

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)	
Jasper Spellazza,)	
)	HUD ALJ No.
Charging Party,)	FHEO No. 05-07-1525-8
)	
v.)	
)	
Rathbone Retirement Community, Inc.)	
Charles Ludwyck, Janet Ludwyck, and)	
Norma Helm,)	
)	
Respondents.)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about October 1, 2007, the complainant, Jasper Spellazza ("Complainant"), filed a verified complaint with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondent Norma Helm violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the "Act"), by making the subject property unavailable to him in violation of 42 U.S.C. §3604(f)(1)(A), and subjecting him to different and inferior terms and conditions of rental or in the provision of services or facilities in connection therewith in violation of 42 U.S.C. §3604(f)(2)(A).¹ On December 11, 2007, Complainant amended his complaint to include an allegation of refusal to provide reasonable accommodation of his disability in violation of 42 U.S.C. §3604(f)(3)(B). Additionally, the amended complaint added Charles Ludwyck and Janet Ludwyck as Respondents.

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

¹ Complainant Spellazza's complaint was referred to the Indiana Civil Rights Commission (the "ICRC") pursuant to Section 810(f) of the Act. On September 17, 2007, HUD requested a waiver of jurisdiction from the ICRC so that HUD could reactivate the Complaint and process it under the Act pursuant to 24 C.F.R. §103.110. On September 26, 2007, the ICRC approved the waiver of jurisdiction so that HUD could process Complainant Spellazza's Complaint.

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 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 HUD Complaint and Determination of Reasonable Cause, Respondents Rathbone Retirement Community, Inc., Norma Helm, and Charles and Janet Ludwyck (collectively referred to as "Respondents") are charged with discriminating against Complainant Jasper Spellazza, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability in violation of 42 U.S.C. §3604(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B) of the Act 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 unit that indicates any preference, limitation, or discrimination based on race, color, religion, sex, "handicap," familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. §3604(c).
2. It shall be unlawful to discriminate in the sale or rental of, 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).
3. 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 disability of (A) that person; or (B) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or (C) any person associated with that person. 42 U.S.C. §3604(f)(2).
4. For purposes of 42 U.S.C. §3604(f), discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. §3604(f)(3)(B).
5. At all times relevant to this Charge, Respondent Norma Helm was the Administrator of Rathbone Retirement Community, Inc., and Respondents Charles and Janet Ludwyck were owners of Rathbone Retirement Community, Inc. Rathbone Retirement Community, Inc. is located at 1320 S.E. Second Street, Evansville, Indiana 47713 ("subject property"). The subject property is a 58-unit, two-story building built in 1906. The subject property was converted to provide independent housing for seniors.

6. In order to reside at the subject property, residents must satisfy Respondents' admissions standards. Respondents' admissions standards are found in their marketing materials and state, in pertinent part, that residents must be "of high moral character, 55 years of age or older, ambulatory, mentally alert and in good health."
7. Complainant is a disabled person as defined by 42 U.S.C. §3602(h) of the Act. Complainant has a mobility impairment due to osteoarthritis of the knee, and degenerative joint disease, resulting in the loss of cartilage in both of his knees, which substantially limits his ability to walk, a major life activity. Due to his age, 84, and diabetes, he is a poor risk for knee replacement surgery. He also suffers from problems with the rotator cuff of his left shoulder which prohibits him from operating a manual wheelchair. At all times relevant to this Charge, Complainant used a walker and a motorized assistive device.
8. At all times relevant to this Charge, Respondents were aware that Complainant was an individual with a disability.
9. On or about October 21, 2002, Complainant moved into the subject property along with his wife.² At the time Complainant moved into the subject property, he only used a cane for assistance in walking.
10. During Complainant's tenancy, he resided in three different units at the subject property. On or about May 18, 2006, he moved into his most recent apartment, which was a newer two-bedroom. At all times relevant to this Charge, Jasper Spellazza was the leaseholder of Apartment 2108 at the subject property.
11. Complainant subsequently used both a motorized scooter and motorized wheelchair while residing at the subject property. He received his motorized wheelchair on or about July 14, 2006. On information and belief, once Complainant received his motorized wheelchair, he primarily used it and decreased his scooter usage. However, he kept his scooter parked in his apartment until he moved from the subject property.
12. Complainant received services from Visiting Nurses Association of South Western Indiana ("VNA") from approximately December 30, 2002 through March 20, 2007. Their services included bathing, house cleaning, nursing care, and physical and occupational therapy. Complainant was discharged from VNA's care on or around March 20, 2007 because he was no longer considered "homebound."
13. On or about December 26, 2007 and April 14, 2008, Pam Paul, Complainant's treating nurse from VNA, was interviewed by a HUD investigator. During that interview, Paul stated that Complainant was ambulating independently with a walker, motorized wheelchair and scooter at the time of his discharge from VNA services.

