

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

The Secretary, United States	:	
Department of Housing and Urban	:	
Development, on behalf of [REDACTED]	:	
[REDACTED]	:	
	:	
Charging Party,	:	
	:	HUDALJ No.
v.	:	FHEO No. 03-10-0399-8
	:	
Sally Lund and the Estate of	:	
David Lund	:	
	:	
Respondents	:	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On June 24, 2010, [REDACTED] (Complainant) filed a verified complaint with the United States Department of Housing and Urban Development (HUD) alleging that David¹ and Sally Lund (Respondents) discriminated against her, based on disability, in violation of the Fair Housing Act (Act), 42 U.S.C. §§ 3601-19. Complainant alleged that Respondents were responsible for the discriminatory refusal to rent to her, failure to make a reasonable accommodation for her emotional support animals and making a discriminatory statement.

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who retains and redelegates this authority to the Regional Counsel (76 Fed. Reg. 42463, 42465 (July 18, 2011)), the authority to issue a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (Assistant Secretary) or his or her designee.

¹ The Department notes that one of Respondents, Mr. David Lund, passed away during the pendency of this claim.

The Fair Housing and Equal Opportunity Director for Region III, the Assistant Secretary's designee, has determined that reasonable cause exists to believe that Respondents engaged in discriminatory housing practices and, therefore, has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

A. Statutory and Regulatory Provisions

1. It is unlawful to refuse to rent or negotiate for rental or sale or otherwise make unavailable or deny a dwelling to any person because of a disability. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a)(1) (2012).
2. Discrimination under 42 U.S.C. § 3604(f)(1) includes denying a person with a disability a reasonable accommodation when such accommodation may be necessary to afford such person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).
3. A reasonable accommodation is a change in a rule, policy, practice or service when such change may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).
4. It is unlawful to make statements with respect to the rental of a dwelling that indicate any preference, limitation or discrimination based on disability, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a) (2012).
5. The Act defines "handicap" as a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such an impairment, or being regarded as having such an impairment. Although the term "handicap" appears in the Fair Housing Act and its implementing regulations, the Charge and Determination of Reasonable Cause use the terms "disability" and "handicap" interchangeably. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201 (2012).

B. Parties

1. Respondents David and Sally Lund owned and rent out a small single-family detached home located at [REDACTED] Erie, PA (subject property), which they advertised for rent at \$500.00 per month in the Erie Times-News. The subject property is a dwelling as defined by 42 U.S.C. § 3602(b).
2. Complainant [REDACTED] is a person with a disability as defined in the Act at 42 U.S.C. § 3602(h) and 24 C.F.R. § 100.201 (2012). Complainant [REDACTED] mental disability limits her major life activities, including her ability to interact with others.
3. Complainant has a disability-related need for her two assistance cats which at times are identified by the parties as "service cats" or "emotional support animals" or "emotional assistance animals."

C. Factual Allegations

1. In or around August of 2009, Complainant viewed a newspaper advertisement for the subject property. The rent was advertised as \$500.00 per month. Complainant is a participant in the Section 8 Housing Choice Voucher Program and had a Section 8 Housing Choice Voucher to assist her in paying rent for a rental property.
2. On or about August 7, 2009, Complainant contacted Respondents using the telephone number listed in the advertisement and spoke to Respondent Sally Lund regarding renting the subject property.
3. During the phone call, Complainant told Respondent Sally Lund that she had a Section 8 voucher and that she owned two cats that were service animals.
4. Respondent Sally Lund stated that she would accept the Section 8 voucher but not the cats.
5. Complainant explained to Respondent Sally Lund that her cats were emotional support animals and that she needed them for her health. Respondent Sally Lund told Complainant that she should not be so emotionally dependent on her cats.
6. Respondent Sally Lund did not ask for medical or other documentation concerning Complainant's need for the emotional support animals.
7. After this telephone call with Respondent Sally Lund, Complainant contacted, Constance Burnett, Housing Director at Voices for

Independence, a disability advocacy group located in Erie, PA. Complainant described her interaction with Respondent Sally Lund and requested that Ms. Burnett assist her with her situation.

8. Shortly thereafter, Ms. Burnett placed a call to Respondents on Complainant's behalf. Ms. Burnett initially spoke with Respondent Sally Lund and told her that she was calling on Complainant's behalf about their recent encounter. Ms. Burnett told Respondent Sally Lund that Complainant has rights as a person with a disability under the Fair Housing Act.
9. Briefly into the conversation Respondent Sally Lund handed the telephone to Respondent David Lund. Ms. Burnett explained to Respondent David Lund that the Fair Housing Act required Respondents to allow Complainant to occupy the subject property with her emotional support animals, regardless of their pet policy. Respondent David Lund told Ms. Burnett that they would not allow Complainant to live in the subject property with her cats.
10. Despite being told of Complainant's disability-related need for her emotional support cats, Respondents refused to engage in the interactive process or seek additional information about Complainant's reasonable accommodation request.
11. Respondents refused to rent the subject property to Complainant because she had emotional support animals which she needed because of her disability. Respondents told Complainant and her advocate, Ms. Burnett, that they would not allow "pets" at the subject property.
12. Despite being told of Complainant's disability-related need for her emotional support animals, Respondents refused to grant a reasonable accommodation to Complainant of their "no pet" policy.

D. Fair Housing Act Violations

1. As described in paragraphs C.4, C.6, C.8 through C.12 above, the Respondents violated Section 804(f)(1)(A) of the Act when they refused to rent their dwelling and denied housing to Complainant because of her disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. § 100.202(a)(1) (2012).
2. As described in paragraphs C.4, C.6 and C.8 through C.12 above, by failing to comply with Section 804(f)(1) of the Act, Respondents also violated Section 804(f)(3)(B) of the Act when they refused to make a reasonable accommodation to their no pet policy and discriminated on the basis of disability in violation of the Act. 42 U.S.C. § 3604(f)(1) and 3604(f)(3)(B); 24 C.F.R. § 100.204(a) (2012).

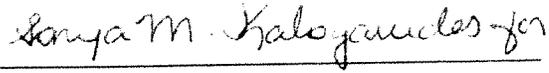
3. As described in paragraph C.5 above, Respondent Sally Lund violated Section 804(c) of the Act by telling Complainant that she should not be so emotionally dependent on her cats, thereby discriminating against her on the basis of disability. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(c)(1) (2012).
4. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages including emotional distress, lost housing opportunity, out of pocket expenses and humiliation.

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C §§ 3604(c), 3604(f)(1)(A), and 3604(f)(3)(B) and requests that an Order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
2. Pursuant to 42 U.S.C. § 3612(g)(3), enjoins Respondents and all other persons in active concert or in participation, from discriminating against any person based on disability in any aspect of sale, rental, use, or enjoyment of a dwelling;
3. Pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1) (2012), assesses a civil penalty against Respondent for each violation of the Act;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for the emotional distress and financial costs associated with Respondents' discriminatory conduct.
5. Requires Respondents to establish a non-discriminatory reasonable accommodation policy and practice that allows persons with a disability who need assistance animals to have them in any of their rental properties.
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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