



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), who has redelegated the authority to the Assistant General Counsel for Fair Housing Enforcement. 74 Fed. Reg. 62803, 62804 (Dec. 1, 2009).

The Deputy Assistant Secretary for Enforcement and Programs, 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 sex and familial status and has authorized and directed the issuance of this Charge of Discrimination.

## **II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE**

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

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex or familial status. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.65(a), 100.70(d)(3), 100.70(d)(4).
2. It is unlawful to make, print, or publish, or cause to be made, printed or published any statement with respect to the sale of any dwelling that indicates any preference, limitation or discrimination based on sex or familial status. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a).
3. It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of sex or familial status. Residential real estate-related transactions include the making or purchasing of loans or providing other financial assistance for maintaining a dwelling or that is secured by residential real estate. 42 U.S.C. § 3605; 24 C.F.R. §§ 100.110-30.
4. At all times relevant, Complainant Carly Neals, and aggrieved persons Quentin Neals, her husband, and their children [REDACTED] lived in a single-family house located [REDACTED], PA [REDACTED]. This property is a dwelling as defined by the Fair Housing Act, 42 U.S.C. § 3602(b).
5. Complainant's children are all minors.
6. Respondent Mortgage Guaranty Insurance Corporation (MGIC) is a Wisconsin insurance corporation with its headquarters at 250-270 E. Kilbourn Ave., Milwaukee, WI.

MGIC also maintains an insurance underwriting office at 11 Campus Blvd., Suite 110, Newtown Square, PA.

7. Respondent Elgina Cunningham is and has been an Underwriter Production Manager at MGIC for 20 years. She manages the Newtown Square office.
8. Respondent Kelly Kane is and has been an Underwriter with MGIC for over ten years. She works at [REDACTED], MA, and is supervised by Respondent Elgina Cunningham.
9. Respondents are engaged in residential real estate-related transactions as defined by the Act, 42 U.S.C. § 3605(b).
10. On or about May 14, 2010, Complainant applied for a mortgage loan with PNC Mortgage to refinance her existing home loan with another lender. The application included, *inter alia*, pay stubs from April 29, 2010 and May 13, 2010 showing Complainant's net pay [REDACTED].
11. On or about June 21, 2010, Complainant gave birth to her youngest child [REDACTED] and began maternity leave.
12. On or about July 6, 2010, PNC Mortgage issued a Conditional Approval to Complainant with the requirement that she obtain mortgage insurance for her loan since the Loan-To-Value (LTV) ratio was 90%. The Fannie Mae Selling Guidelines that the lender relied on require mortgages over 80% LTV to include mortgage insurance.
13. On or about July 12, 2010, a PNC Mortgage Underwriter submitted a mortgage insurance application for Complainant's loan to MGIC. PNC sought mortgage insurance coverage on 25% of the value of the loan, pursuant to the terms and conditions of MGIC's Mortgage Guaranty Master Policy.
14. On or about July 20, 2010, MGIC Underwriter Kane communicated to PNC that the only item still needed to satisfy the mortgage insurance for Complainant's loan was verification of assets for two months reserves in Complainant's bank account.
15. On or about July 25, 2010, Complainant emailed her PNC Loan Processor that she had the necessary assets in her bank account, which would be shown on the bank transaction history to be faxed to PNC the next day, July 26, 2010. In the email, Complainant noted that she was on maternity leave in order to explain why her salary was deposited in two parts.
16. On or about July 26, 2010, Respondents MGIC and Kane received bank statements showing "Direct Deposit - Reg. Salary." on June 24, 2010 an amount of [REDACTED]; July 8, 2010 an amount of [REDACTED]; July 22, 2010 an amount of [REDACTED], and a "Direct Deposit- Adj. Salary" of July 23, 2010 in the amount of [REDACTED].

17. On or about July 26, 2010, in notes summarizing the status of Complainant's loan, Respondent Kane wrote "rec'd updated bank statements along with email from Borrower that states she is on maternity leave. LVM for [PNC mortgage underwriter] notifying her that we cannot proceed until borrower is back to work full-time. Subsequently, on July 26, 2010, Respondent Kane submitted to PNC's Mortgage Underwriter a "Request for Additional Information," which stated:

ADDED 07/26/2010 additional Information until borrower is back YTD earnings to support \$7933.00 for CARLY F. NEALS. Verify Borrower is back to work full time.

Upon receipt of this information, we will continue to underwrite this application and advise you of our decision. This information is needed no later than Aug. 14, 2010 at the address listed below. If we do not receive the requested additional information by that date, MGIC will be unable to give further consideration to the application for private mortgage guaranty insurance.

