

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

The Secretary, United States)	
Department of Housing and Urban)	FHEO No. 09-09-1454-8
Development, on behalf of [REDACTED])	
[REDACTED])	
)	
Charging Party,)	
v.)	
)	
City of Santa Rosa and La)	
Esplanada Unit 1 Owners' Association,)	
)	
Respondents)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On September 16, 2009, complainant [REDACTED] ("Complainant [REDACTED]") filed a complaint ("Complaint") with the United States Department of Housing and Urban Development ("HUD"), alleging that Respondents, the City of Santa Rosa ("Respondent City of Santa Rosa") and La Esplanada Homeowner's Association ("Respondent HOA") (collectively, "Respondents"), inter alia, violated the Fair Housing Act ("Act"), 42 U.S.C. §§ 3601-19, by discriminating on account of familial status. On January 31, 2011, Complainant [REDACTED] amended the Complaint to include [REDACTED] ("Complainant [REDACTED]") as a complainant, reflect Respondent HOA's legal name (La Esplanada Unit 1 Owners' Association), and allege additional violations of the Act. Specifically, Complainant alleged facts that constitute violations of 42 U.S.C. §§ 3604(a)-(d) and 3617. Efforts at conciliating the Complaint were unsuccessful.

The Act authorizes the Secretary of HUD to issue 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 that authority to the General Counsel. 24 C.F.R. §§ 103.400 and 103.405. The General Counsel has redelegated this authority to the Regional Counsel. 74 Fed. Reg. 62803, 62804 (Dec. 1, 2009).

The Office of Fair Housing and Equal Opportunity Region IX 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 and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF CHARGE

Based on HUD's investigation of the allegations contained in the Complaint and Determination of Reasonable Cause, filed herewith, Respondents are charged with violating the Act as described below:

1. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(3) and 100.70.
2. 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 therewith, because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65.
3. 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 familial status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75.
4. It is unlawful to represent to any person because of familial status that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d); 24 C.F.R. §§ 100.50(b)(5) and 100.80.
5. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
6. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with: a (1) parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20.

7. The property in question is a 120-unit condominium development in Santa Rosa, California (“Subject Property”). The Subject Property was built in two “phases.” Phase 1 consists of 36 condominium units located at the following addresses: 1501 La Esplanada Place; 1591 La Esplanada Place; and 1611 La Esplanada Place. Phase 2 consists of 84 condominium units located at the following addresses: 1511 La Esplanada Place; 1531 La Esplanada Place; 1541 La Esplanada Place; 1551 La Esplanada Place; 1561 La Esplanada Place; 1571 La Esplanada Place; and 1581 La Esplanada Place.
8. Complainant [REDACTED] is, and at all relevant times has been, a limited liability company that owns all 84 units in Phase 2 of the Subject Property. Complainant [REDACTED] is, and at all relevant times has been, the [REDACTED] of Complainant [REDACTED].
9. Respondent City of Santa Rosa is, and at all relevant times has been, a municipality located in Sonoma County, California.
10. Respondent HOA is, and at all relevant times has been, a nonprofit mutual benefit corporation that is incorporated in the State of California and is responsible for enforcing compliance with the Subject Property’s covenants, conditions, and restrictions (“CC&Rs”).
11. On or around April 4, 2000, Respondent City of Santa Rosa rezoned the Subject Property for use as a senior development.
12. On or around March 10, 2003, the original CC&Rs for the Subject Property were recorded with the Sonoma County Recorder’s Office. Section 18.02 of the CC&Rs provides as follows:

This Project is a development designed to provide housing for Senior Citizens and is intended to qualify as a senior citizen housing development within the meaning of Civil Code Section 51.3(b)(4). On commencement of occupancy of the Unit, at least one resident must be a Senior Citizen who intends to reside in the Unit as his or her primary residence on a permanent basis. All other residents must qualify under one of the following categories: (i) the resident is 45 years or older; (ii) the resident is the spouse of the Senior Citizen; (iii) the resident and the Senior Citizen are cohabitants; (iv) the resident is providing the primary physical or economic support to the Senior Citizen; (v) the resident is a Qualified Disabled Resident; or (vi) the resident is a Permitted Health Care Resident.
13. Section 18.01 of the CC&Rs defines a Senior Citizen as “[a] person 55 years of age or older.”
14. On or around April 11, 2004, Respondent HOA resolved to amend the CC&Rs by reducing the minimum age requirement for residents from 55 to 40 years. This

amendment was recorded with the Sonoma County Recorder's Office on or around November 9, 2004.

