

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS**

The Secretary, United States	)	
Department of Housing and Urban	)	
Development, on behalf of	)	
Elaine Gustafson, her minor great-grandchildren	)	
and the Estate of Richard H. Wise,	)	
	)	
Charging Party,	)	
	)	
v.	)	HUDALJ No.:
	)	FHEO No.: 05-12-1124-8
	)	
Greenbrier Village Homeowners' Association, Inc.,	)	
Gassen Company, Inc., and Diane Brown,	)	
	)	
Respondents.	)	

**CHARGE OF DISCRIMINATION - (CORRECTION)<sup>1</sup>**

**I. JURISDICTION**

On July 16, 2012, Complainant Elaine Gustafson (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“Department” or “HUD”), alleging that Respondents Greenbrier Village Homeowners’ Association, Inc., Gassen Company Inc., and Diane Brown (“Respondents”) violated 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 (“Charge”) 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 (24 C.F.R. §§ 103.400 and 103.405; 76 Fed. Reg. 42462), who has retained and re-delegated to the Regional Counsel (76 Fed. Reg. 42465), 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 the Office of Fair Housing and Equal Opportunity for Region V, 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 familial status, and has authorized and directed the Regional Counsel to issue this Charge. 42 U.S.C. § 3610(g)(2).

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<sup>1</sup> The FHEO Number on page 1 of the Charge of Discrimination was corrected from 05-12-1365-8 to 05-12-1124-8.

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

Based upon HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents are charged with discriminating against Complainant, her minor great-grandchildren, and Richard H. Wise, aggrieved persons as defined by 42 U.S.C. §3602(i), based on familial status, in violation of 42 U.S.C. § 3604(b) and (c) of the Act as follows:

### **A. LEGAL AUTHORITY**

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of the familial status of that person. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a).
2. 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 which 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(a).

### **B. PARTIES AND SUBJECT PROPERTY**

3. At all times relevant to this Charge, Complainant had custody of her two minor great-grandchildren, with whom she and her partner, Richard H. Wise, were domiciled.
4. Complainant, Richard H. Wise, and her minor great-grandchildren are protected under the Act on the basis of their familial status, as defined under 42 U.S.C. § 3602(k).
5. Richard H. Wise ("Wise") died in August 2012.
6. Complainant, her minor great-grandchildren, and the Estate of Richard H. Wise are "aggrieved person(s)" as defined by the Act. 42 U.S.C. § 3602(i).
7. At all times relevant to this Charge, Complainant and Wise owned unit 306 at The Condominiums of Greenbrier Village ("Greenbrier Village") in a building commonly known as "Greenbrier II."
8. The street address for Greenbrier II is 10531 Cedar Lake Road, Minnetonka, Minnesota 55305.
9. Greenbrier Village has six (6) condominium buildings and each building has a homeowners' association, known as a "sub-association." Greenbrier II's sub-association is known as "Greenbrier Village Condominium II Association."
10. Greenbrier Village contains approximately 462 condominium units.

11. At all times relevant to this Charge, Respondent Greenbrier Village Homeowners' Association, Inc., a Minnesota non-profit corporation, (the "Master Association") was the umbrella association for Greenbrier Village.
12. The Master Association is responsible for the enactment and enforcement of the rules and regulations that govern the common areas, also known as the common property.
13. The Master Association enacts rules and regulations which restrict activities in the common areas of Greenbrier Village.
14. Respondent Gassen Company, Inc. ("Gassen") was, at all times relevant to this Charge, the property management agent at Greenbrier Village. Respondent Gassen is a Minnesota corporation.
15. Respondent Diane Brown ("Respondent Brown") is, and at all times relevant to the Charge, the on-site property manager for Greenbrier Village. Respondent Brown is a Gassen employee.
16. In her role as the on-site property manager, Respondent Brown authored and/or published, or caused to be authored and/or published, written documents under the name "Greenbrier Management" and the "Greenbrier office."

### **C. FACTUAL ALLEGATIONS**

17. On April 30, 2010, Complainant was awarded custody of her minor great-grandchildren, a girl and a boy, both of whom are bi-racial and are now 9 and 11 years old.
18. Ruth Shaltis owns a unit in Greenbrier II and lives across the hallway from Complainant's unit. Shaltis served as the Vice-President of the Master Association in June 2011.
19. On or about June 6, 2011, the Master Association formed a committee, headed by then Vice-President Shaltis, to consider the idea of a change to the existing Master Association's Rules and Regulations regarding playing on the grounds and common areas and to present new text to the Master Association.
20. On July 25, 2011, the Master Association enacted a rule affecting the use of the common areas of Greenbrier Village (herein referred to as the "Common Areas rule").
21. The Common Areas rule prohibited, in relevant part, "playing," "picnicking," or "sunbathing" on the common property.
22. By passage of this Common Areas rule, the Master Association also prohibited the use of "Bicycles, tricycles, scooters, skates, skate boards, roller blades, etc." by saying those items "may not be used on the property."

23. The Common Areas rule was not distributed or published to Greenbrier Village residents after it was enacted.
24. On August 12, 2011, Complainant and Wise received a Rule Violation Notice. It stated, in relevant part, "Description of Violation: Children on complex. Rules and Regulations, page 10, Item E, states that children are not allowed to play in the common areas. Please have children refrain from this activity to avoid fines. Also, enclosed is the new rule governing children playing on the complex." The Master Association's Rules and Regulations, at page 10, section E only regulated the conduct of children.
25. A handwritten note signed by "The Greenbrier Office" accompanied the August 12, 2011 Rule Violation Notice. The note advised Complainant and Wise of the new rule, directed them to place the rule in their rule book, and to abide by the new rule. The rule referenced by this note was the Common Areas rule. The page of the Master Association's Rules and Regulations that contained the rule was included with the note.
26. On or about August 16, 2011, Complainant and Wise received another rule violation notice, this time in the form of a letter from Respondent Brown, citing them for violating the new Common Areas rule. A copy of the Common Areas rule was enclosed with the August 16, 2011 letter.
27. The August 16, 2011 violation letter, stated, in relevant part, that, "This office has received another complaint about the children in your care being out on the grass by the building. I am enclosing a copy of the new rule, which clearly stated that children are not allowed on the grass or landscaping on the premises. This is a rule recently passed by the HOA Board, and I'm sure you understand that exception cannot be made for one family without other families expecting the same treatment. Possibly your children could use the playground across Cedar Lake Road for picnicking and playing. This would solve the problem for everyone. Otherwise, if the violation continues, I will have no option other than to begin fining you for each breach of this rule."
28. Wise responded to the August 16, 2011 rule violation letter, by writing to Respondent Brown's supervisor, Kris Knowles, at Respondent Gassen. Respondent Brown, rather than Knowles, responded to Wise's letter, on or about September 7, 2011.
29. Respondent Brown's September 7, 2011 letter states, in relevant part, that she had been instructed to write the August 16, 2011 rule violation letter after a board member communicated a complaint about Complainant's great-grandchildren to her. She also disclosed that the Common Areas rule had not been given to all residents; that the new rule was rescinded after learning of "some new laws pertaining to the use of common areas;" and that she was sorry that Wise and his family "were caught in the middle of this change."
30. On September 26, 2011, the Master Association held a board meeting. The board meeting minutes reflect that on the topic of the "New Common Area Rules Amendment" President Huttner stated, the "new rules must be rescinded due to the recent change in discrimination

laws.” Shaltis moved to rescind the Common Areas rule. And the motion to rescind the rule carried. The Common Areas rule was in effect from July 25, 2011 to September 26, 2011.

31. On March 13, 2012, Complainant called the Minnetonka Police Department after a neighbor allegedly grabbed her great-granddaughter to force her to face his video camera, so that he could have a record of her inappropriate activity in the common areas.
32. On April 18, 2012, Respondent Brown wrote a letter to Complainant and Wise, stating that Respondents had received “numerous” complaints about Complainant’s great-grandchildren that weekend. Respondent Brown’s letter stated that she was not issuing a violation notice for an infraction or assessing them with a fine. Instead, Respondent Brown requested that Complainant “take into consideration the comfort of the other residents living here and have your grandchildren observe the Greenbrier rules.” The letter also stated that “while playing on the grass or sidewalks *is* allowed, playing in the landscaping and trees *is not*.” (emphasis in the original) The Board of Directors for Condo II was copied on the letter.
33. In or around April 2012, Complainant saw a “Reminders” notice from Greenbrier Management on a bulletin board in the laundry room on her floor. The bulletin boards in the laundry rooms of Greenbrier Village are used by Greenbrier Management to communicate with residents. The first relevant paragraph of the Reminders stated, “Kids playing on the grounds must be supervised by an adult at all times. Kids may not play in the garage, driveway, parking lots, or by the pond. If kids are in the grass, they may not dig, ride bikes, slide down hills, or in any way hinder the growth of the lawn. They cannot play in the trees or planted areas and may not jump off balconies.” The second relevant paragraph in the Reminders stated, “The sounds of children playing near a building can be disturbing, especially if they are yelling, screaming, or crying. Out of respect for your neighbors, games that necessitate such noise should be taken to a park or across the street to the playground at the school.”
34. In or around August 2012, Respondent Brown received four written complaints from residents living in Greenbrier II, regarding Complainant’s great-grandchildren. On information and belief, these four resident complaints were submitted at the request of Respondents.
35. Complainant’s great-grandchildren were never determined to have damaged any property, real or personal, at Greenbrier Village.
36. Complainant and Wise were the only residents threatened with a fine for a violation of the Common Areas rule.
37. In Section E of the Master Association’s Rules and Regulations, revised November 1998, the activities of children on the property were regulated. Section E was titled “Children.” In August 2011, Section E was located on page 10 of the Master Association’s Rules and Regulations. Upon information and belief, the Master Association did not amend or alter the Section E rule to remove an explicit reference to children until in or around December 2012.

