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 the Housing Discrimination Project, Inc.,	)	
Charging Party,	)	
v.	)	HUD ALJ No.
	)	FHEO No. 01-11-0291-8
Nilma Y. Fichera and N.A.G. Realty, LLC,	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 5, 2011, the Complainant Housing Discrimination Project, Inc. filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging that Respondents Nilma Y. Fichera and N.A.G. Realty, LLC discriminated on the basis of familial status in violation of the Fair Housing Act ("the Act"). 42 U.S.C. § 3601-3619.

The Act authorizes the Secretary of HUD to issue 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 has delegated to the General Counsel, who has redelegated to the Regional Counsel, 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. 24 C.F.R. §§ 103.400 and 103.405; 76 Fed.Reg. 42463, 42465 (July 18, 2011).

The Office of Fair Housing and Equal Opportunity Region I 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 THIS CHARGE

Based on 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:

A. LEGAL AUTHORITY

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 race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.

2. It is unlawful to make, print, or publish, or cause to be 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, disability, 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; 24 C.F.R. § 100.80.

3. "Familial status" is defined as "one or more individuals (who have not attained the age of eighteen (18) years) being domiciled with... a parent or another person having legal custody of such individual or individuals." 42 U.S.C. § 3602(k)(1); 24 C.F.R. § 100.20.

4. HUD has issued guidance concerning lead-based paint hazard control activities and the requirements of the Fair Housing Act, which provides that "[i]f a unit which has not undergone lead hazard control treatments is available and the family chooses to live in the unit, the housing provider must advise the family of the condition of the unit, but may not decline to allow the family to occupy the unit because the family has children." HUD Memorandum, *Requirements Concerning Lead-Based Paint and the Fair Housing Act* (August 1, 1997).

B. PARTIES AND SUBJECT PROPERTY

5. Complainant Housing Discrimination Project, Inc. ("Complainant") is a non-profit corporation located at 57 Suffolk Street, Holyoke, Massachusetts. Complainant's mission is to combat housing discrimination and promote fair housing practices in Central and Western Massachusetts. As part of its mission, Complainant performs tests to uncover evidence of housing discrimination.

6. Respondent Nilma Y. Fichera ("Respondent Fichera") is the manager of N.A.G. Realty, LLC. Respondent Fichera resides at 559 Benjamin Road, North Babylon, New York. Upon information and belief, Respondent Fichera has an ownership interest in N.A.G. Realty, LLC.

7. Respondent N.A.G. Realty, LLC, a Massachusetts limited liability corporation, with a principal place of business at 1548 Northampton Street, Holyoke, Massachusetts, owns and manages the subject property.

8. The subject property is a 24-unit apartment building located at 728 Hampden Street, Holyoke, Massachusetts ("subject property"). The subject property is identified by four separate addresses: 728 Hampden Street, 35 O'Connor Street, 37 O'Connor Street, and 39 O'Connor Street, Holyoke, Massachusetts. The subject unit is a basement apartment at 35 O'Connor Street, Apt. 1 ("subject unit").

C. FACTUAL ALLEGATIONS

9. On May 4, 2010, Respondents posted an advertisement on the Western Massachusetts section of the Craigslist website (www.craigslist.org) captioned:

   $850/3br – Old but New touch (Holyoke MA.) (map)

10. Respondents' advertisement described a three-bedroom apartment available for rent, stating in relevant part:

    Reply to: nagrealty@aol.com...Beautiful 6 room basement apt...Please call for info...N.A.G. Realty, LLC, 413-553-3636, Oconnor [sic] Ave at Hampden St.

11. In response to Respondents' advertisement, Complainant arranged for four trained fair housing testers to call the phone number listed to inquire about the apartment available for rent. The four testers called 413-553-3636 at various times over the next week. In each instance described below, the testers spoke with Respondent Fichera.

12. On May 4, 2010, the first fair housing tester ("Tester 1") called Respondent Fichera about renting the subject unit. After a brief discussion about the subject unit, Respondent Fichera stated: "This apartment does not have a lead certificate and the law says I can't rent to anyone with children under 5. Do you fall into that category?"

13. Tester 1 replied that she has a 5-year-old child and a 6-year-old child. Respondent Fichera said that she thought she could not rent to anyone under 5 years old, but 5 years old and above would be okay. Respondent Fichera added, "By the way, I'm not supposed to ask how old your kids are. I could get in trouble for that too." Respondent Fichera stated to Tester 1 that, while all her apartments are refurbished, it was difficult to tell "which apartments have lead and which don't."

14. The conversation ended with Respondent Fichera reiterating that a 5-year-old child and 6-year old child may not be a problem, but she would have to get back to Tester 1 to confirm. At this time, Respondent identified herself as "Nilma," spelling "N-I-L-M-A," and then wrote down Tester 1's name and cell phone number. Respondent Fichera never returned a call to Tester 1.

15. On May 5, 2010, the second fair housing tester ("Tester 2") called Respondent Fichera about renting the subject unit. Respondent answered the phone and identified herself as "Nilma." After describing the subject unit, Respondent Fichera revealed that the apartment did not have a lead certification.

16. When Tester 2 asked Respondent Fichera if she would be willing to get a lead certificate because Tester 2 has a 2-year-old son, Respondent told Tester 2 that someone gave her an estimate that it would cost $100,000 to repaint the entire building.

