondent Cletus Kaemmerer 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 familial status, in violation of 42 U.S.C. §3604(b).¹ On March 9, 2004, the HUD Complaint was amended to add Billie Kaemmerer as a Respondent. Again, on October 1, 2004, the HUD Complaint was amended a second time to add violations of 42 U.S.C. §§3604(a) and (c) of the Act.

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 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 familial status, and has authorized and directed the issuance of this Charge of Discrimination.

¹ The investigation revealed that there was no reasonable cause to believe that Respondents violated 42 U.S.C. §3604(b) of the Act.

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 Cletus and Billie Kaemmerer are charged with discriminating against Complainant Melody Rachels, an aggrieved person as defined by 42 U.S.C. §3602(i), on the basis of familial status, in violation of 42 U.S.C. §3604(a) and (c) as follows:

1. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, sex, religion, familial status, disability, or national origin. 42 U.S.C. §3604(a); see also 24 C.F.R. §100.60(a); 24 C.F.R. §§100.60(b)(3), (b)(5).
2. 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 race, color, religion, sex, disability, familial status, or national origin, 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(b); 24 C.F.R. §§100.75(c)(1) and (2).
3. At all times relevant to this Charge, Respondents Cletus and Billie Kaemmerer were the owners of the property located at 6 Geri-Ann Drive, Unit No.6, Belleville, Illinois 62220 ("subject property"). The subject property contains three units and is not occupied by Respondents. The subject unit is a one-bedroom loft apartment. The bedroom and bathroom are located upstairs in the loft space, and the downstairs consists of a kitchen, dining room and family room.
4. On or about January 4, 2001, Complainant signed her lease which provided that "said premises should be occupied by no more than 2 adults and 0 children." At that time, Respondents also verbally told Complainant that children were prohibited from living at the subject property. On or around January 4, 2001, Complainant moved into the subject property.
5. When Respondents rented Unit No. 6 to Complainant, she alone occupied the unit, and she did not have children. Complainant became pregnant during her tenancy at 6 Geri-Ann Drive, Belleville, Illinois 62220, and confirmed her pregnancy on or about March 15, 2002.
6. Complainant resided in her unit at the subject property without incident from on or about January 4, 2001 until the spring of 2002.
7. In or around the spring of 2002, Complainant told both Respondents Cletus and Billie Kaemmerer that she was pregnant.

8. In response to Complainant's announcement of her pregnancy, Respondent Billie Kaemmerer told Complainant that she could not continue to reside in her unit at the subject property with a child. Respondent Cletus Kaemmerer added that his insurance company, State Farm Insurance, did not allow children to live in Complainant's unit because of safety concerns. At this time, Complainant explained to Respondents that she did not want to move, she did not have the money to move, nor did she have any place else to go.
9. Respondent offered Complainant a unit located at 420-422 Park Street, in Belleville, Illinois.² Complainant did not accept the Park Street unit because the rent was \$600.00, almost double her rent, and more than Complainant could afford.
10. On or about August 2, 2002, Complainant won \$5,000.00 by playing a slot machine at the Casino Queen in East Saint Louis, Illinois. On or about September 15, 2002, Complainant told Respondents that, after many attempts, she was unable to locate another apartment to rent and was considering purchasing a home with her winnings, as she was unable to remain in Respondents' unit once she gave birth. She again appealed to Respondent Cletus Kaemmerer to reconsider his decision to terminate her tenancy. She explained to Respondent Cletus Kaemmerer that she could either stay in her apartment and pay her rent with her winnings or use the money to purchase a home, but not both.
11. Respondent Cletus Kaemmerer reiterated that Complainant needed to move from the subject property because she was having a baby and they would not allow her to reside in the unit with a child. As such, he advised Complainant to use her winnings to purchase a home. Complainant requested that Respondents apply her security deposit of \$340.00 to be used for her September rent, and she proceeded to use all the money she had to purchase a home. Respondent agreed to allow Complainant's security deposit to be used as rent.
12. Complainant paid her rent on the 15th of each month. Therefore, her security deposit covered her rent from September 15, 2002 until October 15, 2002.
13. On or about October 22, 2002, Complainant received a 30-day notice from Respondents terminating her tenancy. The notice requested that she "quit and deliver possession of the premises" by December 4, 2002, and that all rent due as a result of her occupancy should be paid on or before December 4, 2002. The notice makes no mention of her rent being in arrears.
14. On or about October 31, 2002, Complainant vacated the subject unit, during her ninth month of pregnancy, and moved into the single family home that she purchased.
15. Complainant gave birth to a baby boy on November 18, 2002.

² However, Respondents were not the owners of the property located on Park Street.

