

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 )  
Metropolitan Milwaukee Fair Housing )  
Council, Inc., )  
 )  
Charging Party, )  
 )  
vs. )  
 )  
Barbara Kuehn and Thomas Kuehn, )  
individually and d/b/a T & B Investments, )  
Diane Broker and Richard Kuehn, )  
 )  
Respondents. )  
\_\_\_\_\_ )

HUDALJ No.  
FHEO Case No. 05-04-0748-8

**CHARGE OF DISCRIMINATION**

I. **JURISDICTION**

On or about May 12, 2004, Metropolitan Milwaukee Fair Housing Council, Inc. (hereafter referred to as “MMFHC”), an aggrieved person, timely filed a verified complaint with the U.S. Department of Housing and Urban Development (“HUD”), alleging that Respondents Barbara Kuehn and Thomas Kuehn, individually and doing business as T & B Investments, Richard Kuehn and Diane Broker discriminated against its fair housing testers on the basis of familial status in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (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 Director of HUD’s Office of Fair Housing and Equal Opportunity for the Midwest HUB, Region V, 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 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 Barbara Kuehn and Thomas Kuehn, individually and d/b/a T & B Investments, Richard Kuehn and Diane Broker are charged with discriminating against Complainant MMFHC, an aggrieved person, based on familial status in violation of 42 U.S.C. § 3604(a) and (c) of the Act as follows:

1. It is unlawful to refuse to negotiate for the sale or rental of a dwelling, or to make unavailable or deny a dwelling, to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.
2. It is unlawful to make or publish any statement or advertisement with respect to the sale or rental of a dwelling that indicates any 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); 24 C.F.R. § 100.75.
3. The properties at issue, Capitol Court Apartments, consist of two buildings located at 1490 and 1500 Capitol Drive, in Green Bay, Wisconsin ("Capitol Court Apartments"). The 1490 Capitol Drive building consists of fourteen one-bedroom units. The 1500 Capitol Drive building consists of fifteen one-bedroom units.
4. According to the City of Green Bay property tax records, Respondents Barbara and Thomas Kuehn, husband and wife, were the owners of the Capitol Court Apartments at all times relevant to this Charge of Discrimination.
5. Respondent Richard Kuehn is the son of Respondents Barbara and Thomas Kuehn. Respondent Richard Kuehn was responsible for managing the Capitol Court Apartments at all times relevant to this Charge of Discrimination.
6. Since on or about August 1, 2004, Respondents Barbara and Thomas Kuehn have employed Respondent Diane Broker and her husband Thomas Broker as the on-site managers of Capitol Court Apartments, where they occupy a unit. Respondent Diane Broker was responsible for showing the units, answering the phones and cleaning and maintaining the common areas of the Capitol Court Apartments at all times relevant to this Charge of Discrimination.
7. Complainant MMFHC is a non-profit fair housing organization in Wisconsin that promotes fair housing practices in the cities of Appleton, Green Bay, Madison, Milwaukee, Oshkosh and Waukesha, as well as other communities in the counties of Dane, Milwaukee, Ozaukee, Washington and Waukesha. Complainant MMFHC's mission includes ensuring that all persons have equal access to housing without regard to family status. In furtherance of its mission, MMFHC provides advocacy services, conducts education and outreach activities, advises public policy, and files legal actions. As part of its fair housing enforcement efforts, Complainant MMFHC conducts fair housing "tests" to determine whether housing providers engage in discriminatory housing practices.

