

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 Sharon Spears)	
and her minor child, Cierra Y. Lewis,)	
)	HUD ALJ No.
Charging Party,)	FHEO No. 05-04-0755-8
)	
v.)	
)	
Walter Perlick Family Trust, Robert Perlick,)	
individually, and as Co-Trustee,)	
Dudley Godfrey Jr., Co-Trustee,)	
Tony Russell, and Patricia Russell,)	
)	
Respondents.)	
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CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about May 17, 2004, the complainant, Sharon Spears (“Complainant Spears”), filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondents Walter Perlick Family Trust, Robert Perlick, Co-Trustee, Dudley Godfrey, Jr., Co-Trustee, and Patricia Russell violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by discriminating on the basis of familial status, in violation of 42 U.S.C. § 3604(a) and (c). On August 24, 2004, the HUD Complaint was amended to add both Robert Perlick, individually, and Tony Russell as Respondents.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg.13121), who has redelegated to the Regional Counsel (67 Fed.Reg. 44234), 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 Office of Fair Housing and Equal Opportunity Region V Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on familial status, and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents Walter Perlick Family Trust, Robert Perlick, individually and as Co-Trustee, Dudley Godfrey, Jr., Co-Trustee, Patricia Russell, and Tony Russell are charged with discriminating against Complainant Sharon Spears and her minor child, Cierra Y. Lewis, aggrieved persons as defined by 42 U.S.C. § 3602(i), on the basis of familial status, in violation of 42 U.S.C. § 3604(a) and (c) as follows:

1. It is unlawful to refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, sex, familial status, religion, disability, or national origin. 42 U.S.C. § 3604(a); see also 24 C.F.R. § 100.60(a); 24 C.F.R. § 100.60(b)(3), (b)(5).
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 that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); see also 24 C.F.R. § 100.75(b); 24 C.F.R. § 100.75(c)(1) and (2).
3. On information and belief, at all times relevant to this Charge, Respondent Walter Perlick Family Trust owned the property located at 4215 West Martin Drive, Milwaukee, Wisconsin 53218 ("subject property"). The subject property is a 15-unit apartment building that is comprised of efficiency, one and two bedroom apartments. At all times relevant to this Charge, the Co-Trustees of the Walter Perlick Family Trust were Respondents Robert Perlick and Dudley Godfrey, Jr. The subject property is not entitled to the housing for older persons exemption found under the Act at 42 U.S.C. § 3607(b).
4. At all times relevant to this Charge, Respondent Robert Perlick was the principal beneficiary of the trust and made the decisions, and policies relating to the rental and management of the subject property.
5. At all times relevant to this Charge, Respondent Tony Russell was the superintendent of the subject property and his duties included showing apartments to prospective tenants, cleaning the apartments when a tenant moved out, cutting the grass, putting in light fixtures, and other such duties. At all times relevant to this Charge, Respondent Tony Russell lived at the subject property with his wife, Respondent Patricia Russell. Respondent Patricia Russell answered phone calls and provided information to prospective renters regarding the subject property, and on occasion showed units to prospective renters when Respondent Tony Russell was not available to do so.
6. At all times relevant to this Charge, Complainant Spears was a single mother with a minor child, Cierra Y. Lewis; her date of birth is December 28, 1992.