16. Respondents admit in their December 5, 2003 Answer (the “Answer”) to the HUD Complaint that the “rental agreement provided that ‘premises shall be occupied by no more than 2 adults and 0 children.’” The Answer also admits that “the reason children were not allowed to reside in the subject premises is due to the configuration of the dwelling which consisted of an open-ended bedroom loft above the living room area which was the only bedroom.”
17. On March 15, 2005, Respondents submitted an “amended” answer to the Complaint bearing the date October 1, 2004 (the “Amended Answer”) and requested that their previous Answer be withdrawn. The request to withdraw the Answer was denied. Respondents’ “Amended” Answer denied discrimination against Complainant.
18. Over 6 months after Complainant moved out of her unit at Respondents’ request, on or about May 22, 2003, Respondent Cletus Kaemmerer filed a small claims complaint in the Circuit Court of the Twentieth Judicial Circuit in St. Clair County, Illinois alleging that on December 4, 2002, Complainant breached a contract with Respondent Cletus Kaemmerer by failing to pay rent for three months and damaging property. The complaint requested \$1,325.40 plus \$350.00 for attorney’s fees from Complainant.
19. On or about October 2, 2003, a hearing was held and the transcripts from that hearing document that Respondent Cletus Kaemmerer admitted that Complainant could not live in the unit with her child. He asserted that his insurance company, State Farm, told him that because the subject property had a lofted bedroom he was not allowed to have children on the premises. Respondent Cletus Kaemmerer further stated under oath that Complainant did not pay him rent for September, October, and November of 2002, and that as far as he knew, Complainant did not move out of the subject property until December 4, 2002.
20. Conversely, Complainant testified that she paid rent to Respondents on September 15, 2002, and moved out of the subject property on October 31, 2002. The judge ruled that Respondent’s evidence was not credible. As such, the judge ruled in favor of Complainant.
21. On or about June 4, 1992, State Farm Insurance Company (“State Farm”) conducted a residential inspection of the interior and exterior of the subject property. The inspection report records concerns discovered during the inspection that State Farm requested must be remedied in order for it to allow continued insurance coverage of the subject property. None of the enumerated concerns include the danger that the loft configuration presents to families with children. In fact, the inspection report does not discuss the loft configuration of the subject property at all. Further, the State Farm Agent, Keith Grodeon, stated that he never told Respondents that they would not receive insurance coverage if they rented to families with children because of the lofted bedroom.

22. Prior to the subject unit becoming available in 2001, a single man with no children resided in the subject unit. Complainant stated that only single persons with no children resided in the units at the subject property during her tenancy. Respondents subsequently rented Complainant's unit to a single female with no children who was also told by Respondents that they did not allow children to reside in the unit.
23. By otherwise making unavailable or denying Unit No. 6 at the subject property because of familial status, Respondents Cletus and Billie Kaemmerer discriminated against Complainant in violation of 42 U.S.C. §3604(a).
24. By making statements with respect to the sale or rental of a dwelling that indicated preference, limitation, or discrimination based on familial status, Respondents Cletus and Billie Kaemmerer discriminated against Complainant in violation of 42 U.S.C. §3604(c).
25. As a result of Respondents Cletus and Billie Kaemmerer's discriminatory conduct, Complainant Rachels has suffered damages, including economic loss, emotional distress, inconvenience, and loss of a housing opportunity. Complainant Rachels secured housing at a higher monthly rate than at the subject property, and pays higher utilities. Because Complainant's mortgage and monthly expenses are higher in her new home she cannot afford to stay in her house, which is currently in foreclosure.
26. The location of the subject property was better for Complainant than her new home. Complainant currently works in Alton, Illinois, which is closer to the subject property than her new home. The subject property was also closer to her family in Belleville, Illinois.
27. The situation was emotionally stressful for Complainant, as well. The discriminatory conduct angered and preoccupied her. Complainant was preoccupied with the major life events that confronted her such as becoming a single mother while at the same time being forced to move because she was having a child, and not having the money to do so.
28. Complainant's pregnancy was "high risk" and she feared the effects of her stress over moving would harm her baby. Complainant's doctor advised her that due to her high-risk pregnancy she should avoid stressful situations. Respondents' discriminatory conduct, however, added stress to Complainant during her already difficult pregnancy.
29. Complainant Rachels' emotional distress manifested itself physically. She became nervous, depressed, suffered anxiety attacks and had stomach problems.

30. The situation was also physically taxing for Complainant. At this late date in her pregnancy, Complainant had to move all of her belongings from the subject property, clean the subject property, and unpack her belongings in her new residence.

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 Cletus and Billie Kaemmerer with engaging in discriminatory housing practices in violation of 42 U.S.C. §§3604(a) and (c) 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 Rachels, an aggrieved person, for her actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§3604(a) and (c); and
4. Awards a civil penalty 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 under 42 U.S.C. §3612(g)(3).

Respectfully submitted,

Courtney Minor
Regional Counsel
for the Midwest

Lisa M. Danna-Brennan
Supervisory Attorney-Advisor
for Fair Housing for the Midwest

Dana Rosenthal
Trial Attorney
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
for the Midwest
77 West Jackson Boulevard, Room 2631
Chicago, Illinois 60604-3507
(312) 353-4681, Ext.2614
FAX: (312) 886-4944

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