38. Between November 21, 2005 and June 1, 2011, Greenbrier Management issued thirteen (13) rule violation notices to families with minor children for violations of the Master Association's Rules and Regulations Section E, Children. No violation notices were issued pursuant to Section E in this time period to households without minor children.
39. From July 25, 2011 to September 26, 2011, the time period during which the Common Areas rule was in effect, only two households received violation notices: Complainant and Nahum Kipnis; he received a verbal warning for violating the Common Areas rule for playing catch with his granddaughter on the common areas, after Complainant brought the activity to Respondent Brown's attention.
40. Upon information and belief, between 2001 and the present, no adult resident has been issued a written warning, or a rule violation notice, for an adult violating the Master Association's Rules and Regulations restricting use of the Greenbrier Village sidewalks or grass.
41. Upon information and belief, no Greenbrier Village household has ever been cited for an adult violating the Master Association's Rules and Regulations restricting residents from playing in the courtyards in Greenbrier Village.
42. Upon information and belief, from March 2001 to the present, no adult resident has been cited, or received a written warning or rule violation notice for their adult use of a bicycle, tricycle, skate board, scooter, skates, and/or, roller blades on the Greenbrier Village property.
43. Adult residents routinely ride bicycles on the common area property in Greenbrier Village.
44. At all times relevant to this Charge, the Master Association's Rules and Regulations contained a complaint procedure.
45. At all times relevant to this Charge, the process for the enforcement of most rule violations required homeowners to submit complaints about other homeowners in writing to the Management Company; and only after the Greenbrier Office received a written complaint would a notice of a rule infraction be delivered to a resident.
46. In issuing the rule violations against Complainant, alleged herein, Respondents failed to adhere to the complaint procedures contained in the Homeowners Association's Rules and Regulations.
47. U.S. Census records, from the 2010 census, for the census block that includes Greenbrier Village reflect the following demographic information for the 463 housing units in the census block: the resident population was 598 persons; 22 residents were under 18 years of age; 289 residents were 70 years of age or older; approximately 17 households had minor children; 571 out of the 598 residents were identified as white; and three (3) were identified as bi-racial.
48. As a result of Respondents' conduct, the aggrieved parties have suffered damages. Specifically, Complainant and Wise suffered frustration and emotional distress.

Complainant's great-grandchildren have been greatly impacted by the aforementioned allegations. The children remain restricted from being in the common areas out of fear of being cited for an infraction. Wise died from chronic obstructive pulmonary disease and Emphysema. He was ill during the summer of 2012 and he had to be put in a hospice program at their home. Because of the complaints against her great-grandchildren, Complainant kept her great-grandchildren inside the house. She was also unable to take the children to the park because of the care Wise required. Wise, seeing the children unable to leave the unit and enjoy the courtyard they viewed from their balcony, lamented to Complainant that children should be able to play outside at their own home. Complainant's great-grandchildren were then inside even in good weather, while one of their guardians was sick and dying.

49. On July 16, 2012, Complainant timely filed her HUD complaint, alleging discrimination on the basis of familial status, race and color.<sup>1</sup>

#### **D. LEGAL ALLEGATIONS**

50. Respondents discriminated against Complainant, Wise, and Complainant's great-grandchildren by treating them less favorably than similarly situated residents of Greenbrier Village, on the basis of familial status, in violation of 42 U.S.C. § 3604(b).
51. Respondents treated Complainant, Wise and Complainant's great-grandchildren less favorably than similarly situated residents without minor children in singling them out for the enforcement of the Master Association's Rules and Regulations restricting access to common areas and restricting certain activities at the property, on the basis of familial status, in violation of 42 U.S.C. § 3604(b).
52. Respondents discriminated against Complainant and her family when they made written and verbal statements indicating a preference, limitation, or discrimination based on familial status, which were heard and seen by Complainant and Wise, in violation of 42 U.S.C. §3604(c).
53. Complainant alleges Respondents unlawful actions and statements continue.

#### **III. CONCLUSION**

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the Regional Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(b) 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.*;

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<sup>1</sup> The Department found no reasonable cause to believe that Respondents discriminated against Complainant or her great-grandchildren on the basis of the children's race or color.

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating on the basis of familial status, in violation of the Act;
3. Awards such monetary damages as will fully compensate Complainant, the Estate of Richard H. Wise, and Complainant's great-grandchildren for any and all injuries caused by Respondents' discriminatory conduct;
4. Awards a \$16,000 civil penalty against Respondents for their violation of the Act pursuant to 42 U.S.C. § 3612(g)(3); and
5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

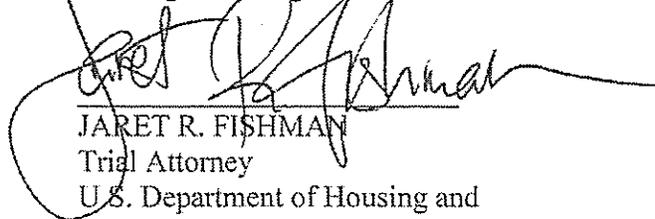
Respectfully submitted,



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Date: 09/20/2013

## DETERMINATION OF REASONABLE CAUSE AND NO REASONABLE CAUSE

**Case Name:** Gustafson, Elaine v. The Condominiums of Greenbrier Village, *et al.*  
**Case Number:** 05-12-1124-8

### I. JURISDICTION

Complainant Elaine Marie Gustafson (“Complainant”) is the great-grandmother and legal custodian of two bi-racial children under the age of eighteen. Complainant alleges Respondents unlawfully subjected her, her partner and her great-grandchildren, all aggrieved parties to this complaint, to less favorable terms, conditions and privileges in housing based on familial status, race and color, and made discriminatory statements based on familial status, by issuing rules and regulations, and violation notices that restricted her great-grandchildren’s full enjoyment of the common areas of the subject property.

Respondents are the Greenbrier Village Homeowners’ Association, Inc. (“the Master Association”), a Minnesota non-profit corporation constituting the umbrella association for the Greenbrier Village condominium community; the Gassen Company Inc. (“Gassen”), the property management agent at Greenbrier Village condominium community; and Diane Brown, the Master Association’s on-site property manager (“Brown”), a Gassen employee.

The subject property, known as “Greenbrier Two,” is a four-story residential condominium building located at 10531 Cedar Lake Road, in Minnetonka, Minnesota (“Greenbrier II”). The subject property is one of the six buildings located within the Greenbrier Village condominium community (“Greenbrier Village”), where all common areas are governed by the Master Association’s by-laws, rules and regulations.

Neither the subject property nor the respondents are exempt under Section 803 or Section 807 of the Fair Housing Act, as amended, 42 U.S.C. §3601, *et seq.* (“the Act”). As such, if Complainant’s allegations are proven, Respondents’ actions would constitute violations of Section 804(b) and 804(c) of the Act. Section 804(b) of the Act makes it unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. Section 804(c) of the Act makes it 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 race, color, religion, sex, “handicap,” familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

The date of the last alleged act of discrimination occurred on April 18, 2012 and is continuing. The complaint was timely filed on July 16, 2012. On July 25, 2013, the complaint was amended to clarify Complainant’s allegations; to properly name all Respondents; to correct the last date of the alleged act of discrimination; and to include Complainant’s allegation of discriminatory statements based on familial status.

Neither Respondents nor the subject property receive federal financial assistance.

