

**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)
)
██████████,)
and The Fair Housing Council of Northern)
New Jersey,)
)
Charging Party,)
)
v.)
)
Michael Pontoriero and)
Mary Ann Pontoriero,)
)
Respondents.)
_____)

**FHEO No. 02-10-0796-8
FHEO No. 02-10-0173-8**

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about December 1, 2009, ██████████ (“Complainant ██████████”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Respondents refused to rent him an apartment because of his race/color (African – American/Black), in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (“Act”). On August 9, 2010, the Fair Housing Council of Northern New Jersey (“FHC”) filed a verified complaint with HUD, alleging that Respondents deny or discourage the rental of housing to applicants on the basis of race/color (African-American/Black) in violation of the Act.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (2). The Secretary has delegated to the General Counsel, who has retained and re-delegated to Regional Counsel, the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this

Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(b).

HUD's efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C § 3610(b).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the above-mentioned verified complaints and the Determination of Reasonable Cause, Respondents are charged with violating 42 U.S.C §§ 3604(a), (b), and (c) as follows:

A. LEGAL AUTHORITY

1. It is unlawful to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race and/or color. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a)-(b).
2. It is unlawful to impose different terms, conditions, or privileges related to the rental of a dwelling because of race and/or color. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a).
3. It is unlawful to make, or cause to be made, any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race and/or color. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(c).

B. PARTIES AND SUBJECT PROPERTIES

4. Complainant [REDACTED] is an "aggrieved person," as defined by 42 U.S.C. § 3602(i), and enjoys protection under the Act based upon his race and color (African-American/Black).
5. FHC is a non-profit organization dedicated to promoting equal opportunity in the rental of housing and eliminating housing discrimination throughout the state of New Jersey. To that end, FHC investigates alleged discriminatory treatment and employs "testers" who simulate housing transactions to evaluate compliance with the Act. FHC expended staff, time and other resources to investigate and respond to the discriminatory rental practices described in this Charge, diverting resources away from other FHC activities. FHC is an "aggrieved person," as defined by 42 U.S.C. § 3602(d) and (i).
6. At all times relevant to this Charge, Respondents Michael and Mary Pontoriero owned a 100% interest in the subject rental properties, two apartment buildings, located at 44 Beech Street (15 units) and 15 Morgan Place (17 units), in North Arlington, New Jersey.
7. At all times relevant to this Charge, Respondents Michael and Mary Pontoriero were the landlords of the subject rental properties.
8. Respondents' apartment buildings are "dwellings" within the meaning of 42 U.S.C. § 3602(b) and 24 C.F.R. § 100.20.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

Complainant [REDACTED] Factual Allegations

9. On or about July 28, 2009, Complainant [REDACTED], while searching for a place to live, saw an advertisement in the newspaper *The Observer*, placed by Respondents, for a one-bedroom apartment located at 44 Beech Street, North Arlington, New Jersey. Complainant [REDACTED] telephoned the contact number listed in the advertisement and left a voicemail message requesting to see the apartment. Respondent Michael Pontoriero returned Complainant [REDACTED] call and scheduled an appointment to view the vacant apartment at noon on July 29, 2009. Respondent Michael Pontoriero asked Complainant [REDACTED] to meet him outside the entrance to 44 Beech Street.
10. Prior to the appointment on July 29, 2009, Complainant [REDACTED] and Respondent Michael Pontoriero spoke briefly on the telephone. Respondent Michael Pontoriero confirmed that he and Complainant [REDACTED] would meet at the entrance to 44 Beech Street, and each indicated that they were minutes from the building. Complainant [REDACTED] arrived at the agreed-upon location a few minutes before noon. Complainant [REDACTED] waited in front of the building for thirty minutes and then placed three telephone calls to Respondent Michael Pontoriero, leaving a voicemail each time. Respondent Michael Pontoriero never appeared at the scheduled appointment and failed to respond to Complainant [REDACTED] telephone calls and voicemail messages.
11. On information and belief, Respondent Michael Pontoriero became aware that Complainant [REDACTED] was African-American/Black.
12. Respondent Michael Pontoriero continued to advertise and seek tenants for the apartment.
13. Believing that Respondent Michael Pontoriero had failed to appear for the scheduled appointment or respond to his telephone calls because of his race and/or color, Complainant [REDACTED] sought assistance from FHC on or about August 6, 2009.