15. In December 2005, when Complainant [REDACTED] purchased the land on which the Phase 2 units were to be built, the 40 year-old minimum age requirement for residents was still in effect.
16. On or around March 23, 2006, Respondent HOA recorded with the Sonoma County Recorder's Office a resolution repealing the 2004 amendment, which reestablished the original age restrictions.
17. On or around January 31, 2007, Complainant [REDACTED] executed Declarations of Annexation, whereby the units in Phase 2 became subject to the jurisdiction of Respondent HOA and were required to be held, sold, leased, transferred, occupied, and conveyed subject to the terms of the CC&Rs.
18. After finishing construction of the Phase 2 units, Complainant [REDACTED] began leasing Phase 2 units to tenants, some of whom included families with children under the age of 18 years.
19. On or around December 11, 2008, Respondent HOA sent a Notice of Violation of CC&Rs to Complainant [REDACTED] demanding that it comply with the CC&Rs "so that at least 1 resident in each unit owned by [Complainant [REDACTED]] be 55 years of age or older and any residents less than 55 years old qualify as Qualified Permanent Residents under Civil Code section 51.3." In its Notice, Respondent HOA stated that it "understands that [Complainant [REDACTED]] will have to give proper notice of lease termination to tenants who do not meet the age restrictions of the [CC&Rs]." Respondent HOA demanded that Complainant [REDACTED] bring all of its units into compliance by February 2, 2009, and stated that it "may proceed with disciplinary action as provided in the [CC&Rs] and under California law for any units that are not in compliance with the [CC&Rs] on February 2, 2009."
20. In a letter dated January 14, 2009, and addressed to Respondent City of Santa Rosa, counsel for Respondent HOA stated that if Complainant [REDACTED] failed to comply by the February 2009 deadline, it would pursue other enforcement options. However, Respondent HOA advised Respondent City of Santa Rosa that a zoning enforcement action would be more effective.
21. In a letter dated January 22, 2009, Respondent City of Santa Rosa notified Complainant [REDACTED] that it had received a complaint that "[c]ondominium units are being rented/leased to tenants under 55 years of age, in violation of the R-3-PD zoning, which limits the occupancy to senior citizens exclusively." Respondent City of Santa Rosa insisted that Complainant [REDACTED] contact the City to resolve any violations that may be found at the

property. The notice further provided that “[Complainant ██████’s] assistance in the preservation of our community is greatly appreciated.”

22. In or around March 2009, Complainant ██████ met with officials of Respondent City of Santa Rosa. At this meeting, the officials insisted that Complainants comply with the Subject Property’s age restrictions.
23. In a letter dated July 7, 2009, Respondent City of Santa Rosa informed Complainant ██████’s representative that “there should be no lease or sale of any unit in violation of the age restriction of 55 years or older.” Respondent City of Santa Rosa requested information for any occupant currently residing in Phase 2 in violation of the age restriction so that it could evaluate “what would be a reasonable vacation process.” Respondent City of Santa Rosa further stated that it was never the City’s intent to allow “any further violation of the age restrictions for the project.” Respondent City of Santa Rosa provided that if it did not receive by August 10, 2009, the requested information in conjunction with a satisfactory proposal as to how Phase 2 could be brought into compliance with the age restrictions, the City would “be forced to consider this a continuing code violation and will take the appropriate response.”
24. Upon information and belief, HUD alleges that at no time prior to the filing of this Complaint did Respondent City of Santa Rosa make any similar inquiries or demands of the owners of units in Phase 1.
25. Eighteen families with minor children currently reside in Phase 2 of the Subject Property. Seven of the families have month-to-month tenancies. Six of the families have lease agreements that expire by the end of 2011. None of the families has a lease expiring later than December 31, 2012.
26. As a result of Respondents’ threats, Complainants must either discriminate against these families with children by evicting them or refusing to renew their leases, or face enforcement measures by Respondents.
27. As a result of Respondents’ threats, Complainants must either discriminate against families with children that are interested in occupying units in Phase 2, or face enforcement measures by Respondents.
28. In establishing and enforcing the foregoing age restrictions with respect to the Subject Property, Respondents made housing unavailable, or will imminently make housing unavailable, to persons because of familial status, in violation of 42 U.S.C. § 3604(a).
29. In establishing and enforcing the foregoing age restrictions with respect to the Subject Property, Respondents discriminated in the terms, conditions, or privileges of the sale or

rental of Complainants' dwellings because of familial status, in violation of 42 U.S.C. § 3604(b).

30. In establishing and enforcing the foregoing age restrictions with respect to the Subject Property, Respondents made, printed, or published, or caused to be made, printed, or published notices or statements with respect to the sale or rental of a dwelling that indicate a limitation, preference, or discrimination based on familial status, in violation of 42 U.S.C. § 3604(c).
31. In enforcing the foregoing age restrictions with respect to the Subject Property, Respondents represented to Complainants because of familial status that their dwellings were not available for sale or rental when their dwellings were in fact so available, in violation of 42 U.S.C. § 3604(d).
32. In establishing and enforcing the foregoing age restrictions with respect to the Subject Property, Respondents coerced, intimidated, threatened, or interfered with Complainants on account of their having aided or encouraged persons in the exercise or enjoyment of rights granted or protected by section 803, 804, 805, or 806 of the Act, in violation of 42 U.S.C. § 3617.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel and pursuant to 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(a)-(d) and 3617, 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, 42 U.S.C. §§ 3604(a)-(d) and 3617;
2. Enjoins Respondent City of Santa Rosa, its agents, employees, and successors, and all other persons in active concert or participation with it from discriminating because of familial status in connection with the sale, rental, or enjoyment of any dwelling located at the Subject Property, pursuant to 42 U.S.C. § 3612(g)(3);
3. Enjoins Respondent HOA, its agents, employees, and successors, and all other persons in active concert or participation with it from discriminating because of familial status in connection with the sale, rental, or enjoyment of any dwelling, pursuant to 42 U.S.C. § 3612(g)(3);
4. Requires Respondents to attend a training that is administered by an entity of HUD's choosing and that addresses the Fair Housing Act's prohibition against familial

status discrimination as well as the statutory and regulatory requirements governing the “housing for older persons” exemption, pursuant to 42 U.S.C. § 3612(g)(3);

5. Awards such damages as will fully compensate Complainants for any and all injuries caused by Respondents’ discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
6. Assesses a civil penalty against Respondents for each violation of the Act that Respondents have committed, 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,

/S/

Kimberly Y. Nash
Regional Counsel, Region IX

/S/

Pouya Bavafa
Attorney
Office of the Regional Counsel
Region IX
U.S. Department of Housing and
Urban Development
600 Harrison Street, 3rd Floor
San Francisco, CA 94107

Dated: September 1, 2011