## II. COMPLAINANT'S ALLEGATIONS

Complainant lives in a condominium community that is not covered by the Housing for Older Persons Act exemption to the Act. She has legal and physical custody of her two great-grandchildren (ages eleven and nine), who are bi-racial. Complainant alleges that she was served a Rule Violation Notice which stated that children are not allowed to play in the common areas. Complainant was also given a new rules provision by management, dated July 25, 2011, which stated that playing and picnicking in the common areas was not permitted. Complainant alleges that in August 2011, she received a second notice from Brown stating that another complaint had been received regarding her great-grandchildren being on the grass near the building and the notice suggested that her great-grandchildren use the playground across the road for picnicking and playing. Complainant alleges that in September 2011 Brown sent her a notice of changes to the rules governing the common areas that pertained to her great-grandchildren and this notice was not given to other residents. Complainant further alleges that in April 2012, she received a notice from Brown asserting that her great-grandchildren were unsupervised, which she states was untrue. Complainant believes property management subjected her and her family to less favorable terms and conditions based on familial status, race, and color by issuing rules and notices that restricted the children's full use and enjoyment of the common areas of the subject property. Complainant also believes management made discriminatory statements in the communication and issuance of those rules and notices that showed preference based on familial status.

## III. RESPONDENTS' DEFENSES

Respondents admit that Greenbrier Village is not entitled to the Housing for Older Persons Act exemption to the Act, and is not operated as housing for older persons. Respondents collectively deny engaging in any discrimination against Complainant or her great-grandchildren based on familial status, race or color. Respondents assert that Brown received complaints about Complainant's great-grandchildren engaging in activities in the common areas that constituted rule violations. Respondents assert that despite Complainant's allegation that her great-grandchildren were supervised in the common areas, Complainant failed to indicate who was supervising the children at the time the children were engaging in rule violations. Respondents also assert that the complaints received were unrelated to the children's race or color and contend that they did not know the race or color of Complainant's great-grandchildren at the time complaints were received from other residents or at the time the enforcement letters were sent to Complainant. Respondents claim that the second rule violation letter, dated August 16, 2011, contained a typographical error and mischaracterized the content of the actual rule governing the common areas. Respondents state that, at that time, all residents were prohibited from being on the grass or landscaping located in common areas. Respondents allege that a letter was sent to Complainant in September 2011 to clarify that the rule change applied to all residents, not just children. Respondents contend that the rules for the common areas were designed to ensure the safety of residents, to protect the landscaping in the common property and to deter conduct which may put residents at harm or may cause

damage to the common property. Respondents claim to have a reasonable and legitimate expectation that all young children be supervised at Greenbrier, for their own safety, for the safety of others and to protect the common areas of the property.

#### IV. FINDINGS

##### *Background*

Complainant is a seventy-one year-old white woman who has had legal custody of her bi-racial great-grandchildren, Dejah and Quincy, for over three years. Complainant owns and occupies Unit #306 at Greenbrier II, a three-bedroom condominium located on the third floor, overlooking a common area courtyard. During the investigative interview, Complainant stated that she purchased her condominium in 2002 and that her now deceased partner, Richard Wise ("Wise"), was also on the deed to the home. Complainant, her two great-grandchildren and Wise all lived together at the subject property until Wise died in August 2012. The investigation finds that after Wise's death, Complainant and her great-grandchildren continued to live in her Greenbrier II unit, and they reside there currently. Quincy is now eleven years of age and Dejah is now nine years old.

During the investigative interview, Complainant stated Quincy's parents are black and white. Dejah is bi-racial, her mother is white, and the race of Dejah's father is unknown.

The investigation finds that Greenbrier Village is comprised of six individual low-rise condominium buildings with a total of 462 dwelling units, located at 10401-10531 Cedar Lake Road, in Minnetonka, Minnesota. The city of Minnetonka is a suburb of Minneapolis/St. Paul and is located in Hennepin County. Each of the six buildings in Greenbrier Village are owned and governed by the members of their respective sub-associations and all the sub-associations fall under the umbrella of the Master Association (i.e., there are six buildings and seven associations). The investigation finds that Greenbrier II is comprised of seventy-four single-family residential dwelling units that are privately owned by members of its sub-association. Not all the units in Greenbrier Village are owner-occupied. Census records, from the 2010 census, reflect that approximately 74 units in Greenbrier Village were renter occupied. An on-site visit to Greenbrier Village on May 31, 2013 found that the entire development area sits on multiple acres of land containing large areas of well-manicured green spaces between each of the buildings, as well as an indoor/outdoor pool and tennis courts. Greenbrier II is located next to the tennis courts on one side and shares an inner-courtyard with at least one of the other buildings in the development on the other side. The common area courtyard includes a walkway that extends the length of the two buildings, with some concrete areas, extensive grass, plants, bushes and trees on each side of the walkway.

While each of the six sub-associations within Greenbrier Village are responsible for adopting their own rules and policies, as deemed appropriate for each building, all common property and common areas located in Greenbrier Village are owned, governed and maintained by the Master Association. The Master Association is run by an executive board comprised of approximately eighteen members, including a president, a vice president and secretaries from each of the sub-associations. Jack Huttner was the Master Association Board President at all times relevant to the complaint allegations. During the investigative interview, Huttner stated that "a management company is hired to run

everything and the Master Board is the oversight to the management company.”

“Common property” is defined in the Master Association’s governing documents as land “[o]wned by the [Master] Association for the common use and enjoyment of the Owners.” According to the Master Association’s formal Declaration, executed May 25, 1977, the Master Association was formed to “[p]rovide for the necessary administration and maintenance of the common property.” The By-Laws of the Master Association, also executed May 25, 1977, state, in pertinent part, that the Master Association is responsible for “[a]rranging for the management of the Development Area or any part thereof, including not only the Common Property, by also the common areas and facilities of each separate condominium property.” The governing documents also dictate that the Master Association is charged with creating the rules that apply to the common areas within the condominium community. The Master Association Declaration states, in pertinent part, that “[e]very owner shall have a right and easement of enjoyment in and to the Common Property and the improvements thereon, subject to...[t]he right of the [Master] Association to pass reasonable rules with respect to the Common Property for the health, comfort, safety and welfare of persons using the same.”

At all times relevant to the Complainant’s allegations, the Master Association employed Gassen as its property management company for all of Greenbrier Village. Gassen, with its principal office located at 6438 City West Parkway, Eden Prairie, Minnesota 55344, is a well-established professional property management company specializing in homeowner association management and maintenance for condominiums, townhomes, common interest communities and cooperatives throughout the state.

Brown, a white woman employed by Gassen, has worked on-site for the Master Association for the last twelve years. During the investigative interview, Brown indicated that her duties include, but are not limited to, handling move-in/move-out procedures; responding to residents’ requests for maintenance; responding to residents’ complaints and handling all the Master Association board meetings (as well as some of the sub-association meetings at the buildings). Brown also indicated that sometime during the late spring or early summer of 2012 she obtained fair housing training.

[It should be noted that the Master Association, Gassen and Brown, among others, were named as Respondents in two previous housing discrimination complaints filed with HUD, on July 27, 2011, and March 8, 2012, respectively, both of which alleged familial status discrimination in connection with housing owned and governed by Greenbrier III, another sub-association within Greenbrier Village. (*See* HUD Case Numbers 05-11-1269-8 and 05-12-0556-8.) As part of the Consent Order in those cases, Brown was required to complete fair housing training. A certificate of Brown’s completion of the training was sent to HUD, as directed. The terms of the Consent Order enjoin Respondents from discriminating against any persons because of their familial status. On August 9, 2012, the Administrative Law Judge entered the Consent Order. The Consent Order is to govern the conduct of the parties for a period of two years following the date the Consent Order became final.]

Brown receives direction on the rules and policies that apply specifically to the common areas at Greenbrier Village directly from the Master Association. During the investigative interview, Brown stated that she has not received any specific training on how

to implement the rules created by the Master Association, but that she learns about the rules when she attends the Master Association Board meetings. She stated that if the Board decides that they want to change a rule her only function is to “retype the change into the rules.” Brown stated that all of the owners have a copy of the rules and regulations and when a rule has been changed, the Master Association typically has her make copies of the particular section that has been changed and send that out to residents with a notice about how the rule may or may not affect residents. Brown stated that the rules have been changed once in the last year, that she can recall, and that the rules are generally not changed very often.

During his investigative interview, Huttner stated that, in an effort to make things easier for property management, the Master Association Board enacted uniform rules for common property at Greenbrier Village years ago; what resulted was a set of rules that govern the inside of each building and a set of rules that govern the common areas. Huttner stated that each building can change the rules to match their building, if they wish, and a lot of the buildings have done that, but the rules for the common areas, which again, are decided by the Master Association Board, could not be changed by the sub-associations. Once any common area rule is implemented, according to Huttner, the management company makes copies of it and distributes it to every resident. Huttner also stated that he does not live in Complainant’s building and he did not personally know Complainant, her great-grandchildren or the races of the children.

*Rules Governing the Common Areas and Violation Notices Issued*

At issue in this case is whether or not enacted rules governing the common areas of Greenbrier Village and the enforcement of those rules by Respondents subjected Complainant and her family to housing discrimination, based on familial status.