Complainant FHC's Allegations

14. FHC constructed a test to determine whether Respondents' actions constituted illegal housing discrimination.

Test 1: August 6, 2009

15. On or about August 6, 2009, responding to a rental advertisement in *The Observer*, two female testers - one Caucasian and one African-American/Black - contacted Respondents about renting an apartment.
16. During the telephone contact, the African-American/Black tester informed Respondent Michael Pontoriero that she was looking to move September 1. Initially, Respondent Michael Pontoriero stated he was not sure what units would be available then and she

should call back. The tester asked if she could see the units currently available and Respondent Michael Pontoriero agreed to meet at the front entrance of 15 Morgan Place at 2 PM. Shortly before the scheduled meeting time, the African-American/Black tester called Respondent Michael Pontoriero to inform him that she was running late. Respondent Michael Pontoriero stated that he too was running late and he would still meet the tester as agreed. The African-American/Black tester arrived at the agreed-upon meeting place at 2:10 PM. At 2:15 PM she called Respondent Michael Pontoriero twice because he was not at the meeting place, but received no answer. Respondent Michael Pontoriero failed to appear for his scheduled appointment with this tester. Respondent Michael Pontoriero never returned the African-American tester's phone calls.

17. On information and belief, Respondent Michael Pontoriero became aware that this tester was African-American/Black.
18. Three hours later, at 5:15 PM on August 6, 2009, the Caucasian tester contacted Respondent Michael Pontoriero to say that she was running a few minutes behind schedule for their appointment. Respondent Michael Pontoriero stated that he would wait for the tester. Respondent Michael Pontoriero appeared for his appointment and spent thirty minutes showing her two units at 15 Morgan Place (Apt. #3 and #6). Respondent Michael Pontoriero encouraged this tester to submit an application and repeatedly attempted to schedule an appointment for her to return with her husband so that he too could view the property. During this appointment, Respondent Michael Pontoriero stated that the building was "in a nice neighborhood." He related how another rental applicant had decided to take an apartment in a section of Newark he described as "where all the blacks are."
19. After the appointment, Respondent Michael Pontoriero telephoned the Caucasian tester several times, leaving messages urging her to rent a unit. On August 9, 2009, Respondent telephoned the Caucasian tester and left a telephone message offering to "work out something on the price."

Test 2: August 7, 2009

20. On August 7, 2009, two additional testers - a Caucasian male and an African-American/Black female - telephoned Respondent Michael Pontoriero and scheduled appointments in the afternoon to see a unit at 15 Morgan Place.
21. The Caucasian tester explained to Respondent Michael Pontoriero on the phone that he was interested in renting a unit on September 1, and Respondent stated that there would be units available.
22. The Caucasian tester arrived five minutes early for his 2:30 PM appointment and received a message from Respondent Michael Pontoriero stating he would be delayed. At or about 2:47 PM, the Caucasian tester telephoned Respondent Michael Pontoriero. Respondent Michael Pontoriero stated that he was across the street. Moments later, Respondent Michael Pontoriero arrived and spent approximately twenty minutes showing

the Caucasian tester two units (Apt. #3 and #6). Respondent Michael Pontoriero answered questions regarding the apartment and offered that the units have a nice view of New York and that the street parking is "not so bad." Respondent Michael Pontoriero encouraged the Caucasian tester to have his wife visit the apartment as well.

23. Respondent Michael Pontoriero made three follow-up calls urging this tester to apply for one of the units. On August 14, 2009, Respondent left a telephone message for this tester offering to "drop the price a little bit."
24. The African-American/Black tester made an appointment to meet Respondent Michael Pontoriero at 15 Morgan Place at 3:00 PM on August 7, 2009. Because the African-American/Black tester was late for her appointment, Respondent Michael Pontoriero telephoned her to ask if she was still meeting him. The tester informed Respondent Michael Pontoriero that she had been delayed and asked if they could meet at 4:00 PM. Respondent Michael Pontoriero agreed. At 3:50 PM, the tester telephoned Respondent Michael Pontoriero and indicated that she would arrive in 20 minutes. Again, Respondent Michael Pontoriero agreed to wait. When the African-American/Black tester arrived at the location at 4:10 PM, she observed a "Caucasian man with Black hair, regular build, approximately 65 years old pulling weeds." This man, who identified himself as "John," informed the African-American/Black tester that Respondent Michael Pontoriero had left. The tester telephoned Respondent Michael Pontoriero, but he did not answer. Respondent Michael Pontoriero never arrived for the scheduled appointment with the African-American/Black tester and never returned her voicemail messages.
25. On information and belief, Respondent Michael Pontoriero became aware that this tester was African-American/Black.

