

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES**

Secretary, United States Department)	
of Housing and Urban Development,)	
on behalf of Quetsy Colon, Alexander Colon,)	
and Pazel Perez)	
)	
Charging Party,)	
)	
v.)	HUD ALJ No.
)	FHEO No. 01-08-0312-8
Cheryl Lee Brill, Wally Wetherbee, Thomas Clarkin,)	
RE/MAX Five Star, Donna Marti, Trustee, and the)	
Velna Marti Irrevocable Income Trust)	
)	
Respondents.)	
)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 9, 2008, Complainant Quetsy Colon filed a complaint with the United States Department of Housing and Urban Development ("HUD"), alleging that the Respondents discriminated in violation of the Fair Housing Act ("the Act"). 42 U.S.C. § 3601-3619.

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) - (2). The Secretary of HUD has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination; and to the General Counsel the authority to issue such a charge of discrimination. The General Counsel has redelegated to the Regional Counsel the authority to issue such a charge.

By Determination of Reasonable Cause dated July 8, 2009, the Director of the Fair Housing Hub, Office of Fair Housing and Equal Opportunity for New England, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case, and has authorized the issuance of this Charge of Discrimination by the Regional Counsel. 42 U.S.C. §3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint, and the findings contained in the attached Determination of Reasonable Cause, the Secretary charges Respondents with violating 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 renter because of the familial status of that renter. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a).
2. It is unlawful for any person 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, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a).
3. Complainant Quetsy Colon is the mother of two minor children, Complainants Alexander Colon and Pavel Perez.
4. As a family with children, Complainants enjoy the protections of the Fair Housing Act's familial status provisions. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20.
5. During May 2008, Respondent Cheryl Brill (hereinafter "Respondent Brill") was employed under a yearly contract as an independent contractor of RE/MAX Five Star, owned and operated by Respondent Thomas Clarkin (hereinafter "Respondent Clarkin"). A business card from RE/MAX lists Respondent Brill as a realtor and Respondent Wally Wetherbee (hereinafter "Respondent Wetherbee") as an administrator. The business card also lists a website: www.cherylandwally.com, which prominently features the RE/MAX logo.
6. Upon information and belief, Respondent Brill is licensed to sell real estate while Respondent Wetherbee is not a licensed realtor but is an accredited staging professional. Upon information and belief, at all times relevant to the complaint, Respondent Wetherbee was both Respondent's Brill husband and her assistant in real estate transactions.
7. The single-family property at 156 Laurens Street, Cranston, Rhode Island 02920 was at all relevant times held in legal title by the Respondent Velna Marti Irrevocable Income Trust.
8. Upon information and belief, Respondent Donna Marti (hereinafter "Respondent Marti") is the trustee and beneficiary of the Respondent Velna Marti Irrevocable

Income Trust. As trustee, Respondent Marti was responsible for renting the property at 156 Laurens Street and had previously rented the property on multiple occasions.

9. During the month of March 2008, Respondent Marti contacted Respondents Brill and Wetherbee to represent her in the rental of the property at 156 Laurens Street. Respondent Marti had used Respondents Brill and Wetherbee on at least two previous occasions to rent the property.
10. Respondent Marti instructed Respondent Wetherbee to restrict the rental to applicants with no children.
11. Respondent Marti insisted upon this restriction because of alleged problems her mother, who lived next door, experienced with previous renters with children.
12. Respondents Brill and Wetherbee did not indicate to Respondent Marti that this restriction was illegal.
13. Respondent Wetherbee posted an advertisement for 156 Laurens Street on Craigslist.com and put a "for rent" sign in the property's yard. The advertisement read: "This is an immaculate spacious 3-bedroom house for rent. It has double parlor, eat-in kitchen, porch and garage. No cats, dogs or children please." The advertisement also included a phone number and a picture of the property.
14. Craigslist is an internet forum featuring free online classified sections, including one section devoted solely to housing.
15. During May 2008, Complainant Quetsy Colon began a search for housing for herself, her fiancé, and her two children.
16. During this time, Complainant Quetsy Colon called the number listed on the Craigslist advertisement.
17. Complainant Quetsy Colon spoke to Respondent Wetherbee, who asked her who would be occupying the property. After Complainant mentioned that she has two children, Respondent Wetherbee informed her that the owner would not rent to families with children.
18. Subsequent to this conversation, Respondents Brill and Wetherbee rented the property at 156 Laurens Street to a group of three men.
19. Under these circumstances, Respondents' refusal to rent to Complainant constitutes a violation of 42 U.S.C. § 3604(a).

20. Through posting the advertisement on Craigslist, Respondent Wetherbee also violated the Act by making and/or publishing an advertisement, with respect to the sale or rental of a dwelling, that indicated a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).
21. Through the statement made to Complainant telephonically, Respondent Wetherbee also violated the Act by making a statement with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on familial status and which showed an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).
22. By making discriminatory statements and causing discriminatory statements and advertisements to be made by Respondent Wetherbee with respect to the rental of a dwelling, Respondent Marti violated the Act. 42 U.S.C. § 3604(c).
23. As trustee, Respondent Marti's actions in making and causing to be made discriminatory statements with respect to the rental of a dwelling subject the Respondent Velna Marti Irrevocable Income Trust to liability under the Act.
24. Respondents Wetherbee and Brill were agents of Respondents Donna Marti and the Velna Marti Irrevocable Income Trust, who are vicariously liable for their violation of the Act.
25. In his capacity as assistant to Respondent Brill, Respondent Wetherbee was an agent of Respondent Brill, who is vicariously liable for Respondent Brill's violation of the Act.
26. In her capacity as a sales agent of Respondents Clarkin and RE/MAX Five Star, Respondent Brill was an agent of these Respondents and they are vicariously liable for her violation of the Act.
27. As a result of the Respondents' conduct, Complainants have suffered damages, including economic loss and emotional distress.

III. CONCLUSION

WHEREFORE, the Secretary of Housing and Urban Development, through the Office of the Regional Counsel for New England, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges the Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a) and 42 U.S.C. § 3604(c) 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. § 3601-3619;

2. Enjoin the Respondents from further violations of 42 U.S.C. § 3604(a) and (c) of the Act;
3. Awards such damages as will fully compensate Complainants for any economic loss and emotional distress caused by the Respondents' discriminatory conduct;
4. Awards a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3);
5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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Regional Counsel
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Abraham Brandwein
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Date: 7/16/09

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination" in FHEO Case 01-08-0312-8 was served this 8th of July 2009 by federal express upon the following:

Chief Docket Clerk
Office of Administrative Law Judges
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and by regular mail upon the following:

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