The investigative record reflects that on or before November 1998, a rule related to children was included in the Master Association’s Rules and Regulations. The rule reads:

E. Children:

Children are not allowed to play in the hallways, stairwells, driveways, elevators, garages or any potentially dangerous area of the condominium property.

Residents shall be responsible for the behavior, welfare and safety of children on the condominium property.

This rule section shall herein be referred to as the “Children” rule. Brown cited the Children rule in the first Rule Violation Notice delivered to Complainant on August 12, 2011 and the Children rule was interpreted, in the body of the Rule Violation Notice, to mean “children are not allowed to play in the common areas.”

An additional rule regarding the common areas was enacted by the Master Association during a meeting held on July 25, 2011. On June 6, 2011, the Master Association formed a committee, headed by resident Ruth Shaltis, to consider the idea of a change to the existing Master Association’s Rules and Regulations regarding playing on the grounds and common areas and to present new text to the Master Association. Ruth

Shaltis owns a unit in Greenbrier II. She lives across the hall from the Complainant's unit. She was the Vice President of the Master Association in June 2011.

The meeting minutes from that date contained the following:

**New Rules for Common Area: Grounds and Landscaping:** a. Playing, picnicking or sunbathing on the common grounds, including lawns, sidewalks, landscaped areas and parking areas is not permitted. Lawn chairs and/or sunbathing are allowed on decks and patios or within the confines of the pool area only. Bicycles, tricycles, scooters, skates, skate boards, roller blades, etc. may not be used on the property. Motion to accept new wording; seconded. Motion carries.

During the investigative interview, Brown stated that these new rules were put in place because several of the adult residents had been asking to play badminton and soccer on the grounds and some "young adult males" wanted to ride their bicycles and rollerblade in the common areas of the property. Brown stated that this became "a real safety issue" because Greenbrier Village has so many elderly residents who walk the sidewalks for their health. She asserted, "We were concerned about their safety and about them being knocked over." According to Brown, the Master Association felt that they had to do something to protect the safety of the elderly residents, so the rules were changed. When asked whether there had actually been any accidents or incidents where elderly residents were injured by someone engaging in the activities prohibited by the new rules, Brown stated that there had been "near accidents" involving seniors. When asked to elaborate, she stated that there had been incidents where seniors were trying to walk on the sidewalk at the property for their health and were suddenly confronted by young males on rollerblades coming around a corner quickly. Brown also asserted, "even if this doesn't knock them over, this frightens them terribly and they can lose their balance very easily." When asked how prohibiting picnicking and sunbathing on the grass was related to protecting seniors at Greenbrier Village, Brown asserted that setting up lawn chairs and lying out on the grass has always been prohibited. Brown also asserted during the investigative interview that the new rules did not just apply to children; they applied to all residents, children included.

Huttner admitted that a copy of the common areas rule, enacted on July 25, 2011, was not distributed widely. He also stated that a lot of people ride bikes in the common areas. He stated he sees bikes outside all the time. Huttner specifically identified one adult neighbor who rides his bicycle on the property daily. Neither Huttner's neighbor nor any adult in Greenbrier Village were cited for riding their bicycles in Greenbrier Village. Since March 2001, no adult resident has been issued a written warning, or a rule violation notice, for violating the Master Association's Rules or Regulations for their use of the Greenbrier Village sidewalks, grass, or landscaping. No adult was cited for playing in Greenbrier Village either. Finally, based on the records furnished to HUD by the Respondent Master Association, no adult resident was cited for the use of a bicycle, tricycle, skate board, scooter, skates, or roller blades.

In response to HUD's request for information, Respondents asserted that the total number of children who reside at Greenbrier Village is unknown. Respondents assert that residents with children are not tracked at Greenbrier Village, and Respondents could not

provide with certainty the exact number of children under the age of eighteen living in Greenbrier II. An estimate was provided for Greenbrier II. Respondents believe 4 households, out of 74 in the building, contain minor children.

U.S. Census Bureau records for 2010 reflected the following information about Greenbrier Village: the population is 598 individuals; 22 residents were under 18 years of age; 289 residents were 70 years of age or older; approximately 17 family households contained children under 18 years of age; the census tract reflected 463 units and approximately 74 of those units were rented; 571 residents were white (95.5%); and three (3) were bi-racial (0.5%).

From November 21, 2005 to June 1, 2011, thirteen (13) Rule Violation Notices were issued to households with minor children for violations of the Master Association's Rules and Regulations, Section E, Children. Seven different condominium units received notices. The nature of the violations ranged from children playing in hallways, to children being unsupervised, to a child riding a tricycle in the parking lot.

On or about August 12, 2011 Brown delivered to Complainant's door a Rule Violation Notice and a one-page excerpt of the new rule from the Greenbrier Village "Rules and Regulations." A handwritten note from Brown was attached and read:

New Rules –  
Please insert in your rules + Regs book. –  
Please abide by new rule.

Thank You –  
Greenbrier Office

The Rule Violation Notice ("First Notice") that Respondents issued to Complainant and Wise was categorized as a warning and indicated a copy of the notice was delivered to the Board of Directors. The First Notice provided the following description of the asserted violation:

Description of Violation: Children on complex. Rules and Regulations, page 10, Item E, states that children are not allowed to play in the common areas. Please have children refrain from this activity to avoid fines. Also, enclosed is the new rule governing children playing on the complex.

The above-referenced violation notice cited specifically to the Greenbrier Condominium Association Rules and Regulations Children Rule.

The investigation finds that on or around August 16, 2011, Brown sent a second notice of violation, this time in the form of a letter addressed to Complainant and her partner, Wise. The letter was accompanied by another copy of the new rule governing the common areas and indicating that Complainant had committed another violation. The letter, signed by Brown, read:

This office has received another complaint about the children in

your care being out on the grass by the building.

I am enclosing a copy of the new rule, which clearly stated that children are not allowed on the grass or landscaping on the premises. This is a rule recently passed by the HOA Board, and I'm sure you understand that exception cannot be made for one family without other families expecting the same treatment.

Possibly your children could use the playground across Cedar Lake Road for picnicking and playing. This would solve the problem for everyone. Otherwise, if the violation continues, I will have no option other than to begin fining you for each breach of this rule.

Thank you in advance for your cooperation in this matter.

An onsite investigation revealed that Cedar Lake Road is a high traffic two-lane roadway located north of Greenbrier Village. The investigation finds that the "playground" Brown referred to in her letter is actually an athletic field for the Hopkins Junior High School, which is owned and maintained by the area school district.

During the investigative interview, Brown stated that she suggested Complainant take her great-grandchildren across the street to the school if they needed to "do the running around on a grassy area." Brown further stated that Cedar Lake Road has a crosswalk and a stop light and she assumed whoever was supervising the children would supervise them walking across the street to the school to play. When asked if she had ever made this kind of suggestion to any other residents at Greenbrier Village, Brown stated that she didn't believe this issue had ever come up with any of the other owners.

During an investigative interview, Complainant stated that after receiving Brown's warning notices and the copies of the new rules, she began observing activity in the common areas more often. She stated that, on one occasion, subsequent to the new rules being issued to her, she observed an adult couple ride their bicycles through the garage, onto the driveway, across the grass, through the parking lot and into the street. Complainant also stated that, on another occasion, subsequent to the new rules being issued to her, she observed a neighbor, Nahum Kipnis (a white resident of Unit # 308 at Greenbrier II), playing ball in the grass of the courtyard with his granddaughter. Complainant stated that, even though she believed this was a harmless activity, under the new rules, this was also a violation and she reported it to Greenbrier management, accordingly. Complainant stated that after Brown received her complaint, Brown left her office, walked over to the resident and gave that resident a verbal warning. Complainant also alleged that when she spoke to Brown to notify her of the technical violation of the "playing" rule, Brown stated that she "felt bad" about having to warn the other resident because he wasn't doing anything wrong.

Brown admitted that she received the complaint from Complainant by telephone and that she walked over and spoke with Complainant's neighbor. She informed Complainant's neighbor that playing ball in the grass was not allowed. According to Brown, the resident thanked her and that it was never an issue again.

When asked why a formal rule violation notice was not issued to Complainant's

neighbor at that time, Brown asserted that generally, one complaint about anything at Greenbrier Village will not initiate a formal warning or infraction notice. She stated that she would have to have received several complaints and have spoken to the complaining resident to try and get at the bottom of what may have happened. Brown also stated that she is “always interested in finding out if a complaint is about a simple annoyance or if the complaint is really legitimate.”