7. In or around October 2003, Complainant was looking for a two-bedroom apartment to rent. On or about October 7, 2003, Complainant found an advertisement on the website, www.jsonline.com, for the subject property that advertised one and two bedroom apartments available for rent. The Milwaukee Journal Sentinel's website is www.jsonline.com and has the capability to search for apartment rentals online.
8. An advertisement for the subject property appeared in the Milwaukee Journal Sentinel in September and October of 2003, which read, "Martin Dr. W. 4215 Quiet neighborhood. 1 and 2 BR, Heat, appl. and A/C, 931-0057."
9. Respondent Robert Perlick placed the advertisement for the subject property in the Milwaukee Journal Sentinel, and determined the advertisement's content. The advertisement does not direct prospective renters to ask specifically for the superintendent of the building or for Respondent Tony Russell when calling the listed telephone number.
10. On or about October 7, 2003, Complainant called (414) 931-0057, the number listed in the advertisement. Complainant reached a recording that indicated that the person at the number she was calling had the privacy manager service on and her number was not identifiable. The recording instructed Complainant to say her name, which Complainant did. A woman then picked up the phone and asked Complainant who she was. Complainant explained that she was inquiring about an apartment for rent. The woman asked Complainant if she had any children. Complainant responded that she had one child and the woman answered, "no kids." Complainant asked the woman what she meant by "no kids," and the woman explained, "no kids allowed" and hung up on Complainant.
11. Immediately after her telephone call with the woman, Complainant called her mother, Katherine Spears, and told her about the conversation she had with the woman. Katherine Spears then called (414) 931-0057, and a woman answered the phone. Ms. Spears told the woman that she was interested in an apartment that was advertised for rent. The woman asked her how many people the rental was for and she told her that it was for two people. The woman then asked her the ages of the two people. Ignoring the question, Ms. Spears repeated that the rental was for two people. The woman again asked the ages of the two people. Ms. Spears stated that one of the people was 11 years old, and the woman replied, "I'm sorry we don't rent to children." Ms. Spears warned the woman that it was illegal to say that she does not rent to children. The woman responded, "I'm only doing what I was told," and hung up the phone on Ms. Spears.
12. On or about October 13, 2003, Complainant called the Metropolitan Milwaukee Fair Housing Council ("MMFHC") and filed a complaint with them. MMFHC conducted testing as a result of the complaint.

13. On or about October 23, 2003, Tester A called (414) 931-0057 and a male answered. Tester A explained that she spoke to Respondent Tony Russell the previous week about viewing a two bedroom apartment and wanted to know if it was still available. The male speaker, who later identified himself as Tony Russell, confirmed that a two-bedroom apartment was still available for rent. Tester A asked when the apartment was available, and Respondent Tony Russell, misunderstanding the question, replied, "\$550.00, no wait, \$525.00 and \$550.00 with parking." Tester A verified that he was referring to the rental amount, and Respondent Tony Russell responded affirmatively. Tester A asked if the apartment was available for November 1, 2003, and Respondent Tony Russell explained that it was available immediately for anyone that wanted it. Tester A volunteered that the apartment was for herself and her three-month-old baby, and asked if he was able to show it to her. He explained to her that it was available to be shown, but that she would "need to be in the other building, because this is a seniors building." She clarified that 4215 was a seniors building, and Respondent Tony Russell replied affirmatively. He explained further that there were kids and young adults in the other building. Tester A asked if the building he was referring to was also on Martin Drive, and he replied that it was not. She asked if there were any available units in the other building, and he replied negatively. Tester A again asked if the subject property was for seniors, and again Respondent Tony Russell replied affirmatively.
14. On or about October 23, 2003, at approximately 2:29 p.m., Tester B called (414) 931-0057 and spoke with a man who later identified himself as Tony Russell, the manager of the subject property. Tester B explained that she was calling about a two-bedroom apartment that she saw for rent on www.jsonline.com. Respondent Tony Russell asked how many people the apartment was for, and Tester B replied that it was for two people. Respondent Tony Russell then inquired about the two people, and Tester B explained that the apartment was for herself and her husband. Respondent Tony Russell said to Tester B, "Okay, because this is senior housing." Tester B told Respondent Tony Russell that she did not have any children. Tester B then verified that a two-bedroom apartment was available. Respondent Tony Russell confirmed her understanding. Tester B asked for the rental amount and Respondent Tony Russell responded that it was \$525.00. Tester B confirmed that the apartment was available in November 2003, and Respondent Tony Russell stated that it was currently available.
15. Again on or about October 23, 2003, at approximately 5:59 p.m., Tester B called (414) 931-0057 and told the man, who later identified himself as Tony Russell, that she had spoken to him earlier about the apartment for rent. She then asked if she could see the apartment that night, before 8:00 p.m. Respondent Tony Russell asked if she could get to the subject property by 6:30 p.m. Tester B replied that she could and asked if it was correct that he was in unit #1. Respondent Tony Russell responded affirmatively.
16. On or about October 23, 2003, at approximately 6:37 p.m., Tester B viewed the subject property, escorted by Respondent Tony Russell. Tester B explained that she was not asked to fill out an application, but was told that applications are taken over the telephone. Respondent Tony Russell told her to contact Respondent Robert Perlick and gave her a make-shift business card with the name Robert Perlick and the telephone

