

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	)	
Dennis Underhill,	)	
	)	HUD ALJ No.
Charging Party,	)	FHEO No. 05-08-1327-8
	)	
v.	)	
	)	
Rathbone Retirement Community, Inc.,	)	
Charles Ludwyck, Janet Ludwyck, and	)	
Norma Helm,	)	
	)	
Respondents.	)	
	)	
	)	

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**CHARGE OF DISCRIMINATION**

I. **JURISDICTION**

On or about June 16, 2008, the complainant, Dennis Underhill ("Complainant"), filed a verified complaint with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondents Norma Helm, Charles Ludwyck and Janet Ludwyck violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601, *et seq.* (the "Act"), by making the subject property otherwise unavailable to him in violation of 42 U.S.C. §3604(f)(1)(A), subjecting him to different and inferior terms and conditions of rental or in the provision of services or facilities in connection therewith in violation of 42 U.S.C. §3604(f)(2)(A), and refusing to provide reasonable accommodation of his disability in violation of 42 U.S.C. §3604(f)(3)(B).

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 disability, 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 HUD Complaint and Determination of Reasonable Cause, Respondents Rathbone Retirement Community, Inc., Norma Helm, Charles Ludwyck and Janet Ludwyck (collectively referred to as "Respondents") are charged with discriminating against Complainant Dennis Underhill, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability in violation of 42 U.S.C. §3604(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B) of the Act as follows:

1. 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 unit that indicates any preference, limitation, or discrimination based on race, color, religion, sex, "handicap," familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. §3604(c).
2. 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 of that buyer or renter. 42 U.S.C. §3604(f)(1)(A).
3. 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 (A) that person; or (B) a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or (C) any person associated with that person. 42 U.S.C. §3604(f)(2).
4. For purposes 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).
5. At all times relevant to this Charge, Respondent Norma Helm was the Administrator of the Rathbone Retirement Community, and Respondents Charles and Janet Ludwyck were owners of Rathbone Retirement Community, Inc. The Rathbone Retirement Community is located at 1320 S.E. Second Street, Evansville, Indiana 47713 ("subject property"). The subject property is a 58-unit, two-story building built in 1906. The subject property was converted to provide independent housing for seniors.
6. In order to reside at the subject property, residents must satisfy Respondents' admissions standards. Respondents' admissions standards are found in their marketing materials and state, in pertinent part, that residents must be "of high moral character, 55 years of age or older, ambulatory, mentally alert and in good health."

7. Complainant is a disabled person as defined by 42 U.S.C. §3602(h) of the Act. Complainant has a mobility impairment due to a spinal injury and nerve damage resulting from surgery addressing that injury. He is substantially limited in the major life activity of walking. At all times relevant to this Charge, Complainant used a motorized assistive device to be mobile.
8. At all times relevant to this Charge, Respondents were aware that Complainant was an individual with a disability.
9. On or about July 1, 2007, Complainant moved into the subject property. At the time Complainant applied, he was using his motorized assistive device.
10. About a week after moving into the subject property, Complainant received a notice from Respondents, dated July 1, 2007, restricting the use of motorized scooters and motorized wheelchairs.<sup>1</sup> On information and belief, while the notice was addressed to Rathbone residents, it was only given to those residents that used motorized scooters or motorized wheelchairs at the subject property.
11. The July 1, 2007 notice prohibited the use of motorized wheelchairs and scooters in the dining room during mealtime and within the residents' apartments. The notice stated that the reason for the prohibition was that the motorized devices were damaging the "beautiful furniture, woodwork, and walls." The notice also asserted that "this has always been the rule," but that some had chosen to disregard it. With respect to motorized scooter or wheelchair use within the apartments, the notice stated that any damage done by a resident with an "electric device" would not be considered normal wear and tear and would be billed to the resident.
12. There is no record that Respondents ever had to charge Complainant for damaging his unit with a motorized assistive device or otherwise.
13. The July 1, 2007 notice also states that residents "are required to be capable of ambulating about their apartment at least with the assistance of 1 staff member," and concluded that "use of an electric device should not be necessary."
14. At no time during his residency at the Rathbone did Complainant use any of Respondents' fee-for-service personal assistant services.
15. Soon after receiving the notice, Complainant went to the dining room in his motorized wheelchair. Respondent Helm was present and told him that he had to transfer to a dining room chair. She summoned 3 or 4 assistants to pick Complainant up to put him in a chair. He refused. He told her that his doctor had told him to stay in his chair and he demanded that she present her medical papers.

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<sup>1</sup> Evidence discovered during the investigation suggests that Respondents first instituted a policy restricting the use of motorized assistive devices on or about December 28, 2004.