In response to the violation letters received from Brown in August 2011, Wise wrote a response letter to Kris Knowles, Gassen’s offsite supervisor of Brown. The letter is undated, but it was sent before September 7, and addresses the August 16, 2011 formal letter from Brown. In his letter, Wise indicated that he and Complainant wanted a retraction of the August 16, 2011 violation letter, a written apology and the name, or names, of the person or persons who reported the alleged violation. In this letter, Wise also stated that the last time Complainant’s great-grandchildren were outside they were accompanied by their family counselor for about thirty minutes, each. He indicated that the children talked with their counselor and threw a football around some, but that there was no picnicking involved. Wise also inquired in his letter whether all residents received a copy of the new rules with the same handwritten note that included the message, “Please abide by these rules.” He also referenced Complainant’s alleged observations of other residents violating the new rules. Wise’s letter concluded with a statement which reads, in relevant part:

...This whole thing is pretty ridiculous [sic]. It is an attempt by a very small group to have things their own way. Well, it ain’t happening. [sic] This building, when Elaine first bought here in 1984, had children living in it then. That is 27 years ago, too late for an over 55 conversation. [sic] Plus, in an already down housing market, would you want to restrict marketability? ...

Brown responded directly to Wise in a letter dated September 7, 2011. In her response letter Brown stated that: the Master Association voted to change the rules governing the use of the common areas by all residents in their last meeting; that the copy of the rule given to Complainant’s household was, in fact, not given to all residents because the Board was “waiting for additional rule changes on other subjects to be written and it was felt they should all be handed out at one time, unless a violation occurred and the resident needed to be informed of the change immediately;” and that the Master Association’s board had decided to rescind the new rule because it was informed of “some new laws pertaining to the use of common areas.” Brown also offered the following apology in this letter:

...I apologize that you and your family were caught in the middle of this change. It was unfortunate timing, and you should disregard the letter. ...However I am sorry you were offended by the letter, as that was not the intention. ...

With respect to Wise’s request that the names of the complaining individuals be provided, Brown also responded in her letter:

As far as the name of the person who complained, you’ll have to obtain that from the board of directors of your building. I was told

by one of the members that there had been complaints and was asked to write a letter to you accompanied by the new rule.

During the investigative interview, Complainant stated that, although Brown asserted that the new rule had not been given to all residents and had been subsequently rescinded, the rule change was recorded in the Master Association meeting minutes and the meeting minutes are accessible to all residents at Greenbrier Village. Complainant alleges that management failed to post or issue any subsequent notices to formally inform all residents that the new rules governing the common areas were actually rescinded.

Respondents assert that the new rule was rescinded, nevertheless. Complainant provided to HUD an undated one-page copy of the Board meeting minutes which provided that "President Huttner stated that the new rules must be rescinded due to the recent change in Discrimination laws" and that the motion carried. Respondents submitted to HUD a copy of the revised August 2003 Rules and Regulations which contained the language of "new rules" sent to Complainant in August 2011 but also included a handwritten note in the margin of the page (Page 5) that read "in force July 25, 2011 to September 26, 2011 only." Respondents also submitted to HUD a copy of the "updated" Rules and Regulations for all residents at Greenbrier Village, dated December 2012. The cover page to the December 2012 copy of the rules instructs residents to throw away any old Rules and Regulations, but to keep Addenda, Policies and Procedures, By-Laws and Declarations, as those had not changed.

The investigation finds that the updated December 2012 rules regarding the common grounds and landscaping at Greenbrier Village closely mirror the rules as they existed in 1998. The following comparison chart illustrates the change in the language of the common area rule, as they were enforced by Respondents at Greenbrier Village over the years:

<p><b>Rules and Regulations 1998</b></p>	<p>C. COMMON AREAS ... 3. Grounds and Landscaping: a. Games creating excessive noise levels or liable of causing damage to a building or the grounds and landscaping are prohibited. ...</p>
<p><b>New wording of the rule voted on by the Master Association on July 25, 2011 and included in the revised August 2003 Rules and Regulations</b></p>	<p>C. COMMON AREAS ... 3. Grounds and Landscaping: a. Playing, picnicking or sunbathing on the common grounds, including lawns, sidewalks, landscaped areas and parking areas is not permitted. Lawn chairs and/or sunbathing are allowed on decks and patios or within the confines of the pool area only. Bicycles, tricycles, scooters, skates, skate boards, roller blades, etc. may not be used on the property. ...</p>
<p><b>Rules and Regulations Updated December 2012</b></p>	<p>C. COMMON AREAS ... 3. Grounds and Landscaping: a. Activities creating excessive noise levels or liable to cause damage to a building or the grounds and landscaping are</p>

	prohibited. ...
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The investigation finds that the updated December 2012 rules also deleted the Children rule regulating children “on the condominium property.” Unlike the Common Areas rule cited above, the Children rule remained the same at Greenbrier Village over the years. From 1998 until its deletion in December 2012, the Children rule appears to have been in effect.

Regarding Brown’s September 2011 response to Wise’s request for the names of the residents who complained about the children, the investigation finds that the complaint and enforcement procedures in the revised August 2003 Rules and Regulations, which were invoked by Brown in her violation letter, provide a somewhat different process than what Brown communicated in her response letter. Page 14 of the 2003 Rules and Regulations provide, in pertinent part:

“L. COMPLAINT, ENFORCEMENT AND APPEALS  
PROCEDURES

Voluntary compliance with the Rules and Regulations is the goal of the Condominium Association. Members of the Board of Directors and the various Association committees serve without compensation and they are under no special obligation to enforce regulations or arbitrate disputes between neighbors, except in cases where their authority is required to obtain compliance with the Condominium Association’s Rules and Regulations. It is therefore, provided that the Association will undertake the following procedure for complaint handling only if Complainant has first attempted and failed to obtain voluntary compliance without the Associations [sic] intervention.

1. Complaints regarding rule violations by homeowners must be submitted in writing to the Management Company. Complainants should have already discussed the complaint with the offending party and must indicate the response received. Anonymous complaints will not be accepted. A grievance should be written on a Problem Report Form located in each laundry room contained in the Appendix to these Rules and Regulations. A copy of this report can be kept by the writer, and the office will give the association president a copy.

2. Upon receipt of a written complaint, the Management Company will give notice of the infraction to the Resident. ...

...

4. Pursuant to Minn. Stat. §515B.3-102(a)(11), an appeals process is available to any unit owner who has received a warning letter for a first offense or upon whom a fine is “scheduled to be imposed.”

At no time during the investigation did Respondent provide evidence that this

procedure was followed with respect to complaints regarding Complainant's great-grandchildren.

During the investigative interview, Brown asserted that she does not indiscriminately send out warning letters to residents. "I have to know there is something really egregious going on," she stated. Brown stated that after she received several complaints about Complainant's great-grandchildren, she believed Complainant needed to understand the rules around children being outside, especially in the landscaping, doing any kind of damage. When asked whether she conducted any investigation after she received complaints about Complainant's great-grandchildren, Brown stated that she did ask residents facing the courtyard if they had witnessed anything. She asserted that although several residents witnessed the children engaged in rule violations, most did not want to formally complain. Brown also asserted during the investigative interview that she did not do anything different in addressing the complaints about Complainant's great-grandchildren than she would do in addressing complaints regarding adults.

On or around March 13, 2012, Complainant's great-grandchildren were involved in an incident at the subject property with residents Herbert Woods and Janis Zenzen. Woods and Zenzen are owners of a unit in Greenbrier II. According to Complainant, her great-grandchildren were playing in the courtyard without her and Woods began videotaping the children. Complainant alleges that the children reported to her that Dejah, who was seven years-old at the time, picked up a branch from off the ground in the courtyard and was playing with it. Complainant alleges that her great-grandchildren told her that Woods then came out to the courtyard and grabbed Dejah by the arm to turn her around to face his camera. Complainant alleges that although she did not witness this event, she believed her great-grandchildren and, after trying to reach Woods and Zenzen, called the Board President of Greenbrier II for intervention. Complainant alleges that the Board President advised her to call the police because he thought the incident should be reported. When the police arrived, she reported to the Officer that she believed her neighbor had been too aggressive with the children, that she didn't want to file charges, but she wanted the Officer to talk to her neighbor. According to the police report, Complainant's neighbor, Woods, denied having any physical contact with the children at any time and stated that he only attempted to prevent damage to his condominium by telling the children he would report them *if* they caused damage.

The investigation finds that even after the new rules governing the common grounds were allegedly rescinded, Respondents issued "Reminders" to residents, specifically addressing the conduct of children at Greenbrier Village. Complainant provided to HUD a reminder notice she alleges was posted on the resident information board located in the laundry room on her floor sometime in April 2012. This document is not dated, but Complainant handwrote on the copy provided to HUD, "Latest New Rules... Came out in April." [sic] In pertinent part, this reminder notice from "Greenbrier Management" states:

Kids playing on the grounds must be supervised by an adult at all times. Kids may not play in the garage, driveway, parking lots, or by the pond. If kids are in the grass, they may not dig, ride bikes, slide down hills, or in any way hinder the growth of the lawn. They cannot play in the trees or planted areas and may not jump off balconies.

