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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)
Earlie Andrew and South Suburban)
Housing Center,)
)
Charging Party,)
)
vs.)
)
Laverne Boettcher and Barbara A.)
Boettcher Testamentary Family Trust,)
)
Respondents.)
_____)

HUDALJ No.
FHEO Case Nos. 05-03-0030-8
05-03-0031-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about October 24, 2002, Earlie Andrew (“Andrew”) and South Suburban Housing Center (“SSHC”), aggrieved persons, timely filed a verified complaint with the U.S. Department of Housing and Urban Development (“HUD”), alleging that Laverne Boettcher and the Barbara A. Boettcher Testamentary Family Trust discriminated against Complainant Andrew on the basis of familial status and discriminated against Complainant SSHC’s fair housing testers on the basis of familial status and race in violation of the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the “Act”).¹

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

¹ The Determination found reasonable cause to believe that Respondents discriminated against Complainant Andrew and Complainant SSHC because of familial status in violation of 42 U.S.C. § 3604 (a) and (c), but found no reasonable cause to believe Respondents discriminated against Complainant Andrew and Complainant SSHC because of familial status in violation of 42 U.S.C. § 3604(b). Furthermore, the Determination found no reasonable cause to believe that Respondents discriminated against Complainant SSHC’s testers because of race in violation of the Act.

reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Director of HUD's Office of Fair Housing and Equal Opportunity for the Midwest HUB, Region V, 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 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 Laverne Boettcher and Barbara A. Boettcher Testamentary Family Trust are charged with discriminating against Complainants Andrew and SSHC, aggrieved persons, based on familial status in violation of 42 U.S.C. § 3604(a) and (c) of the Act as follows:

1. It is unlawful to refuse to negotiate for the sale or rental of a dwelling, or to make unavailable or deny a dwelling, to any person because of familial status. 42 U.S.C. § 3604(a).
2. It is unlawful to make or publish any statement or advertisement with respect to the sale or rental of a dwelling that 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).
3. "Familial status" is defined by the Act as one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals. 42 U.S.C. §3602(k).
4. At the time of the alleged incident of discrimination, Complainant Andrew and his wife, Jennifer Andrew, were the parents of three minor children, Jasmine Andrew, age 1, Ashlyn Andrew, age 4, and Kyle Andrew, age 6.
5. Complainant SSHC is a non-profit fair housing advocacy organization located in Homewood, Illinois whose mission is to assist client families to acquire affordable housing in Chicago's south suburban area. Complainant SSHC maintains a rental listing service to assist individuals and families in locating appropriate rental apartments or houses on a non-discriminatory, affirmative basis. As part of its fair housing enforcement efforts, Complainant SSHC conducts fair housing "tests" to determine whether housing providers engage in discriminatory practices.
6. Since September 17, 1998, the building located at 860 Stratford Drive East, Bourbonnais, in Kankakee County², Illinois ("Subject Property"), has been held in trust by Respondent Barbara A. Boettcher Testamentary Family Trust. The Subject Property is a four-unit

² The 2000 U.S. Census Bureau statistics for Kankakee County, Illinois, reveals that renter-occupied housing units with 4 or more person household represents 22 % of the total population in that geographic area.

apartment building consisting of two two-bedroom and two three-bedroom units. The unit in question is a three-bedroom unit (“Subject Unit”). Respondent Laverne Boettcher manages the Subject Property, is named as Trustee of Respondent Barbara A. Boettcher Testamentary Family Trust and is also the beneficiary.

7. In or around September 15, 2002, an advertisement for rental appeared in Kankakee’s *“The Daily Journal”* and read as follows: “BOURBONNAIS Briarcliff 3 bdrm, air, attached garage, appliances, 1.5 baths, no pets, lease, deposit. \$680/mo 815/697-2146.”
8. Upon information and belief, the phone number (815) 697-2146 is listed to Respondent Laverne Boettcher and he is the only recipient of calls at that number.
9. On or about September 15, 2002, Complainant Andrew telephoned 815/697-2146 and spoke with an unidentified man. Complainant Andrew inquired whether the three-bedroom unit was still available. The man informed Complainant Andrew that the unit was available. The man then inquired “how many adults?” Complainant Andrew answered that the unit would be for “two, with three children.” The man replied that he was looking for “adults only” because older people lived below the available unit. The call ended.
10. After the above conversation ended, Complainant Andrew noticed a publisher’s notice in *The Daily Journal* that provided fair housing information, including a description of which classes are protected under fair housing laws. The notice included Complainant SSHC’s and HUD’s phone numbers.
11. On or about September 16, 2002, Complainant Andrew contacted Complainant SSHC, regarding his phone conversation with the man who refused to show or rent the subject unit to him and his family. In response, Complainant SSHC conducted two fair housing tests on the Subject Property.
12. On September 16, 2002, Tester #1, posing as pregnant and married with two children, telephoned 815/ 697-2146 and left a message stating her interest in a three-bedroom apartment advertised for rent. On the same day, an unidentified man returned the tester’s phone call. The tester’s caller identification read “815/697-2146 Boettcher Laver.”
13. During the conversation, Tester #1 indicated her interest in the three-bedroom apartment. Respondent Laverne Boettcher asked the tester who would be occupying the unit. Tester #1 informed him that the unit was for herself, her husband, two children and one “on the way.” Respondent Laverne Boettcher responded that the building did not have any children. He stated that a 70 year-old lady lived in the other three-bedroom apartment and that another man working different hours also lived there. Respondent Laverne Boettcher continued by stating that he is trying to keep the building quiet, and that he could not help her.
14. On September 17 and 18, 2002, Tester #2, posing as married with no children, telephoned 815/697-2146 and left two messages regarding her interest in the advertised apartment.
15. On September 18, 2002, a man, who identified himself as “Laverne,” returned the tester’s