number 1 (262) 786-7941 on it. Respondent Tony Russell told Tester B that the building is quiet, and that everyone that lives there is over 30 years old. He further emphasized that there was no loud music, drinking or pot smoking. Respondent Tony Russell also told Tester B during her visit that no children were allowed to live in the building. Tester B was shown unit 6 at the subject property, which is a two-bedroom apartment on an upper level. She was told the rent was \$525.00, and that she could get a 2-year lease. Tester B indicated that the apartment was vacant and she was informed that it was available for rental on the date she viewed it.

17. Respondents' June 9, 2004 Answer to HUD's complaint denies that Respondents discriminated against Complainant. Further, they allege that Respondent Patricia Russell was not an employee of the Walter Perlick Family Trust. The June 9, 2004 Answer, however, does admit that Respondent Patricia Russell answered the phone at her home at telephone number (414) 931-0057, and spoke with an unidentified female caller. Respondents' further contend that Respondent Patricia Russell started to explain that she did not know "whether any children currently lived in the complex," but the caller misunderstood and responded rudely, which resulted in Respondent Patricia Russell terminating the call.
18. Respondents' September 17, 2004 Answer to HUD's Amended Complaint describes instructions given to both Respondent Tony Russell and Respondent Patricia regarding their management of the subject property by Respondent Perlick as if they were both his employees. Respondents' Answer also contends that Respondent Tony Russell was to show vacant apartments to anyone that requested to see them, and that Respondent Tony Russell was never instructed by Respondent Robert Perlick that families with children were not permitted to live at the subject property, nor was he told to inquire into the number and ages of prospective tenants.
19. Respondent Tony Russell verified that he managed two properties for Respondent Robert Perlick, one being the subject property and another property on Highland Drive¹. Respondent Tony Russell stated that he lives at the subject property with his wife, Patricia Russell. He confirmed that the telephone number (414) 913-0057, in the advertisement, is their personal phone number. Respondent Tony Russell explained that his role is to show prospective tenants the apartments, tell them the rent, and then give them Robert Perlick's home phone number to call regarding the application.
20. Respondent Tony Russell confirmed that his wife, Patricia Russell, might have shown an apartment to a prospective tenant, but that he is usually the one to do so. He continued to explain that if a prospective tenant comes to the subject property and wants to view it, and he is not there, then his wife could show the unit. Further, he admitted telling a prospective tenant that the building was for seniors only, but he conceded that he does not consider the building for persons 55 years or 62 years or older.
21. Respondent Tony Russell confirmed that no families with children lived in either property that he managed for Respondent Robert Perlick.

¹ The property is located at 4260 W. Highland Blvd., Milwaukee, Wisconsin 53208.