Test 3: November 4, 2009

26. On November 4, 2009, FHC instructed two testers - a Caucasian male and an African-American/Black female - to contact Respondent Michael Pontoriero by telephone responding to an advertisement placed in *The Observer* for a one-bedroom apartment. Both testers were given appointments to view the apartment that same evening. Respondent Michael Pontoriero asked each to meet him in front of the building.
27. During the initial telephone contact, the Caucasian tester inquired as to the monthly rent and was told it was \$1,000.
28. The Caucasian tester met with Respondent Michael Pontoriero on November 4, 2009, at 6:15 PM. Respondent Michael Pontoriero met the Caucasian tester at the front entrance and stated that he would go get the keys. Respondent Michael Pontoriero walked around to the side of the building and quickly returned with the keys. The Caucasian tester inspected Unit #7 at 15 Morgan Place. Respondent Michael Pontoriero walked with the tester from room to room, pointing out the marketable features of the apartment. Respondent Michael Pontoriero did not mention a lack of parking spaces in the vicinity of the building to this tester.

29. As the Caucasian tester was exiting the building, the African-American/Black tester was arriving. The African-American/Black tester asked the Caucasian tester if he was Mike. The Caucasian tester replied that Mike was inside.
30. The African-American/Black tester waited at the front entrance of 15 Morgan Place for several minutes. Because it was dark and she was waiting alone, the African-American/Black tester began to feel anxious and called Respondent Michael Pontoriero several times without answer. Respondent Michael Pontoriero finally appeared, walking toward the entrance from the back of the building. Respondent Michael Pontoriero did not immediately introduce himself. The African-American/Black tester asked if he was "Mike." Respondent Michael Pontoriero indicated that he was Mike and opened the front door. The first comment Respondent Michael Pontoriero made to the African-American/Black tester as they walked up the stairs to inspect unit #7 was that the monthly rent was \$1,100. Respondent Michael Pontoriero was also discouraging regarding parking, repeatedly stressing that there was a lack of parking spaces for the building. When the African-American/Black tester viewed the apartment, Respondent Michael Pontoriero did not accompany her from room to room.

Test 4: November 30 – December 1, 2009

31. On November 30, 2009, FHC instructed two testers - a Caucasian male and an African-American/Black female - to contact Respondent Michael Pontoriero by telephone and state that they were looking to rent the one-bedroom apartment he had recently listed in *The Observer*.
32. The Caucasian tester made an appointment to see the unit at 4:30 that same day. The African-American/Black tester contacted Respondent Michael Pontoriero and made an appointment to see the apartment at 10:30 AM on December 1, 2009.
33. The Caucasian tester arrived at 15 Morgan Place at 4:45 PM on November 30, 2009, and waited for Respondent Michael Pontoriero at the entrance, as instructed during the initial telephone contact. While waiting, the tester noticed a man drive slowly past the building. The tester later identified this man as Respondent Michael Pontoriero. Respondent Michael Pontoriero took the Caucasian tester to view unit #7, and walked around with the tester pointing out various features. Respondent Michael Pontoriero told the tester, "[c]ome down to my car and I'll give you an application." The tester reported that Respondent Michael Pontoriero opened the trunk of his car and gave him an application and a credit report authorization form.
34. On December 1, 2009, the African-American/Black tester arrived at 15 Morgan Place at 10:44 AM, after having called Respondent Michael Pontoriero ten minutes before to confirm their appointment. When the tester arrived she waited in the vestibule area of 15 Morgan Place for several minutes and then called Respondent Michael Pontoriero. Respondent Michael Pontoriero indicated that he would be there shortly. Respondent Michael Pontoriero arrived, asked the tester her name, and stated he would get the keys.