18. Respondent Kane admits that she told PNC that Complainant must return to work before the mortgage insurance application could be approved.

19. Throughout July-August 2010, Complainant made repeated requests to PNC Mortgage personnel asking when the loan would close. PNC Mortgage personnel repeatedly told her that they could not close the loan until MGIC approved the insurance application.

20. On or around August 2 and 10, 2010, the PNC Loan Processor requested letters from Complainant's employer stating that Complainant was an active full-time employee. The first letter, sent as an email on or about August 2, 2010 from Complainant's supervisor to the PNC Loan Processor stated "Carly is an active full time employee of mine." On August 9, 2010, the PNC Loan Processor emailed Complainant's supervisor, stating that

The Mortgage insurance company that was requiring the letter saying Carly was back to work is now stating that the fact that she is an active, full time employee of your[s] is not enough. They want something that says directly that Carly is back from her Maternity Leave as of 8/2. Again, this needs to be signed and dated and faxed or scanned over to me.

21. As requested, on or about August 10, 2010, Complainant's supervisor provided a second letter, which noted that Complainant had returned to work and was on vacation leave. Respondent Kane received these letters from Complainant's supervisor that same day.

22. On or about August 11, 2010, Respondent Kane left the PNC Mortgage Underwriter a message stating that she needed a pay stub for Complainant.
23. On or about August 13, 2010, Complainant emailed her PNC Loan Officer and Loan Processor requesting that they tell her the name of the mortgage insurance company requesting her pay stub information, and what the company requested and the reason for the request.
24. On or about August 13, 2010, the PNC Loan Processor responded to Complainant via email stating "I can tell you that the MI company called the UW this time and stated that they wanted a pay stub showing you had returned before they would approve so unfortunately the one showing paternal [sic] time off is not going to work."
25. On or about August 13, 2010, after receiving the email described in the preceding paragraph, Complainant emailed PNC's Marketing and Sales Manager to complain that conditioning the closing on her physical return to work was discriminatory because she was on maternity leave. She noted that the PNC Loan Officer told her that the condition originated with Respondent MGIC.
26. On or about August 19, 2010, Complainant provided a pay stub dated August 18, 2010 to her PNC Loan Processor which showed her current earnings as 80 hours of "short-term disability vacation" at \$ [REDACTED].
27. In loan comments dated August 19, 2010, Respondent Cunningham wrote that she discussed the pay stub received with customer [PNC]. Per the employer, the borrower has returned to work from maternity leave and is currently using vacation time. When using vacation time after maternity leave, pay is coded STD-Vacation. Borrower's base pay rate is the same as prior to maternity leave; total YTD earnings are not reflected on the current pay stub as the pay is from a different acct/STD. Ok to proceed.
28. On or about August 20, 2010, MGIC issued the certificate/commitment for mortgage insurance for complainant.
29. On or about August 24, 2010, Complainant sent an email to her PNC Loan Officer declining to close the loan scheduled for August 25, 2010 in part because of her concerns about the discriminatory conditions required for approval.
30. Subsequently, Complainant refinanced her mortgage with another lender.
31. By requiring that Complainant return to work from maternity leave as a condition before approving her mortgage insurance application, Respondents discriminated in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services or

facilities in connection with such dwelling, because of sex or familial in violation of 42 U.S.C. § 3604(b).

32. By making statements during the mortgage insurance transaction that the mortgage insurance application could not be finalized until Complainant returned to work from maternity leave and provided pay stubs proving her return, Respondents indicated a preference, limitation, or discrimination based upon sex and familial status in violation of 42 U.S.C. § 3604(c).

33. By requiring that Complainant return to work from maternity leave as a condition before approving her mortgage insurance application, Respondents discriminated in making available such a transaction, or in the terms or conditions of such a transaction, because of sex or familial status in violation of 42 U.S.C. § 3605.

34. Because of Respondents' discriminatory conduct, Complainant has suffered actual damages, including emotional distress, such as anxiety and stress.

### **III. CONCLUSION**

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Mortgage Guaranty Insurance Corporation, Kelly Kane and Elgina Cunningham with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(b), 3604(c) and 3605 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(b), (c) and 3605.
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of sex or familial status against any person, in violation of the Fair Housing Act;
3. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed or aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act;
4. Awards such damages as will fully compensate Complainant, including damages for emotional distress, pursuant to 42 U.S.C. § 3612(g)(3); and

5. Assesses a civil penalty of \$16,000 against each Respondent for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671.

The Secretary of HUD further prays for such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 31st day of May, 2011.

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For Fair Housing Enforcement

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