The sounds of children playing near a building can be disturbing, especially if they are yelling, screaming, or crying. Out of respect for your neighbors, games that necessitate such noise should be taken to a park or across the street to the playground at the school.

...

Please read your rules book for a complete list of do's and don't [sic] at Greenbrier, and have a great summer.

The aforementioned Notice, published by the bulletin board in the Greenbrier II laundry room, appears to elaborate on the existing Greenbrier rules.

Brown sent another letter addressed to Complainant and Wise, dated April 18, 2012. In this letter, Brown asserted that the management office had received "numerous complaints regarding the behavior of [her] grandchildren over the past weekend."<sup>1</sup> Brown also stated in her letter, "Unfortunately, none of your neighbors feel comfortable speaking directly to you about this because they are afraid of retaliation, and I am not issuing a violation or fine for an infraction of the rules, or telling you the children cannot play outside. I am merely requesting that you take into consideration the comfort of the other residents living here and have your grandchildren observe the Greenbrier rules." In the April 18 letter, Brown wrote:

Elaine, you have told me in the past that your grandchildren are always supervised when on the grounds, so I don't understand why they are being allowed to play in the landscaping, climb the trees, break branches off trees, and poke sticks through screens, all of which was observed by a number of residents, including residents from the building across the courtyard. You and the children, and whoever is supervising them, need to understand that while playing on the grass or sidewalks *is* allowed, playing in the landscaping and trees *is not*." (emphasis in the original)

During the investigative interview, and despite the allegation of "destructive behavior," specifically a screen being damaged, Brown stated that there has never been any formal report of a resident's property being destroyed by Complainant's great-grandchildren, nor has there ever been any reports or fines levied against Complainant or Wise for destruction of common area property or any of the buildings as a result of the children's conduct or activities. Brown also stated during the investigative interview that she never conducted a formal investigation into the "numerous" complaints she claimed were received by "numerous" residents about Complainant's great-grandchildren. Brown further asserts that she has never even seen Complainant's great-grandchildren and has never visited Complainant to speak with her about the complaints about Complainant's great-grandchildren.

During the course of the investigation, however, Respondents submitted four separate

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<sup>1</sup> Complainant stated during the investigative interview that many of her neighbors are friends with her family and very familiar with her great-grandchildren. Complainant alleges that she belongs to the book club at Greenbrier; that one neighbor painted portraits of the children; that another neighbor tutored the children; and that the children were invited to come sing for residents every year at the Christmas party at Greenbrier Village.

letters from residents living at Greenbrier II, all complaining in general about negative experiences with children being disruptive at the property and three that specifically complained about the behavior of Complainant's great-grandchildren in the courtyard area. The investigation finds that the witness's letters that specifically named Complainant's great-grandchildren all referenced the children climbing, yelling, running, playing with sticks or jumping on shrubs and plants. Two of the letters were dated August 10, 2012 and two were undated. All of the letters were requested by Respondents after the HUD complaint was filed. One of the undated letters, addressed to the "Greenbrier Office" from Ruth Shaltis, a resident living in Unit #303 at Greenbrier II, read in pertinent part:

...Over the past two years I've received calls and heard complaints about the noise (exciting piercing screams, shouting, yelling) and rambunctious behavior by children, especially in the courtyard.

I personally observed a boy and a girl, who are my neighbors, in the courtyard running, chasing, jumping shrubs and plants, climbing trees, yelling back and forth. The boy climbed into a tree and the girl jumped up and down for a low limb in another tree until she was able to grab it and tugged at it until she was able to pull it down. She looked at it, swung it around, threw it on the ground, cried out and ran off. The boy then scampered down the tree and disappeared. The courtyard was then empty. This was reported to the Office...

During the investigative interview of Ruth Shaltis, she stated that she is a seventy-three year old white woman who has owned her condo unit at Greenbrier II for over twenty years. Shaltis stated that until May 2013, she served as the Vice-President on the Master Association Board for three years, and that she currently serves as the Secretary for Greenbrier II. Shaltis stated that she wrote the above referenced letter after the housing complaint had been received to provide HUD with "background information and a defense for Greenbrier." Shaltis stated that she neglected to date the letter, but that she was pretty sure she wrote it in August 2012. Shaltis stated that she also wrote the letter because she knew there were residents that would not formally complain about things they witnessed involving Complainant's great-grandchildren.

Shaltis stated that sometime in August 2012 another neighbor across the hall from her unit called her into his unit to show her what was happening down in the courtyard. Shaltis said, at that time, she personally witnessed Complainant's two grandchildren, Dejah and Quincy, engaging in "rather rambunctious behavior in the courtyard." When asked to clarify what she meant by "rambunctious behavior," Shaltis stated that she saw both children jumping around, yelling and stepping on foliage. She stated that she saw the little girl, Dejah, tugging at a low level tree limb until it broke completely off. Shaltis stated that she did not think the children were being "intentionally destructive" or "planning to destroy the property" but that they were being destructive, nonetheless. Shaltis stated that this incident was the first and only time she personally witnessed Complainant's grandchildren playing in the courtyard unsupervised. When asked if she thought the children were behaving in a manner abnormal for their apparent age when she saw them in the courtyard, Shaltis stated that it was hard for her to say whether or not the children were acting abnormally. "I'm not one to judge," Shaltis stated. "But you would think someone would

have reined them in if they had observed it," she stated. When asked how she recognized the two children in the courtyard, Shaltis said that Complainant is her neighbor and she has seen Complainant with her grandchildren before. Shaltis stated that she did not notice their race. She also stated, "It was not obvious if they were one race or another."

Complainant and her great-children continue to live at Greenbrier II, and have no plans to leave the property. During the investigative interview, Complainant stated that this entire situation at Greenbrier Village has made her feel very bad for her great-grandchildren, who she cannot let go outside at the property without being supervised, according to the rules being enforced. Complainant stated that she is fearful that property management will issue another rule violation and she will be subjected to a fine. She also stated that Wise got very sick in the summer of 2012 and eventually had to be placed in hospice care inside their home. As a result, she stated she could not escort the children outside to play at all because she had to remain in the unit with her partner. She stated that the children suffered a great deal during that time because they had to stay in the house.

Complainant stated during the investigative interview that before he died, Wise was especially angry and distraught by the situation involving her great-grandchildren at Greenbrier Village. She stated that Wise often told her that he felt bad for the children, and that "children ought to be able to play outside where they live." Complainant stated that she believes the common area rules at Greenbrier Village are not conducive to families with children and that she found it strange that in a complex that allows children there are hardly ever any children outside playing.

## V. ANALYSIS

### *Section 804(b)*

The statute proscribes discrimination "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 race, color, religion, sex, familial status, or national origin." To state a claim under Section 804(b), a plaintiff must show that he or she was subjected to less favorable "terms, conditions, or privileges because of a protected status."

To establish a *prima facie* case of discrimination under Section 804(b) of the Act, the following four elements must be met:

1. Complainant is a member of a protected class under the Act;
2. Complainant resides at the respondent's property;
3. Respondents, knowing that Complainant was a member of a protected class, offered complainant certain terms, conditions, services or facilities; and
4. Respondents offered more favorable terms and conditions to other persons who are not members of Complainant's protected class.

### *Complainant's Section 804(b) claim based on familial status-REASONABLE CAUSE.*

The investigation obtained direct evidence of discrimination. The Master Association's Rules and Regulations, as enforced by Brown against Complainant, and as restated in Reminders, subjected the Complainant, Wise, and Complainant's great-

grandchildren to less favorable terms and conditions than adult residents without minor children.

Respondents enacted at least one facially discriminatory policy in the form of the Children rule. This rule, as enforced, subjected children, and specifically Complainant's great-grandchildren, to terms and conditions that were less favorable than those offered to adult residents. Based on the Master Association's interpretation of their Rules and Regulations, Complainant's great-grandchildren were not allowed to play in the courtyards of Greenbrier Village. The great-grandchildren were instructed not to walk in the grass, use the sidewalks, or sit and talk with their family counselor outside in the common areas near their building. These less favorable terms and conditions were first communicated by the Master Association's enactment of the Children rule and were then impactful upon their enforcement on August 12, 2011.

The Common Areas rule, as enacted and enforced, also subjected Complainant's great-grandchildren uniquely to adverse treatment on August 16, 2011 and thereafter. During the two-months that the Common Areas rule was in effect, Complainant was the only recipient of a written Rule Violation Notice. Brown's notice to Complainant threatened a fine for the violation and encouraged Complainant to take her great-grandchildren offsite to access green space and to play. No adult resident was cited pursuant to the Common Areas rule. And no adult resident was instructed to engage in recreational activities off Greenbrier Village property. Until the Children rule was removed in December 2012, the Master Association's Rules and Regulations, as enacted, treated Complainant differently.