calls. After Tester #2 indicated her interest in a rental, Respondent Laverne Boettcher asked her who would occupy the unit. Tester #2 replied the unit was for herself and her husband. During the course of the conversation, Respondent Laverne Boettcher informed Tester #2 that the rent and security deposit were each \$680. He then provided Tester #2 with the address and directions for 860 Stratford Drive East, the Subject Property. An appointment to view the three-bedroom unit was scheduled later that evening for 7:30 p.m.

16. That evening, Tester #2 arrived for the scheduled appointment and met with Respondent Laverne Boettcher. After entering the subject unit, which was still occupied by another tenant, Tester #2 asked Respondent Laverne Boettcher when the unit would be available. He replied that the current tenant should be moved out by that weekend.
17. During the course of the visit, Tester #2 asked whether the neighborhood was quiet. Respondent Laverne Boettcher replied that he tried to limit the building to no children. He remarked that he keeps the building quiet so no one complains. As Tester #2 and Respondent Laverne Boettcher walked outside, Respondent Laverne Boettcher volunteered that if someone had children while living there, he would not “kick them out” but that it just “makes it easier for him.”
18. Respondent Laverne Boettcher does not deny making statements indicating a preference against or limitation on families with children. However, Respondent Laverne Boettcher denies discriminating against families with children. Respondent Laverne Boettcher alleges that he maintains a three-person per unit rule regardless of the number of bedrooms in the unit, or the composition of the family.
19. HUD’s investigation revealed that per the Code Enforcement Officer for the Village of Bourbonnais, based on the measurements of the Subject Unit,³ the maximum number of persons allowed to occupy the unit is five, which would exactly accommodate Complainant Andrew’s family.
20. When Respondent Laverne Boettcher told Complainant Andrew that he was looking for “adults only,” Respondent refused to negotiate for the rental of a dwelling because of familial status in violation of 42 U.S.C. § 3604(a) of the Fair Housing Act.
21. When Respondent Laverne Boettcher told Complainant Andrew that he was looking for “adults only,” Respondent made a statement that indicated preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination because of familial status in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
22. When Respondent Laverne Boettcher told Tester #1 that the building did not have children and that he could not help her, Respondent refused to negotiate for the rental of a dwelling because of familial status and made a statement that indicated a preference, limitation, or discrimination based on familial status in violation of 42 U.S.C. § 3604 (a) and (c) of the

³ The measurements of the Subject Unit are as follows: Bedroom 1 measure 88 square feet, Bedroom 2 measured 126 square feet, and Bedroom 3 measured 132 square feet.

Fair Housing Act.

23. When Respondent Laverne Boettcher told Tester #2 that he limits the building to no children, Respondent Laverne Boettcher's statement indicated a preference, limitation, or discrimination based on familial status in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
24. As a result of Complainant Andrew's inability to rent the three-bedroom Subject Unit, in a tight housing market, Complainant Andrew and his family were forced to stay in their small two-bedroom apartment where his three minor children share one small bedroom. The current living conditions contribute to a more stressful environment for Complainant Andrew, his wife and minor children. Because of Respondent Laverne Boettcher's discriminatory conduct, Complainant Andrew's subsequent housing situation negatively impacted Complainant and his family.
25. As a result of Respondent Laverne Boettcher's discriminatory conduct, Complainant, his wife and minor children have suffered damages including, but not limited to: economic loss, emotional distress, inconvenience, embarrassment, humiliation, and the loss of a housing opportunity.
26. As a result of Respondents' discriminatory conduct, Complainant SSHC has suffered damages, including frustration of its mission and diversion of its resources away from other fair housing activities in which it would be otherwise engaged, including housing referral, education and outreach, testing and filing other fair housing actions, in order to address Respondents' discriminatory conduct.

III. PRAYER FOR RELIEF

WHEREFORE, the Secretary of Housing and Urban Development, through the Regional Counsel for the Midwest, Region V, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges the 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, and successors, and all other persons in active concert or participation with any of 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 Andrew and his wife and children, aggrieved persons, for their economic loss, emotional distress, inconvenience and loss of housing opportunity caused by Respondents' discriminatory conduct;
4. Awards such damages as will fully compensate Complainant SSHC for Respondents' discriminatory conduct frustrating its fair housing mission and diverting scarce resources

away from other fair housing activities; and

5. Awards a civil penalty of \$7,500.00 against each Respondent 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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