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

Secretary, United States Department of Housing and Urban Development, on behalf of Complainant [redacted],	)	
Charging Party,	)	ALJ No. _____
v.	)	
	)	FHEO No. 09-14-0267-8
Gordon Jong, Nancy Jong, Michael Jong, and Sharon Jong,	)	
Respondents	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On December 30, 2013, Complainant [redacted] timely filed a complaint with the U.S. Department of Housing and Urban Development ("HUD") alleging that Respondents Gordon Jong, Nancy Jong, and American Realty & Construction, Inc., discriminated against her on the basis of disability in violation of the Fair Housing Act ("the Act"), as amended, 42 U.S.C. §§ 3601-19. On April 22, 2014, the complaint was amended to remove American Realty & Construction, Inc., as a respondent. On June 25, 2014, the complaint was amended again to add Michael Jong and Sharon Jong as respondents.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons 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 that authority to the General Counsel, who has re-delegated that authority to the Regional Counsel. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region IX has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case, and she has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the findings contained in the Determination of Reasonable Cause, Respondents Gordon Jong, Nancy Jong, Michael Jong, and Sharon Jong are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability[1] of: that buyer or renter; a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

2. It is unlawful to discriminate 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 with such dwelling, because of a disability of: that person; a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

3. For the purpose of 42 U.S.C. § 3604(f), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

4. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by section 3603, 3604, 3605, or 3606 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

B. Parties and Subject Property

5. [redacted] has mental disabilities, which substantially limit her ability to socially interact, work, and live independently. [redacted] has a disability as defined by the Act. 42 U.S.C. § 3602(h).

6. [redacted] is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i).

7. At all times relevant to this Charge, [redacted] rented an apartment in a 13-unit multifamily apartment complex located at 715 Leavenworth Street, San Francisco, California 94109 ("the

[1] The Act uses the term "handicap" instead of the term "disability." However, both terms have the same legal meaning and may be used interchangeably. This Charge uses the term "disability."

Subject Property"). [redacted] unit at the Subject Property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b).

8. At all times relevant to this Charge, Respondents Gordon Jong, Nancy Jong, Michael Jong, and Sharon Jong owned the Subject Property as tenants in common.

9. At all times relevant to this Charge, Respondent Gordon Jong ("Respondent Jong") managed the day-to-day operations of the Subject Property on behalf of Respondents.

C. Factual Allegations

10. [redacted] has rented a unit at the Subject Property since April 1993.

11. [redacted] lease contains a provision that states: "No pets shall be brought on the premises without the prior consent of the Owner."

12. In April 2012, [redacted] obtained a letter from her doctor at the time, [redacted], indicating that [redacted] had an emotional impairment and that she was prescribing "an emotional support animal that will assist in coping and improve this condition." [redacted] obtained such a support animal, a cat named Minou, that same month.

13. In early October 2013, Respondent Jong discovered that [redacted] had Minou in her unit. Respondent Jong informed [redacted] that she must remove Minou from the unit or face eviction.

14. On or around October 6, 2013, [redacted] sent to Respondent Jong the letter from Dr. [redacted] prescribing an emotional support animal for her.

15. On October 17, 2013, Respondent Jong's attorney sent [redacted] a letter stating that Respondent Jong "does not agree to the maintenance of the cat in the premises" and demanding that Dr. [redacted] "identify with specificity the condition that requires [redacted] use of such a comfort animal." Respondent's attorney also demanded that Dr. [redacted] explain why alternative accommodations would not be effective, stating that "there is no requirement that my client must accept the maintenance of a cat." Respondent Jong's attorney further explained, "In lieu of a cat, my client or client's own expert could recommend the use of a goldfish or other aquarium pet. My client is entitled to have these possibilities addressed by Dr. [redacted] as well as by my client's own expert."

16. In his October 17, 2013 letter, Respondent Jong's attorney also stated that if the parties could not reach a resolution regarding [redacted] cat, Respondent Jong was prepared to file a lawsuit against [redacted] regarding her reasonable accommodation request and would depose Dr. [redacted] regarding the basis of her determination that [redacted] required an emotional support animal as well as her qualifications to make such a determination.

17. In response to the request from Respondent Jong's attorney, on October 28, 2013, [redacted] mailed to Respondent Jong an additional letter from her therapist, [redacted], dated October 24, 2013. In his letter, [redacted] indicated that [redacted] faced limitations regarding social interaction, coping with stress, and mood regulation. [redacted] therefore strongly recommended that [redacted] keep her emotional support animal to improve her quality of life and help her live independently.

18. Furthermore, on November 2, 2013, [redacted] also mailed to Respondent Jong a letter from her current doctor, [redacted], dated November 1, 2013. In the letter, Dr. [redacted] identified [redacted] disabling impairments and explained that they substantially impacted her day-to-day functioning and ability to live independently. Dr. [redacted] stated that she hoped [redacted] would continue using her emotional support animal because it had been therapeutically helpful to her.

19. Nonetheless, despite having received verification of [redacted] need for an emotional support animal from three different medical providers, on November 12, 2013, Respondent Jong served [redacted] with a Three Day Notice to Perform Covenant or Quit ("Three Day Notice"). The Three Day Notice stated that [redacted] had violated the terms of the lease by maintaining a cat in the unit without Respondents' prior written consent. The Three Day Notice further stated that [redacted] must remove all "pets" from the premises within three days or face eviction.