² Complainant's wife passed away not long after moving in to the subject property.

14. Complainant received physical and occupational therapy from Progressive Rehabilitation in or around the spring of 2007. On or about May 18, 2007 Complainant was discharged from physical therapy; and on or around May 21, 2007, Complainant was discharged from occupational therapy under the code, "goal met."
15. Complainant received services from American Nursing Care ("ANC") from on or about March 26, 2007 through at least July of 2007. Their services included bathing, nursing care, and medication management. Complainant's medical records from ANC indicate that Complainant was able to get to and from the toilet independently with or without an assistive device, and that he was able to transfer with minimal human assistance or with the use of an assistive device.
16. On or about February 13, 2008, Brandi Basham, one of Complainant's treating nurses at ANC, was interviewed by a HUD investigator. During that interview, Basham stated that she observed Complainant using his scooter and she thought he maneuvered "quite well." Complainant's medical records show that, while under Nurse Basham's care, as late as July 20, 2007, Complainant still ambulated safely with and without assistive devices.
17. On or about May 22, 2008, Pat McCarty, another of Complainant's treating nurses at ANC was interviewed by a HUD investigator. During that interview, McCarty stated that Complainant did not need the intense care of a nursing home, but needed assistance with bathing and medications.
18. At all times relevant to this Charge, Complainant also received home health services in his apartment provided by outside staff hired by his family. During June and July 2007, the period of time in which the eviction letter was served, Complainant received assistance from Shannon Phillips with his bathing and housekeeping needs.
19. On or about July 1, 2007, Respondents issued a notice to Rathbone residents regarding the use of motorized scooters and wheelchairs.³ On information and belief, while the notice was addressed to Rathbone residents, it was only given to those residents that used motorized scooters or wheelchairs at the subject property.
20. The July 1, 2007 notice prohibited the use of motorized wheelchairs and scooters in the dining room during mealtime and within the residents' apartments. The notice stated that the reason for the prohibition was that the motorized devices were damaging the "beautiful furniture, woodwork, and walls." The notice also asserted that "this has always been the rule," but that some had chosen to disregard it. With respect to motorized scooter or wheelchair use within the apartments, the notice stated that any damage done by a resident with an "electric device" would not be considered normal wear and tear and would be billed to the resident.

³ Evidence discovered during the investigation suggests that Respondents first instituted a policy restricting the use of motorized assistive devices on or about December 28, 2004.