8. In January 2003, Complainant MMFHC became aware of allegations of possible discriminatory housing practices by housing providers in the Green Bay area. As a result, Complainant MMFHC began monitoring rental advertisements in the *Green Bay Press – Gazette*.
9. Between January 2003 and August 2003, Complainant MMFHC identified approximately nine (9) advertisements for Capitol Court Apartments.
10. On January 26, 2003, Respondents placed an advertisement for rental in the *Green Bay Press – Gazette*. The advertisement read as follows: “G.B. West – ‘DISTINCITVE’ CAPITOL COURT APT. MUST SEE! 1 bdrm Apts., beautiful lounge/patio with free city gas grills to use, laundry facilities, underground parking available. Quiet, clean, & secure. Approx. 70% elderly, all adults welcome! No pets. 499-0135.”
11. Between January 31 and August 6, 2003, in response to rental advertisements, Complainant MMFHC conducted multiple fair housing tests of the Capitol Court Apartments.
12. On January 31, 2003, Tester #1, posing as a single mother with a child, telephoned (920) 499-0135 and spoke to an unidentified man. Tester #1 indicated that she was interested in a one-bedroom apartment. The man informed her that units were available. An appointment to view a unit was scheduled for February 1, 2003. The man informed Tester #1 that the owner would be showing the unit and would call her back to confirm the appointment.
13. On February 1, 2003, Tester #1 arrived for the scheduled appointment and met with Respondent Barbara Kuehn. After Respondent informed Tester #1 of the application process and related fees, Respondent informed Tester #1 that the majority of renters were elderly and that there were no children in the apartments.
14. During the course of the visit, Respondent Barbara Kuehn inquired as to who would be occupying the unit. Tester #1 informed Respondent that the unit was for herself and her three year old daughter. Respondent replied that she did not know “how that would work out” since most of the renters were elderly and there were no children in the area. Respondent further suggested that there might be a law against renting a one-bedroom unit to an adult and a child.
15. On January 31, 2003, Tester #2, posing as a single female with no children, telephoned (920) 499-0135 and spoke with a man who identified himself as “Rick,” Respondent Richard Kuehn. Tester #2 indicated that she was interested in a one-bedroom apartment and Respondent informed her that units were available. An appointment to view the unit was scheduled for February 1, 2003. Respondent informed Tester #2 that the owner would be showing her the unit.
16. On February 1, 2003, Tester #2 arrived for the scheduled appointment and met with Respondent Barbara Kuehn. During the course of the visit, Respondent informed Tester #2 that the complex is quiet and consists of all adults and long-term tenants.

17. On February 23, 2003, Respondents placed an advertisement for rental in the *Green Bay Press – Gazette*. The advertisement read as follows: “G.B. West – CAPITOL COURT APT. 1 bdrm heated, quiet, clean, secure, underground parking, 1<sup>st</sup> floor laundry, large patio, gas grills, lounge w/ TV, microwave, copier, etc. 499-0135.”
18. On March 4, 2003, in response to the February 23, 2003 advertisement, Tester #3, posing as a single mother with a child, telephoned (920) 499-0135. She spoke with a man who identified himself as “Rick,” Respondent Richard Kuehn. Tester #3 indicated that she was interested in a one-bedroom apartment. An appointment to view the unit was scheduled for March 6, 2003.
19. On March 6, 2003, Tester #3 arrived for the scheduled appointment and met with Respondent Richard Kuehn. During the onsite visit, Respondent informed Tester #3 that there were no children in either building. Respondent also informed her that the buildings were quiet, with most residents being in their fifties, in addition to some young couples. During the course of the conversation, Tester #3 informed Respondent that she had a daughter. Respondent told Tester #3 that she could fill out an application, but that he did not know if she would be rejected based on having a child.
20. On March 5, 2003, Tester #4, posing as a single female with no children, telephoned (920) 499-0135 and spoke with a man who identified himself as Richard Kuehn. Tester #4 indicated that she was interested in a one-bedroom apartment. Respondent informed her that units were available. An appointment to view the unit was scheduled for March 6, 2003.
21. On March 6, 2003, Tester #4 arrived for the scheduled appointment and met with Respondent Richard Kuehn. During the course of the visit, Respondent informed Tester #4 that everyone was friendly and knew each other and that most of the residents were in their fifties. He joked with Tester #4, remarking that the “old grannies” would not bother her much.
22. On April 25, 2003, Respondents placed an advertisement for rental in the *Green Bay Press – Gazette*. The advertisement read as follows: “G.B. West – CAPITOL COURT APT. 1 bdrm heated, quiet, clean, secure, underground parking, 1<sup>st</sup> floor laundry, large patio, gas grills, lounge w/ TV, microwave, copier, etc. 499-0135.”
23. On May 1, 2003, in response to the April 25, 2003 advertisement, Tester #5, posing as a single female with no children, telephoned (920) 499-0135. She spoke with a woman who identified herself as Barbara Kuehn. Tester #5 inquired about the availability of a one-bedroom apartment. During the course of the conversation, Respondent asked Tester #5 if the unit was just for herself. Tester #5 replied affirmatively. Respondent remarked to her that the Capitol Court Apartments had residents ranging in age from twenty to ninety-five years of age.
24. On May 1, 2003, Tester #6, posing as a single mother with a child, telephoned (920) 499-0135 and spoke with an unidentified man. Tester #6 inquired about the availability of a one-