22. Respondent Patricia Russell confirmed that the telephone number (414) 931-0057, listed in the advertisement, was their personal home telephone number. She also admitted that she would answer phone calls regarding vacancies at the subject property. Respondent Patricia Russell indicated that Complainant never provided her name during their phone conversation, but that she assumes that Complainant is the woman that started yelling at her when she stated that there were “no kids.” Respondent Patricia Russell explained that the woman admonished her for discriminating and told her that she could not refuse to rent to families with children.² Respondent Patricia Russell indicated that she tried to explain what she meant to the woman, but the woman kept yelling so she told the woman to have a nice day and hung up the phone. Respondent Patricia Russell explained that she told the woman on the phone “no kids,” but meant that at the time of the call no children resided in the building.
23. Respondents provided the names, Nozibele Watson and Virinique Downs, as two families with children that previously resided at the subject property. Nozibele Watson stated that she lived at the subject property from May 1998 through April 2003. Ms. Watson confirmed that her son lived with her from May 1998 until January 2000. She indicated that her son was 22 years old when he moved in with her to attend Marquette University.
24. Virinique Downs confirmed that she lived at the subject property from October 1999 through May 2001. Ms. Downs verified that when she moved into the subject property in October 1999 she did not have children. Ms. Downs’ son was born on August 13, 2000. Ms. Downs explained that she moved out of the subject property of her own volition less than a year after having her son.
25. Complainant also filed a complaint with the Wisconsin Equal Rights Division (“WERD”). On or about July 27, 2004, WERD issued a Charge and Determination of Probable Cause on behalf of the Complainant because of familial status against Respondents Robert Perlick, Dudley Godfrey, Jr. as Co-Trustees of the Walter Perlick Family Trust, and Patricia Russell. Complainant elected not to pursue her claims in state court, but rather to proceed with the HUD complaint process.
26. Respondents Robert Perlick and the Walter Perlick Family Trust have previously been the subject of a familial status housing discrimination complaint. On or about December 9, 1991, the Secretary of HUD brought a charge of discrimination against, Ward and Lillian Hetzel, Dudley Godfrey, Jr., and Robert Perlick, HUD ALJ Case No. 05-90-1369-1, in violation of 42 U.S.C. § 3604(a), (c) and (d) of the Act because of familial status for allegedly applying a “singles only rental policy.” On or about March 9, 1992, the parties agreed to resolve the controversy through an Initial Decision and Consent Order.³

² Based on Respondent Patricia Russell, Complainant and Complainant’s mother, Katherine Spears’, descriptions of their October 7, 2003 phone calls regarding the subject property, it appears Respondent Patricia Russell is actually referring to her phone conversation with Complainant’s mother, Katherine Spears.

³ The Secretary dismissed its complaint against Dudley Godfrey Jr. As a result, Mr. Godfrey was not a party to the Initial Decision and Consent Order.

27. By otherwise making unavailable or denying a unit at the subject property because of familial status, Respondents discriminated against Complainant, and her minor child, in violation of 42 U.S.C. § 3604(a), and in contravention of public policy.
28. By making statements with respect to the sale or rental of a dwelling that indicated preference, limitation, or discrimination based on familial status, Respondents discriminated against Complainant, and her minor child, in violation of 42 U.S.C. § 3604(c) and in contravention of public policy.
29. As a result of Respondents' discriminatory conduct, Complainant Spears and her daughter have suffered damages, including emotional distress, economic loss, and inconvenience. Complainant Spears secured housing at a higher price than at the subject property, pays higher utilities, and was inconvenienced by having to continue her search for housing.
30. Respondents' discriminatory conduct made Complainant feel helpless, degraded, stressed, and decreased her desire to socialize. Complainant feels diminished trust in others, and more "on-guard" than before the discriminatory conduct occurred. Complainant Spears' emotional distress also manifested itself physically. She suffered migraine headaches, experienced a loss of appetite, and had trouble sleeping.
31. Respondents' discriminatory conduct made Complainant's daughter, Cierra Y. Lewis, feel sad and helpless. Cierra Y. Lewis felt that it was her fault that she and her mother could not find a place to live, and felt that it was her responsibility to help her mother find an apartment.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to Section 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a) 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.*;
2. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating on the basis of familial status against any person in any aspect of the purchase or rental of a dwelling;

3. Awards such damages as will fully compensate Complainant Spears, and her minor child, aggrieved persons, for their actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3604(a) and (c); and
4. Awards a civil penalty against each Respondent for violations of the Act committed pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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