17. Tester 2 continued to express his interest in viewing the subject unit. Respondent Fichera refused to show Tester 2 the apartment explaining that she would not show Tester 2 the subject unit because Tester 2 had a 2-year-old and the subject unit did not have a lead certificate. When asked a second time during the same phone call, Respondent Fichera again refused to show Tester 2 the subject unit.

18. On May 6, 2010, the third fair housing tester ("Tester 3") called Respondent Fichera about renting the subject unit. Tester 3 told Respondent Fichera that she was a single mother with two children, a boy and a girl, and that she needed an apartment with 3 bedrooms. Respondent Fichera replied that the apartment did not have a lead certificate and that the law stated that children under 5 years old could not live in the apartment without a lead certificate. Tester 3 said that her children were teenagers.

19. As the conversation continued, Respondent Fichera told Tester 3 that she purchased the subject property, a 24-unit building, in 2005 from a family who had owned the property for nearly 40 years. Respondent Fichera then agreed to permit Tester 3 to view the subject unit at 3:30 p.m. the next day. Respondent Fichera explained that she lived in New York, but she would get in touch with the maintenance person or the current tenant to arrange a viewing.

20. On the morning of May 7, 2010, Respondent Fichera left a voicemail message for Tester 3 confirming that 4:00 p.m. that day would be a good time to view the subject unit because the current tenant would be home.

21. Later that day, Tester 3 returned Respondent Fichera's call and asked for the precise address of the apartment. Respondent Fichera told Tester 3 that the address was 35 O'Connor Street, Holyoke, Massachusetts, one of the four addresses of the subject property.

22. On May 7, 2010 at 3:45 p.m., Tester 3 arrived at 35 O'Connor Street to view the subject unit. Upon entering the building, Tester 3 noticed that Respondent Fichera's name and address were posted on a glass window inside the building's outer door:

    Nilma Fichera MGR.
    P.O. Box 2560
    North Babylon, NY 11703
    N.A.G. Realty, LLC

23. Tester 3 knocked on the door to the subject unit at 35 O'Connor Street, Apt. 1. The current tenant greeted Tester 3 and showed her around the apartment. After the viewing, Tester 3 thanked the current tenant and left.

24. On May 8, 2010, Tester 3 called Respondent Fichera to tell her that she liked the subject unit. Respondent Fichera informed Tester 3 that she would need to verify Tester 3's employment and income information before she could commit to renting her the subject unit.

25. On May 7, 2010, the fourth fair housing tester ("Tester 4") called Respondent Fichera about renting the subject unit. Tester 4 left a voicemail message for Respondent Fichera with his name and phone number.

26. On May 8, 2010, Respondent Fichera returned Tester 4's call. During the call Tester 4 asked Respondent Fichera if the subject unit had a lead certificate. Respondent Fichera replied that she did not have a lead certificate and that she would not be able to rent to anyone with a child under 5 years old.

27. Tester 4 pressed Respondent Fichera if she would be willing to get a lead certificate. Respondent Fichera replied that she was not sure because the paint on the back porch had never been checked for lead. Respondent Fichera added that she had looked into the cost of re-doing the front porch and it was over $100,000. Respondent Fichera further insisted that it was very hard to get a lead certificate.

28. Respondent Fichera reiterated to Tester 4 that she would not be able to rent to a child under 5 years old. Respondent Fichera asked Tester 4 if he would move in himself or with kids, to which Tester 4 replied that he would be moving in with kids.

29. Tester 4 then asked Respondent Fichera her name. Respondent replied that her name was "Nilma."

30. As the conversation continued, Respondent Fichera asked Tester 4 the age of his children. When Tester 4 revealed that his children were under 5 years old, Respondent Fichera replied: "Oh, it wouldn't work out." Respondent Fichera said

that she should have someone come and look into getting a lead certificate, but the back porches would have to be ripped out before she could get a certificate.

D. FAIR HOUSING ACT VIOLATIONS

31. Respondents' conduct and statements to Testers 1, 2, and 4 violated Section 804(a) of the Act by refusing to rent, refusing to negotiate to rent, or otherwise making unavailable the subject unit to families with children. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.

32. Respondents' statements to Testers 1, 2, 3 and 4 violated Section 804(c) of the Act by indicating preferences, limitations, or discrimination based on familial status. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75; 24 C.F.R. § 100.80.

33. As a result of the Respondents' discriminatory acts, Complainant suffered damages, including diversion of resources and frustration of purpose.

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 Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C.§ 3604(a) and (c), and prays that an order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619 and its implementing regulations;

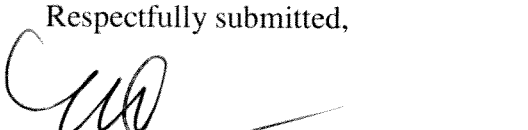
2. Enjoins Respondents and all other persons in active concert or participation with them from further violations of 42 U.S.C. §§ 3604(a) and (c) of the Act;

3. Awards such damages as will fully compensate Complainant for diversion of resources and frustration of purpose;

4. Awards a civil penalty against each Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3);

5. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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Date: 1/12/12

CERTIFICATE OF SERVICE

I hereby certify that copies of the Determination of Reasonable Cause, Charge of Discrimination and Important Notice in FHEO Case No. 01-11-0291-8 were sent to the following parties on this 12th day of January, 2012, in the manner indicated:

UPS OVERNIGHT DELIVERY

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