

LEGAL AUTHORITY IN SUPPORT OF CHARGE

4. It is unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter. 42 U.S.C. § 3604(f) (1) (A).
5. It is 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 handicap of (a) that person; or (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 person. 42 U.S.C. § 3604(f) (2).
6. A public housing authority may adopt a preference for admission of working families, however, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities. 24 C.F.R. § 960.206(b) (2).

PARTIES:

7. Complainant, Judy Guerriero, is a person with a physical disability. She suffers from a progressive spinal cord disease and has undergone several back surgeries, resulting in limited mobility, chronic pain and occasional use of a cane to walk. Complainant does not work on account of her disability, but receives Supplemental Security Income.
8. Respondent Tuckahoe Housing Authority ("THA" or "Respondent") is a public housing authority and a recipient of federal financial assistance. It has 250 units in two housing complexes. THA's administrative office is located on 4 Union Place, Tuckahoe, NY.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE:

9. On June 11, 2001, Complainant applied for public housing at THA. At the time, Complainant and her children resided at 87 Main Street, Apt. 3, Tuckahoe, NY.
10. THA accorded Complainant a Preference 1 priority, which it gave to "Working residents living in the Village of Tuckahoe" and placed her on a waiting list for a three-bedroom unit.
11. In July 2002, THA sent Complainant a letter asking whether she was still interested in a public housing apartment, and, if so, requesting that she complete an attached form.
12. Complainant submitted the form to THA, expressing her continued interest in renting an apartment and reporting child support as her source of income. THA continued to accord her a Preference 1 priority.

13. In June 2003, THA contacted the Complainant regarding a vacancy. Complainant went to the THA office for an eligibility interview where she was told by Catherine Viggiano, Housing Administrator, that THA had a "working family" policy for housing. Complainant told Ms. Viggiano that she was disabled and could not work.
14. In a letter dated June 9, 2003, Eric DeEsso, THA Executive Director, denied Complainant an available unit because "our preference for housing is 'living and/or working in Tuckahoe' and we need to choose these applicants first." Complainant remained on the waiting list with the highest priority, Preference 1.
15. On August 1, 2004, THA sent Complainant another letter asking her to complete a form, if she was still interested in residing in a THA apartment. On August 4, 2004, Complainant expressed her continued interest in renting an apartment at THA and indicated on the form that her sources of income were from child support and disability benefits from Social Security. Complainant's THA application remained active with a Preference 1 priority.
16. On September 2004, a three-bedroom THA apartment became available; however, THA assigned that unit to a non-disabled applicant who had applied in August 2000, and been accorded a Preference 2 priority, which THA gave to "Working residents living in the Town of Eastchester."
17. In May 2006, Complainant relocated her family to 5 Union Place, Apt. 2, Tuckahoe, NY, where they still reside.
18. On June 5, 2006, THA sent Complainant a letter, notifying her of a possible vacancy and instructing her to arrange for an interview, if she remained interested in an apartment. Because Complainant had moved, the letter was returned to THA and Complainant was removed from the waiting list on June 9, 2006.
19. On July 17, 2006, Complainant went to the THA office to inquire about the status of her application and was told she was removed from the waiting list because the June 5th notification letter was returned. Ms. Viggiano told Complainant that she would have to reapply and that her name would then be added to THA's waiting list. Ms. Viggiano also told Complainant that there was a "working person" policy. Complainant asked to speak to Mr. DeEsso, who told her to reapply. He also told Complainant that there was a "working person only" preference.
20. On July 19, 2006, Complainant submitted her application for housing and was accorded a Preference 5 priority, which THA gives to non-working Tuckahoe residents.
21. Federal regulations permit a public housing authority (PHA) to adopt an admission preference for working families, so long as disabled applicants are also given the benefit of the working family preference. 24 C.F.R. § 960.206(b) (2). Accordingly,

individuals with disabilities are entitled to be classified as working families when a PHA applies its working family preference and cannot be treated differently than other working families because of their disability.

22. During September 2006, 2 three-bedroom THA apartments became available for occupancy. THA gave one of those apartments to a non-disabled working person who applied in June 2006, with a Preference 1 priority and the other apartment to a non-disabled person who applied in June 2006 with a Preference 4 priority, which THA accords to "Working applicants who do not fall into preferences 1 through 3."

FAIR HOUSING ACT VIOLATIONS:

23. THA violated the Act because it refused to rent her an apartment because of her handicap. 42 U.S.C. § 3604(f) (1) (A).
24. THA violated the Act by discriminating against Complainant in the terms, conditions, or privileges of rental of a dwelling, because of her handicap. 42 U.S.C. § 3604(f) (2).
25. THA violated the Act because it refused to accord Complainant the benefit of its working family preference although she was disabled and federal regulations mandate that disabled persons are entitled to a public housing authority's working family preference. 42 U.S.C. §§ 3604 (f) (1) (A) and (f) (2); 24 C.F.R. § 960.206(b) (2).

CONCLUSION:

WHEREFORE, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g) (2) (A), hereby charges the Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f) (1) and (f) (2), and prays that an order be issued that:

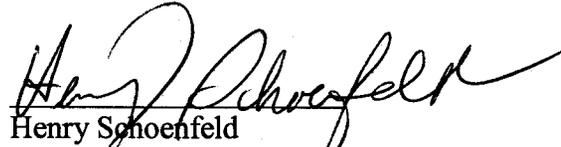
1. Declares that the discriminatory housing practices of the Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;
2. Enjoin Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of handicap against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g) (3);
3. Direct Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, to comply with 24 C.F.R. § 960.206(b) (2), which mandates that an applicant be given the benefit of a preference for working families if the head of household is a person with disabilities.

4. Direct Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, to provide Complainant with its next available, suitable apartment.
5. Awards such damages pursuant to 42 U.S.C. §3612(g) (3) as will fully compensate Complainant for emotional distress, inconvenience, lost housing opportunity and economic loss caused by Respondent's discriminatory conduct;
6. Awards a civil penalty against the Respondent for each violation of the Act, pursuant to 42 U.S.C. §3612(g) (3); and
7. Awards such additional relief as may be appropriate under 42 U.S.C. §3612(g) (3).

Respectfully submitted,



John J. Cahill
Regional Counsel
New York/New Jersey Office



Henry Schoenfeld
Associate Regional Counsel



Lorena Alvarado
Attorney Advisor

Office of Regional Counsel
U.S. Department of Housing and
Urban Development
26 Federal Plaza, Room 3500
New York, New York 10278-0068
(212) 542-7734

Date: September 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Notice," and "Determination" in Judy Guerriero v. Tuckahoe Housing Authority FHEO No. 02-06-0651-8, was sent to the following, in the manner indicated:

By Overnight Mail:

Judy Guerriero (Complainant)
5 Union Place
Apt. 2
Tuckahoe, NY 10707
(914) 774-9332

Tuckahoe Housing Authority (Respondent)
4 Union Place
Tuckahoe, NY 10707
(914) 961-3373

Carl Sloan, Esq. (Respondent's Counsel)
Wolf Haldenstein Alder Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016
413-528-3628

By Overnight Mail and Facsimile:

Chief Docket Clerk
Office of Administrative Law Judges
1707 H Street, N.W., 11th Floor
Washington, DC 20006
FAX (202)254-0011

This 28th day of September 2007.


Mabel Cheng, Paralegal Specialist
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
26 Federal Plaza, Suite 3500
New York, New York 10278
(212) 542-7740