16. When Complainant challenged the policy, Respondent Helm told Complainant that he had to abide by the policy and that eventually there would be no motorized vehicles permitted at the Rathbone.
17. Respondents evicted Jasper Spellazza, a tenant at the subject property, who used a motorized wheelchair and scooter for mobility, because he used his motorized assistive devices in the dining room and in his apartment, in violation of the July 1, 2007 policy referenced in paragraph 11, above.
18. At no time did Respondents waive the policy restricting the use of motorized assistive devices as it applied to Complainant, despite his need to use those assistive devices for ambulation and his inability to use a manual wheelchair.
19. At no time during his residency at the Rathbone did Respondents communicate to Complainant that the policy restricting the use of motorized assistive devices did not apply to him.
20. At no time during his residency at the Rathbone did Respondents engage in an interactive discussion with Complainant regarding his statements that he could not and would not comply with the policy restricting the use of motorized assistive devices to determine if a reasonable accommodation was reasonable and necessary to allow Complainant an equal opportunity to use and enjoy his dwelling.
21. In response to receiving the July 1, 2007 notice, referenced in paragraph 11, above, Complainant refused to sign his lease and began searching for a new place to live.
22. In or around January 2008, Complainant moved to the Willow Park Retirement Center, another assisted living community for seniors, receiving the same level of care as he did at the subject property.
23. Respondents admit that in order to live at the subject property, an individual must be "ambulatory."
24. Respondents admit that since 2006, and at all times relevant to this Charge, they maintained a policy that individuals were not permitted to use motorized assistive devices in the dining room and/or in their units at the subject property.
25. At all times relevant to this Charge, it was Respondents' policy that residents and prospective residents who relied upon motorized assistive devices for ambulation in their units and the dining room were not considered "ambulatory" and therefore were not qualified to rent or continue renting from Respondents.
26. In 2007, it was Respondents' policy to reject prospective residents who needed to use "motorized vehicles" for ambulation, including motorized wheelchairs, and to forbid their use by existing residents.

27. In 2008, it was Respondents' policy to reject prospective residents who needed to use "electric scooters" for ambulation and to forbid their use by existing residents.
28. Respondents admit that as a result of their policy restricting the use of motorized scooters inside the subject property, three tenants vacated the Rathbone: Complainant, John Vezzuoso and Jasper Spellazza.
29. By making, printing or publishing a policy, on July 1, 2007, restricting or prohibiting ambulation with a motorized assistive device, and making other statements restricting the use of motorized devices at the subject property, Respondents discriminated against Complainant on the basis of disability by stating a preference for individuals who are not mobility impaired and a limitation upon individuals who are mobility impaired and use assistive devices, in violation of 42 U.S.C. §3604(c).
30. By imposing a discriminatory ambulation policy negatively impacting the ability of Complainant to use his motorized assistive device as necessary for his disability, Respondents constructively evicted Complainant and otherwise made the subject property unavailable to Complainant in violation of Section 804(f)(1)(A) because of his disability.
31. By imposing a policy restricting Complainant's use of his motorized wheelchair at the subject property in the dining room and his apartment, and not restricting the use of apartments and the dining room by individuals who do not use motorized assistive devices, Respondents subjected Complainant to different and inferior terms and conditions of rental of a dwelling or different and inferior provision of services and facilities in connection therewith in violation of 42 U.S.C. §3604(f)(2)(A) because of his disability.
32. By applying a policy, restricting Complainant's use of his motorized wheelchair when Respondents knew or should have known that Complainant needed a reasonable accommodation of that policy, Respondents refused to provide Complainant a reasonable accommodation in violation of 42 U.S.C. § 3604(f)(3)(B).
33. As a result of Respondents' discriminatory conduct, Complainant has suffered damages, including economic loss, emotional distress, loss of a housing opportunity, and inconvenience.
34. As a result of receiving Respondents' discriminatory policies, hearing Respondents' discriminatory statements and learning of the eviction of Jasper Spellazza, Complainant lived in constant insecurity and fear that Respondents would evict him or require him to physically transfer or move his body in a way that would result in physical harm to him.

35. Respondents' actions subjected Complainant to economic loss. He incurred moving expenses, and had to pay a significant amount more in rent per month in his subsequent housing.
36. Respondents' actions caused Complainant emotional distress. During his tenancy at the subject property, Complainant lived under constant fear and insecurity that Respondents would seek to force him to transfer from his motorized assistive device to a dining room chair, something he could not do and of which he was terrified.
37. Respondents' actions caused Complainant humiliation. During his tenancy at the subject property, Respondents humiliated Complainant by demanding that he either give up the independence of being able to move about his apartment and the dining room on his own or move out of the subject property.

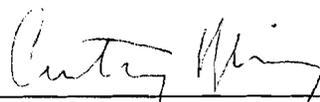
### III. CONCLUSION

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(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B) 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 disability against any person in any aspect of the purchase or rental of a dwelling;
3. Awards such damages as will fully compensate Complainant, an aggrieved person, for his actual damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. §§3604(c), (f)(1)(A), (f)(2)(A) and (f)(3)(B); and
4. Awards a civil penalty of \$16,000 against each Respondent for each violation 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).

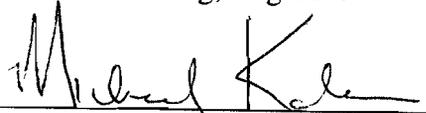
Respectfully submitted,



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