bedroom apartment. The man informed Tester #6 of the availability of a unit. Tester #6 informed the man that the unit would be for herself and her daughter. He responded that they did “not take kids.” He stated that mostly older tenants resided at the property and that they did “not take kids or pets.” During the course of the conversation, the man asked Tester #6 the age of her daughter. Tester #6 replied that she had a two year old daughter. The man paused and then said that he just could not rent to her. Oddly, he remarked regretfully that the one-bedroom that was available for rent was “really nice.”

25. On July 13, 2003, Respondents placed a rental advertisement in the *Green Bay Press – Gazette*. The advertisement read as follows: “Seniors-Delight Capitol Ct Apts 499-0135.”
26. On August 3, 2003, Respondents placed another rental advertisement in the *Green Bay Press – Gazette*. The advertisement read as follows: “G.B. West – CAPITOL COURT APT. 1 bdrm heated, quiet, clean, secure, underground parking, 1<sup>st</sup> floor laundry, large patio, gas grills, lounge w/ TV, microwave, copier, etc. ‘TRY US!!’ 499-0135.”
27. On August 6, 2003, in response to the July 13 and August 3, 2003 advertisements, Tester #7, posing as a single mother with a child, telephoned (920) 499-0135. She spoke with a woman who identified herself as Diane Broker. Tester #7 inquired about the availability of a one-bedroom apartment for herself and her daughter. Respondent Broker responded that a unit was available, but asked Tester #7 her daughter’s age. Tester #7 replied that her daughter was two years old. Respondent replied that she was sorry but that they did not allow children or pets.
28. On August 6, 2003, Tester #8, posing as a single female with no children, telephoned (920) 499-0135. She spoke with a woman who identified herself as “Diane,” Respondent Diane Broker. Tester #8 inquired about the availability of a one-bedroom apartment for herself. Respondent informed Tester #8 of the availability of a unit, but volunteered that that they did not allow children or pets.
29. On July 27, 2004, Respondent Diane Broker admitted to a HUD investigator, that she did, in fact, inform the testers that the property did not take children or pets.
30. Respondents, through the actions described above, refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to the testers posing as mothers with children because of familial status in violation of 42 U.S.C. § 3604(a) of the Fair Housing Act.
31. By making statements to the testers that indicated a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination, Respondents committed unlawful discrimination in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
32. By publishing advertisements in the *Green Bay Press – Gazette* with respect to the rental of a dwelling that indicated a preference, limitation, and discrimination because of familial status, Respondents Barbara Kuehn and Thomas Kuehn committed unlawful discrimination

in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.

33. As a result of Respondents' discriminatory conduct, Complainant MMFHC has suffered frustration of its mission and diversion of its resources away from other fair housing activities including advocacy services, education and outreach, testing and the filing of other legal actions in order to address Respondents' discriminatory conduct.

### III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel for the Midwest, Region V, 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(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, and successors, and all other persons in active concert or participation with any of 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 MMFHC for Respondents' discriminatory conduct frustrating its fair housing mission and diverting scarce resources away from other fair housing activities; and
4. Awards a civil penalty of \$8,000.00 against each Respondent 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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COURTNEY B. MINOR  
Regional Counsel for the Midwest  
Region V

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LISA M. DANNA  
Supervisory Attorney-Advisor for Fair Housing

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BARBARA SLIWA  
Trial Attorney  
U.S. Department of Housing  
and Urban Development  
Office of the Regional Counsel  
for the Midwest  
77 West Jackson Boulevard, # 2617  
Chicago, Illinois 60604-3507  
(312) 353-6236, ex.2613  
FAX: (312) 886-4944

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