When Respondent Michael Pontoriero did not return after several minutes, the tester used the intercom system in the vestibule and pressed the button labeled "Super." A female answered and told the tester to "wait." Several more minutes passed and the tester walked outside to find Respondent Michael Pontoriero weeding along the side of the building. Respondent Michael Pontoriero then came inside and accompanied the tester to the second floor apartment. Respondent Michael Pontoriero opened the door to a unit at the end of the hall and told the tester to look around. Respondent Michael Pontoriero curtly answered questions about the unit from the entryway, but did not show the tester around the unit. The tester indicated an interest in moving in by December 15, 2009, and Respondent Michael Pontoriero told her, "I showed it to a man last night and he might take it." Respondent Michael Pontoriero told the tester to call him if she was "really interested," even though the tester had already informed him that she was interested and inquired about the application process and rental fees. Respondent Michael Pontoriero did not give this tester an application or attempt to follow-up her visit with a telephone call.

35. Later that evening, Respondent Michael Pontoriero called the Caucasian tester from the November 30th showing and left a voicemail message saying, "call me if you want the apartment."

D. FAIR HOUSING ACT VIOLATIONS

36. As described in paragraphs 14-35 above, Respondents violated 42 U.S.C § 3604(a) and (b) by discriminating against Complainant FHC when its testers applied for, or attempted to apply for, vacant units that Respondents offered for rental at their North Arlington apartment buildings based on their race and/or color. In particular, Respondents discouraged FHC's African-American/Black testers from applying for vacant rental apartments, and refused to make rental apartments available to its African-American/Black testers by, *inter alia*: (1) failing to appear for scheduled appointments; (2) failing to return phone calls; (3) failing to provide rental applications; and (4) failing to offer the same favorable rental terms that they offered to Caucasian testers.
37. As described in paragraphs 9-13 above, Respondents violated 42 U.S.C § 3604(a) and (b) because they refused to meet with Complainant [REDACTED] or take his telephone calls when he attempted to view a vacant apartment that Respondents had advertised for rental based on Complainant's race and/or color.
38. As described in paragraph 18, Respondents violated 42 U.S.C § 3604(c) when Michael Pontoriero made discriminatory comments and statements that demonstrated a preference for Caucasian tenants and a bias and hostility towards African-American/Black rental applicants and tenants.

E. DAMAGES

39. By engaging in the unlawful conduct described above, Respondents have caused Complainant [REDACTED] to suffer great and irreparable loss and injury, including, but not

limited to, out-of-pocket damages, humiliation, embarrassment, emotional distress and a deprivation of his right to rental housing regardless of race and/or color.

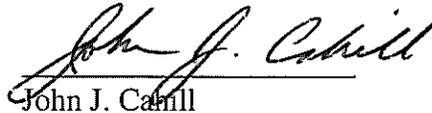
40. Complainant FHC has also suffered damages as a result of Respondents' discriminatory conduct because its time and resources were directed away from its services and programs, including education and outreach, and towards the investigation of the discriminatory conduct and enforcement of fair housing laws against Respondents. Further, Complainant FHC's mission to eliminate housing discrimination and to ensure equal housing opportunities for all was frustrated, and its constituents harmed, by Respondents' discriminatory housing practices.

III. CONCLUSION

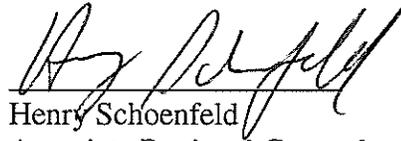
WHEREFORE, the Secretary of HUD, through the office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), (b), and (c), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of race and/or color in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);
3. Mandates Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainants for damages caused by Respondents' discriminatory conduct;
5. Awards a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671 (2011); and
6. Award such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

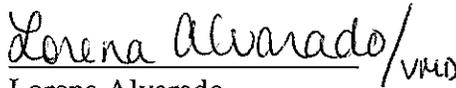
Respectfully submitted,



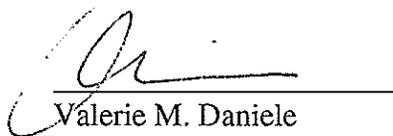
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Date: June 19, 2013