21. There is no record that Respondents ever had to charge Complainant for damages to his unit as the result of his use of a motorized assistive device.
22. The July 1, 2007 notice also states that residents "are required to be capable of ambulating about their apartment at least with the assistance of 1 staff member," and concluded that "use of an electric device should not be necessary."
23. On or about July 5, 2007, Respondents issued a lease termination letter to Complainant Spellazza ("eviction letter"). The eviction letter advised Complainant that Respondents were terminating his lease because (1) over the past year his physical condition had declined to the point that he was unable to ambulate inside his apartment, and (2) he refused to follow the rules set by Respondents regarding the use of motorized scooters and wheelchairs.
24. The July 5, 2007 eviction letter stated that it was imperative that residents be capable of ambulating inside their apartments with a walker. The eviction letter further stated that two different nurses had approached Respondent Helm regarding Complainant's need for assisted living services, but that Complainant had refused Respondents' fee-for-service assisted living services. Finally, the eviction letter states that it is Respondents' "policy to only allow ambulatory seniors to live at The Rathbone."
25. At all times relevant to this Charge, for an additional \$500 per month, Respondents offered personal care assistance to residents of the subject property who chose to receive those services. The services included: personal laundry, bathing, dressing, mobility assistance and personal care assistance. During his tenancy at the subject property, Complainant declined all but Respondents' personal laundry services; contracting instead with outside entities for similar services.
26. On or about July .11, 2007, a week after receiving his eviction letter, Complainant contacted the office of his personal physician, Dr. Douglas Jaye Hatler, M.D., for assistance with securing other appropriate housing. In response, Dr. Hatler's Care Coordinator, Becky Richardville, contacted Respondent Helm. Richardville's notes from this call indicate that Respondent Helm told Richardville that Complainant had damaged his apartment with his scooter; that Complainant refused to walk with a walker in his apartment; and that he would not follow the rules for using motorized devices at the subject property.
27. At no time did Respondents waive the motorized devices policy as it applied to Complainant, despite his need to use those assistive devices for ambulation and his inability to use a manual wheelchair.
28. At no time did Respondents engage in an interactive discussion with Complainant regarding his noncompliance with the motorized devices policy to determine if a reasonable accommodation was reasonable and necessary to allow Complainant an equal opportunity to use and enjoy his dwelling.

29. There is no record, during the time that Complainant resided at the subject property, that Complainant harmed anyone as the result of his use of a motorized assistive device. During the investigation, Respondents were only able to articulate one incident in which Complainant made contact with another resident with his motorized scooter; the resident was unharmed.
30. There is no record, during the time that Complainant resided at the subject property, from Complainant's treating physician or any other physician who saw Complainant that concludes that Complainant was not ambulatory or that he could not live independently at the subject property with or without reasonable accommodations.
31. There is no record, during the time that Complainant resided at the subject property, from nurses or physical therapists who treated Complainant, which concludes that Complainant was not ambulatory or that he could not live independently at the subject property with or without reasonable accommodations.
32. It is Respondents' policy when an existing resident's personal condition declines to the point that Respondents feel that they can no longer meet that resident's needs, to consult that resident's family and personal physician and, if recommended, transfer the resident to a hospital or nursing home.
33. Respondents did not contact Complainant's family or his personal physician prior to serving Complainant with an eviction letter on July 5, 2007, despite the eviction letter's mention of Complainant's declining physical condition.
34. Complainant's son, William Spellazza, acts as Complainant's Power of Attorney. William Spellazza conveyed to Respondent Helm that he was his father's Power of Attorney; and Respondent Ludwyck acknowledges that William Spellazza managed Complainant's personal affairs.
35. William Spellazza regularly visited Complainant at the subject property, and Respondents had his personal contact information. Respondent Helm personally spoke with William Spellazza regarding minor matters concerning Complainant, but did not contact him regarding Complainant's alleged physical decline.
36. Instead, contrary to Respondents' policy of contacting a resident's family and personal physician when a resident was in physical decline, Respondent Helm sought advice from Respondents' attorney and insurance agent about whether Complainant should remain at the subject property. Respondents ultimately decided to terminate Complainant's tenancy.
37. Subsequent to his eviction, Complainant moved to the Atria, another assisted living community for seniors, receiving the same level of care as he did at the subject property.