As another example of different treatment, Complainant and other families with children were publicly subjected to "Reminders" placed in the laundry room on Complainant's floor. Parents with children were told, regardless of the age of their children, that they had to supervise their children whenever they were on the grounds. In this publication, the 17 families with minor children were told they must limit the activities of their children. Greenbrier Management specifically stated that the "sounds of children playing near a building can be disturbing" and encouraged residents with children to take such activities elsewhere. This document recognizes a strong preference for the enjoyment of residents without minor children. Greenbrier Management's public "Reminder" directed specifically at this protected group also supports the determination of reasonable cause.

In this case, all four elements of a *prima facie* case of familial status discrimination pursuant to Section 804(b) claim have also been established.

The Act defines "familial status" as one or more individuals (who have not attained the age of 18 years) being domiciled with-- (1) a parent or another person having legal custody of such individuals or individual; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. Complainant maintains legal and physical custody of her great-grandchildren who are under eighteen years of age. Accordingly, Complainant is a member of a protected class under the Act and the first element of the claim is satisfied.

Complainant resided in Greenbrier Village at all times relevant to this case.

With respect to the third and fourth elements of the claim based on familial status, the investigation finds that the elements are established. Complainant was subjected to less favorable terms, conditions, and privileges of residency, which give rise to a reasonable inference of prohibited discrimination.

In regard to the third element, the Association was aware that Complainant had children living in her unit. Both the application of the Master Association's rules, and the enactment of rules to restrict the behavior of her great-grandchildren, supports a finding that Respondents subjected Complainant and her great-grandchildren and Wise to adverse treatment during their tenancy at Greenbrier Village. The Children rule itself, enacted on or before November 1998, as interpreted by the Association in the August 12, 2011 Rule Violation Notice, subjected Complainant and her great-grandchildren to adverse conditions in their housing. Only children were limited by this rule which broadly restricted their activities in the common areas. The investigation also finds that the Rule Violation Notice, dated August 12, 2011, constituted adverse treatment. The violation notice, which was enforcing a rule restricting the activities of children only, threatened a fine for noncompliance. The Association specifically enforced the Children rule against Complainant, Wise, and Complainant's great-grandchildren in regards to their use of the common areas, and by this notice, Respondents restricted their enjoyment of their residence. The circumstances of the August 18, 2011 violation letter, among the other catalogued events at issue, also support the satisfaction of this element. Complainant was treated differently. And this treatment impacted Complainant's family in a negative way.

In terms of the fourth element, residents without children were not subject to the same conditions or treatment. First, the Children rule only affected children and households with children. Adults were not restricted in their playing in the common areas. Respondents produced copies of warning and rule violation notices from March 2001 to the present. No adult resident was issued a written warning, or a rule violation notice, for violating the Master Association's Rules or Regulations for their use of the Greenbrier Village sidewalks, grass or landscaping. No adult was cited for playing in the driveways or garages. By interpreting the Children rule to not only limit the use of driveways and garages, but also the common areas at the subject property, Respondents offered more favorable terms and conditions of occupancy to persons who are not members of Complainant's protected class. The Association's enforcement of the Children rule to limit the movement of Complainant's great-grandchildren in the common areas also subjected them to different treatment than residents without children. The investigative finding that the new rule, enacted on July 25, 2011, was only delivered to Complainant—with instructions to abide by it—but to no other tenants, evidences disparate treatment of Complainant's household based on familial status. This rule has very specific prohibitions directed at children, including a broad prohibition on "playing" in the common areas, including the grassy areas, and use of "bicycles, tricycles, scooters, skates, skate boards, roller blades, etc." on "the property." Owners not of Complainant's protected class were not furnished the new rule before it was enforced. Complainant's allegation of selective enforcement of the rule was also substantiated. Respondents could provide only one example of another resident being disciplined under the respective rules. That example also involved a child, and regarded another grandparent receiving a warning for violating the new rule for playing outside with his grandchild and that warning was the result of Complainant's phone call to Greenbrier Management. The treatment of Complainant was also more severe. Complainant was the only resident to receive a written notice pursuant to

the new rule, and she was the only resident threatened with a fine. The evidence suggests that the Association's rules were not similarly enforced to restrict the behavior of adult residents. For example, the Board President references adults regularly riding bicycles on the common areas, but no adults have received warnings for that violation, formal or informal.

Accordingly, the Department finds Respondents were aware of Complainant's protected class status and subjected her to less favorable treatment than similarly situated residents, satisfying the third and fourth elements of the claim and establishing a *prima facie* claim of familial status discrimination.

*Complainant's Section 804(b) claim based on race and color-NO REASONABLE CAUSE.*

In this case, two of the elements of Complainant's Section 804(b) claim based on race and color have not been met.

Both children are bi-racial. Accordingly, Complainant's great-grandchildren are members of a protected class, and Complainant is also protected by her association with them. However, Complainant's allegation that Respondents subjected her to discriminatory terms and conditions because of the race and color of her great-grandchildren fails at element three of the *prima facie* showing.

The evidence does not show Respondents enacted rules or sent rule violation notices to Complainant because the children in her custody are bi-racial or that the notices were in any way motivated by race. The investigation finds that the race and color of the children were never discussed by either of the parties, verbally or in writing. The investigation also finds that Respondents did not maintain information on the races of residents. Complainant alleges, however, that contrary to Brown's assertion, she believes Brown has seen the children before and that in one specific instance, she witnessed Brown treat a white resident differently with respect to children being allowed in the common areas. According to Brown, a written violation notice was not issued to the white neighbor because it was an isolated event that had not occurred before or after the incident in question. The investigation did not find evidence to confirm either party's position on whether or not Brown was, in fact, aware of Complainant's great-grandchildren's race and color. Nor is there comparative evidence establishing a practice of treating white children more favorably than Complainant's great-grandchildren. As such, the evidence does not support a finding that Complainant was treated differently because of the race and color of her great-grandchildren.

The totality of all the evidence obtained during the investigation does not show reasonable cause to believe that Respondents, knowing Complainant's children were bi-racial, subjected her to terms and conditions in housing that were different than the terms and conditions imposed on residents outside the protected class. As such, the third and fourth elements of the claim are not met, and a *prima facie* showing of discrimination based on race and color has not been established.

*Section 804(c)-REASONABLE CAUSE*

Direct evidence provides reasonable cause to believe that Respondents violated

Section 804 (c) of the Act. The evidence shows Respondents made statements to Complainant and her significant other in the form of rules, notices and letters which indicated a preference and a limitation based on familial status.

The totality of the circumstances supports a determination that an ordinary listener would consider the Rule Violation Notices, the enacted rules, and the "Reminders" collectively as the Respondents indicating a preference and/or a limitation that discriminated against Complainant, based on familial status.

First, on or before November 1998, the Master Association enacted the Children rule which restricted only children from playing in various locations on the Greenbrier Village property. Respondents interpreted this rule to also restrict a child from playing in the common areas. This interpretation of the rule was communicated to Complainant in an August 12, 2011 Rule Violation Notice form. This section of the rules only limited the activity of children "on the property." The Association's interpretation of the rule and application of the rule, as evidenced by the August 12, 2011 Rule Violation Notice, would be construed by an ordinary person as indicating specific limitations on the activities of children. Adults were not subjected to similar limitations. Complainant was the recipient of this interpretation of the rule. And the rule, as interpreted, affected Complainant as a member of a protected class. Respondents did not communicate to Complainant that the Children rule had been rescinded. One understanding of the April 2012 "Reminders" notice is that it affirmed that the Children rule was still operative. The other reading of the "Reminders" was that another rule or policy had been enacted, or was being interpreted, to restrict children from engaging in the listed activities. Either way, the Children rule indicated an unreasonable restriction on a class of persons protected under the Act.

Second, on August 16, 2011, Complainant and her partner received a letter, the second rule violation notice in a week, informing them that Complainant's great-grandchildren were observed "being out on the grass by the building." The letter stated this was a prohibited activity and cited to the newly enacted rule. Brown wrote that the new rule had recently been passed by the HOA board. This rule, enacted July 25, 2011, codified again the Children rule prohibition on children being on the common areas. A fine was threatened. Brown recommended that Complainant escort her great-grandchildren across the road to a school to play and picnic and that "This would solve the problem for everyone."

To summarize, Complainant received two notices citing to two different rules in the Homeowners Association's Rules and Regulations that were being interpreted to explicitly limit the activities of children in the common areas.

Third, on July 25, 2011, the evidence shows the Master Association voted to change the Association's rules to prohibit playing, picnicking or sunbathing on the lawns, sidewalks and landscaped areas and to specifically prohibit the use of "bicycles, tricycles, scooters, skates, skate boards and roller blades on the property." Respondents' stated rationale for this rule was health and safety concerns. The investigation shows that this new rule, while enacted for the entire Greenbrier community, was only printed and delivered to Complainant.