20. Following the Three Day Notice, Respondent Jong's attorney sent a letter to [redacted], dated November 13, 2013, stating that [redacted] doctor "failed to explain the reason that another service pet, i.e. goldfish, hamster, etc., could not be used" as an emotional support animal instead of a cat. Respondent Jong's attorney further stated that, assuming [redacted] had a qualified disability, Respondent Jong would not necessarily be required to accept "a furry pet such as a cat or dog." The letter further stated that Respondents would seek an examination of [redacted] by their own psychiatrist and threatened to broadly "review all files, notes and documents, pursuant to subpoena, prepared and maintained by [redacted]] psychiatrist." The letter concluded by warning [redacted] to be prepared to "incur that litigation expense."

21. In fear of being evicted from her home by Respondents, on November 13, 2013, [redacted] sent Minou to live with her friend.

22. On November 21, 2013, Respondent Jong inspected [redacted] apartment to confirm that Minou was no longer in the unit.

23. On January 17, 2014, [redacted] attorney sent a letter to Respondents, through their attorney, regarding her client's request for a reasonable accommodation. [redacted] attorney included two new letters from Dr. [redacted] and [redacted] regarding [redacted] disability-related need for her emotional support animal.

24. [redacted] letter, dated January 9, 2014, identified [redacted] emotional

impairments and reiterated that [redacted] had a disability by virtue of these impairments. He also stated that [redacted] cat – "an intelligent and interactive animal able to bond with her and provide nurturing companionship" – qualified as an emotional support animal and satisfied [redacted] therapeutic needs in a way that a fish or rodent could not.

25. Dr. [redacted] letter, dated January 10, 2014, also reiterated that [redacted] was disabled as a result of her impairments. Dr. [redacted] explained that pets that are able to communicate with and comfort their owners in a tangible way with body warmth and soothing sounds are most commonly used as emotional support animals. Dr. [redacted] indicated that cats in particular have been widely used in certain patient populations because of their calming presence. Dr. [redacted] stated that [redacted] had experienced emotional hardship as a result of her cat's removal from her unit, and expressed hope that [redacted] would be permitted to resume living with her cat so as to avoid further emotional harm to her.

26. [redacted] received no response from Respondents concerning her renewed request for a reasonable accommodation, nor any response to the additional medical letters.

27. On February 5, 2014, [redacted] attorney sent another letter to Respondent Jong's attorney regarding her client's request for a reasonable accommodation.

28. Respondent Jong's attorney finally responded to [redacted] attorney by letter dated February 20, 2014. In his response, he provided additional questions that he insisted [redacted] healthcare providers must answer in order for Respondent Jong to make a determination regarding her reasonable accommodation request. For example, Respondent's attorney demanded the résumés of [redacted] healthcare providers and asked whether they had ever visited [redacted] premises, whether they had ever seen [redacted] cat interact with her, and if they believed that "the prescription of a comfort animal is not as significant as that of prescribing medication." Respondent's attorney stated that if Respondent Jong failed to receive answers to these and other questions, his refusal to allow the cat would be considered to be reasonable.

29. On April 28, 2014, Respondent Jong's attorney sent a letter to [redacted] attorney stating that his client had agreed to allow [redacted] to have a cat as a reasonable accommodation, provided that she keep only the one cat and submit a photograph and the name of the "pet." Respondent Jong's attorney added that his client was ready to have the matter litigated in discovery if [redacted] wished to pursue her request further.

30. [redacted] brought Minou back to her apartment within approximately one week after receiving notice of Respondent Jong's decision.

31. As a result of Respondents' actions, [redacted] suffered actual damages, including but not limited to emotional distress and economic loss.

D. Legal Allegations

32. As described in paragraphs 10-31 above, Respondents have violated the Act because they made housing unavailable to [redacted] by denying her reasonable accommodation request to keep her emotional support animal at her apartment when such an accommodation may be necessary to afford her an equal opportunity to use and enjoy her dwelling. 42 U.S.C. § 3604(f)(1) and (f)(3)(B); 24 C.F.R. §§ 100.202(a) and 100.204(a).

33. As described in paragraphs 10-31 above, Respondents have violated the Act because they discriminated in the terms, conditions, or privileges of [redacted] tenancy by denying her reasonable accommodation request to keep her emotional support animal at her apartment when such an accommodation may be necessary to afford her an equal opportunity to use and enjoy her dwelling. 42 U.S.C. § 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).

34. As described in paragraphs 10-31 above, Respondents have violated the Act by retaliating against [redacted] when they served her with the Three Day Notice, threatened to have her examined by a psychiatrist, in response to her request to keep her emotional support animal, and threatened to obtain all of her medical records. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the Regional Counsel for Region IX, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of the Act and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. § 3601, *et seq.*;

2. Enjoins Respondents, their agents, their employees, their successors, and all others in active concert or participation with any of them from discriminating because of disability against any person in any aspect of the sale or rental of a dwelling, pursuant to 42 U.S.C. § 3612(g)(3);

3. Requires Respondents, their agents, and their employees to adopt and implement a policy consistent with HUD regulations and guidance on granting reasonable accommodations for applicants and tenants with disabilities when such accommodation may be necessary for the use and enjoyment of a dwelling, including granting reasonable accommodations that enable individuals with disabilities to keep assistance animals in their dwellings;

4. Requires Respondents, their agents, and their employees to attend a training that addresses the Act's prohibitions against disability discrimination;

5. Awards such damages as will fully compensate [redacted], pursuant to 42 U.S.C. § 3612(g)(3);

6. Assesses a civil penalty against each respondent for his or her violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

7. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 30 day of September, 2014.

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