38. Respondents admit that in order to live at the subject property, an individual must be "ambulatory."
39. Respondents admit that since at least 2006, and at all times relevant to this Charge, they maintained a policy that individuals were not permitted to use motorized assistive devices in the dining room and/or in their units at the subject property.
40. At all times relevant to this Charge, it was Respondents' policy that residents and prospective residents who relied upon motorized assistive devices for ambulation in their units and the dining room were not considered "ambulatory" and therefore were not qualified to rent or continue renting from Respondents.
41. In 2007, it was Respondents' policy to reject prospective residents who needed to use "motorized vehicles" for ambulation, including motorized wheelchairs, and to forbid their use by existing residents.
42. In 2008, it was Respondents' policy to reject prospective residents who needed to use "electric scooters" for ambulation and to forbid their use by existing residents.
43. Respondents admit that as a result of their policy restricting the use of motorized scooters inside the subject property, three tenants vacated the Rathbone: Complainant, John Vezzuoso and Dennis Underhill.⁴
44. By making, printing or publishing a policy, on July 1 and July 5, 2007, restricting or prohibiting ambulation with a motorized assistive device, and making other statements restricting the use of motorized devices at the subject property, Respondents discriminated against Complainant on the basis of disability by stating a preference for individuals who are not mobility impaired and a limitation upon individuals who are mobility impaired and use assistive devices, in violation of 42 U.S.C. §3604(c).
45. By evicting Complainant because he failed to follow the policy restricting his motorized scooter and wheelchair use in his apartment and the dining room and by subjecting him to their discriminatory ambulation policy, Respondents otherwise made the subject property unavailable to Complainant in violation of Section 804(f)(1)(A) because of his disability.
46. By imposing the policy restricting Complainant's use of his motorized scooter and wheelchair at the subject property in the dining room and his apartment, and not restricting the use of apartments and the dining room by individuals who do not use motorized assistive devices, Respondents subjected Complainant to different and inferior terms and conditions of rental of a dwelling or different and inferior provision of services and facilities in connection therewith in violation of 42 U.S.C. §3604(f)(2)(A) because of his disability.

⁴ Neither Vezzuoso nor Underhill was evicted, but moved as the result of the policy. Underhill has also filed a HUD complaint against Respondents because of their policy regarding motorized devices.

47. By evicting Complainant because he failed to follow the policy restricting his motorized scooter and wheelchair use without attempting to provide Complainant with a reasonable accommodation to ameliorate any alleged direct threat to the health, safety or property of others, Respondents refused to provide Complainant a reasonable accommodation in violation of 42 U.S.C. § 3604(f)(3)(B).
48. By applying their ambulation policy, restricting Complainant's use of his motorized scooter and wheelchair when Respondents knew or should have known that Complainant needed a reasonable accommodation, and instead evicting Complainant, Respondents refused to provide Complainant a reasonable accommodation in violation of 42 U.S.C. § 3604(f)(3)(B).
49. As a result of Respondents' discriminatory conduct, Complainant has suffered damages, including economic loss, emotional distress, loss of a housing opportunity, and inconvenience.
50. Respondents' actions subjected Complainant to economic loss. He incurred moving expenses, and had to pay a significant amount more in rent per month in his subsequent housing.
51. Respondents' actions caused Complainant emotional distress. He was embarrassed that Respondents evicted him, and became depressed. After receiving his eviction letter, Complainant attempted to talk to Respondent Helm about it. During this discussion, Complainant felt that Respondent Helm berated him in public. As a result, Complainant isolated himself in his apartment for a number of days.
52. Respondents' actions caused Complainant to feel demeaned, frustrated, and defeated. Requiring Complainant to move and leave the support system he created for himself, after his wife passed away, created great stress and anxiety for Complainant. Respondents' actions also made Complainant feel self-conscious about the state of his health, and as a result, he had difficulty creating a new support system once he left the subject property. Because he could no longer drive, he was unable to stay connected to his friends at the subject property.
53. Complainant's emotional distress also manifested itself physically. Aside from depression, Complainant's health declined due to his eviction. Respondents' actions broke Complainant's spirit. As a result, once he left the subject property he stopped trying to use his walker or improve his mobility.
54. Respondents' discriminatory acts inconvenienced Complainant and caused him a lost housing opportunity. He was forced to move from the subject property which was closer to his other son, Phillip Spellazza, his niece, and the Veterans Administration Clinic where he saw his physician.

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 with engaging in discriminatory housing practices in violation of 42 U.S.C. §3604(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B) 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 disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant, an aggrieved person, for his actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§3604(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B); and
4. Awards a \$16,000 civil penalty against each Respondent for each violation 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,



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Date: 09/25/08