Additionally, while adults are presumably also prohibited from engaging in the

above-referenced activities, e.g., “playing” and using “bicycles,” “skates,” “skateboards” and “roller blades” (but logically not “tricycles”) an ordinary listener would understand that this new rule was enacted to limit children more than it was enacted to limit adults, especially an ordinary listener that was familiar with the demographics of the community. The Census data suggests that the majority of residents living in Greenbrier Village are elderly individuals who are less prone to engage in the use of recreational equipment like scooters, skates, skate boards and roller blades. As such, an ordinary reader would interpret the new rule to show a preference for the enjoyment of the common areas by residents who do not have children in their care and custody. Finally, Respondents understood the new rule to be adverse to the activities of the children in Complainant’s custody. Respondents acknowledged the rule was rescinded because of “some new laws pertaining to the use of common areas.” The fact remains that less than a month after the enactment of the July 25, 2011 rule, Brown sent a letter citing Complainant for allowing the children in her care to be out on the grass.

Lastly, sometime in April 2012, the evidence shows Greenbrier Management posted a rule reminder on a community bulletin board in Complainant’s building. Within this publicly displayed document, residents were advised that children playing on the grounds must be supervised by an adult at all times. And that if children were to be on the grass, they could not dig, ride bikes, slide down hills, “or in any way hinder the growth of the lawn.” The reminder also communicated that “The sounds of children playing near the buildings could be disturbing, especially if they are yelling, screaming, or crying.” The reminder further stated that to be respectful to neighbors, games that necessitated such “noise” should be taken to a park or across the street to the playground at the school. These “Reminders” were specifically directed at families with children, and indicated a preference that families with children engage in activities elsewhere for the benefit of their neighbors. The April 2012 “Reminders” followed Complainant’s great-grandchildren’s encounter with their neighbors, Woods and Zenzen, and corresponded in time with a written letter, dated April 18, 2012. In the April 18, 2012 letter from Brown, Complainant and her partner were informed of management’s receipt of “numerous complaints regarding the behavior of your grandchildren.” Among other things, Complainant and her partner were requested to consider the “comfort of the other residents living here and have your grandchildren observe the Greenbrier rules.”

Based on the information set forth above, there is reasonable cause to believe that Section 804(c) of the Act was violated as alleged.

### *Respondents’ Defenses to the Claims*

Respondents do not dispute that they were aware that Complainant has custody of her minor great-grandchildren; nor do the Respondents dispute that the responsive rules were enacted or enforced. Respondents assert, however, that the new rules regarding the common areas were intended to apply to all residents and that the letter sent to Complainant on August 16, 2011 contained a “typographical error” that mischaracterized the content of the actual rule governing the common areas, specifically use of the word “children.” But, use of the discriminatory limitation is not actually a typographical error<sup>2</sup> at

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<sup>2</sup> The term “typographical” extends from the root word “typography” which is the “style or appearance of printed matter;” the “art or procedure of arranging type or processing data and printing from it.” <http://oxforddictionaries.com/definition/english/typography> (last visited 9-13-13).

all; and Respondents' attempt to characterize it as such is disingenuous. Nevertheless, Respondents assert the new rules were rescinded and Complainant was advised of such. Respondents further assert that the rules for the common areas are designed to ensure the safety of residents, to protect the common property and to deter conduct which may put residents at harm or may cause damage to the common property; that they received multiple complaints about Complainant's great-grandchildren engaged in activities that violated those rules; and that they had a reasonable expectation that young children be supervised on the common grounds.

Contrary to Respondents' assertions, the investigation finds that the rule on Children, enacted on or before November 1998, only limited the activities of children, and, as applied, did so in an unreasonable and discriminatory manner. While enforcing a rule against children playing in a "dangerous area" may, in some circumstances, be reasonable, interpreting all common areas to be a "dangerous area" is an unreasonable restriction on the enjoyment of the common areas. Such a broad prohibition on playing in the common areas is not a reasonably tailored restriction. Respondents' focus on the apparent neutrality of the rule enacted on July 25, 2011 does not serve as a defense for this existing rule, as it is focused exclusively on children.

Additionally, the rule enacted on July 25, 2011 was only applied against families with children. Complainant was one of only two residents who received a warning or a notice of violation for activities restricted by the July 25, 2011 rule. The only other application of the rule was an incident involving another grandparent and child. And the Respondents acted only after Complainant complained.

Despite the enactment of the rule on July 25, 2011, the rule was not distributed broadly, as was the practice of the Association. Complainant was the only resident to whom Respondents gave a copy of the Association's new rule. Brown, whose property management activities are overseen by the Master Association, sent two copies of the new rule to Complainant in advance of the rule being issued to all residents. The defense was that Complainant's great-grandchildren were the only individuals to be engaged in rule violations within the common areas. This, however, is contradicted by statements made by the Association's President who, in his investigative interview, said a lot of people ride bicycles in Greenbrier Village. Complainant also said that during the pendency of the July 25, 2011 rule, she observed persons riding bicycles in Greenbrier Village. Given these investigative findings, Respondents' overall treatment of the Complainant and her children in comparison appears discriminatory.

Further, as to the impact of the July 25, 2011 rule, the evidence suggest that children in the complex were more likely than adults to be engaging in the activities cited in the rule. The population in the complex suggests as much. A witness stated that the majority of residents of the subject property are seniors. She estimated that out of the 74 units in Greenbrier II, six residents are over 90 years old and ten residents are over 80 years old. Based on Respondents' "guesstimate," four units out of 74 units in Complainant's building have children. Census records support the claim that most residents are older persons-- 71% of residents are 55 years of age and older. Playing and the use of tricycles, bicycles, skates, skate boards, or roller blades, may be engaged in by adults and children alike, but such recreational activities are more likely to be undertaken by children. Accordingly, the population of Greenbrier Village would suggest that the rule, as applied, would have a

discriminatory impact on the families with minor children.

Next, the investigation finds that although Respondents assert that the rules governing the common areas are designed to ensure the safety of all residents and to deter conduct that may put residents at harm or cause damage to the common areas, Respondents failed to produce any evidence of how children playing in the grass of the common areas has the effect of threatening the safety of others, or the condition of common property. Brown and the Association's President concede that no injuries have been caused by residents generally or children specifically who engaged in the conduct prohibited by the rules. Respondents assert they received complaints that Complainant's great-grandchildren were poking holes through screens with sticks, however, Respondents produced no evidence that this kind of damage of property ever actually occurred (e.g., work orders for repairs or fines levied against Complainant for property damage). Contrary to Respondents' assertions that multiple complaints were received regarding Complainant's great-grandchildren's conduct in the common areas, the investigation finds that written complaints regarding Complainant's household that were submitted to HUD during the course of the investigation were not provided to management until after Respondents received notice of the HUD complaint, suggesting the complaints may have been solicited by Respondents. The investigation finds that Respondents' defenses in this regard were merely pretext for discrimination.

Lastly, Respondents assert that there is a reasonable expectation that "young children" be supervised while in the common areas. The investigation finds that the Reminders published to residents that children playing on the grounds must be supervised by an adult at all times. Respondents made no specific exemption to this rule based on the age of children or the location of the children in the common areas. As such, no matter what age of the children, they were prohibited under the rules from being in any of the common areas without being supervised by an adult. (E.g., Complainant's great-grandchildren are 9 and 11, and Complainant's balconies faced the grassy courtyard.) Such restrictions unreasonably limit the freedom of families with children whose children may actually be old enough to play outside without constant supervision. Measures to supervise and ensure the safety of children have long been held to be in the purview of parents and guardians and not housing providers. The investigation concludes that reasonable cause exists to believe Respondents discriminated against Complainant and her family based on familial status.

## VI. CONCLUSIONS

Accordingly, the evidence shows reasonable cause to believe claims of familial status discrimination against Respondents under Section 804(b) and 804(c) of the Act. The evidence does not show reasonable cause to believe claims of race and color discrimination against Respondents under Section 804(b) of the Act.

## VII. ADDITIONAL INFORMATION

Notwithstanding this determination by HUD, the Fair Housing Act provides that Complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing

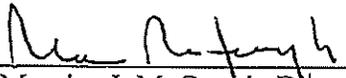
practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless a party requests that no such release be made. 24 C.F.R. § 103.400(a)(2)(ii). Such request must be made by the respondent within thirty (30) days of receipt of the determination to Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, S.W. Washington, D.C. 20410. Notwithstanding such request, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

For a copy of the Final Investigative Report for this case contact:

U.S. Department of Housing & Urban Development  
Maurice J. McGough, Director  
Region V, Office of Fair Housing and Equal Opportunity  
77 W. Jackson Boulevard, Room 2101  
Chicago, IL 60604-3507

On behalf of the United States  
Department of Housing and Urban Development

  
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Maurice J. McGough, Director Region V  
Office of Fair Housing and Equal and Opportunity

09/20/2013  
Date