

**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)
James Brown and Jeffrey Daubman,)
)
Charging Party,)
)
v.)
)
The Latvian Tower Condominium)
Association, Inc. and)
Karl Tegtmeier,)
)
Respondents.)
_____)

FHEO No: 07-08-0224-8
07-08-0649-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about December 17, 2007, and August 8, 2008, respectively, Complainants James Brown and Jeffrey Daubman filed verified complaints with the U.S. Department of Housing and Urban Development (HUD) alleging they were injured by discriminatory acts based on familial status. After referral of the matter to the Omaha Human Rights and Relations Department (OHRRD), OHRRD consented to HUD's reactivation of the cases. The complaints were subsequently amended, the most recent of which was on or around September 9, 2008, to allege the proper respondents, issues, and allegations. Complainants allege Respondents violated Sections 3604(a), (c) and (d) of the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (the "Act") based on familial status by making housing unavailable, making or publishing discriminatory statements, and representing to others that a dwelling was not available for sale when such dwelling was in fact available.

The Act authorizes the issuance of a Charge of Discrimination (Charge) 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 (Mar. 30, 1989)), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234 (Jul. 1, 2002)), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or her designee.

By Determination of Reasonable Cause of September 23, 2008, the FHEO Region VII Director, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred based on familial status and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents are charged with discriminating against the Complainants based on familial status in violation of 42 U.S.C. §§ 3604(a), (c) and (d) as follows:

A. Applicable Federal Law

1. It is unlawful to make unavailable or deny a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(3) and 100.70(b) and (c)(1).
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 familial status or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50(b)(4) and 100.75(a), (b), and (c)(1) and (2).
3. It is unlawful to represent to any person because of familial status that any dwelling is not available for sale when such dwelling is in fact available. 42 U.S.C. § 3604(d); 24 C.F.R. §§ 100.50(b)(5) and 100.80(a) and (b)(2) and (3).
4. At no time during the events of this complaint did Respondent The Latvian Tower Condominium Association, Inc. (hereafter, LTCA), or the subject property, qualify as a housing for persons who are 55 years of age or older, or qualify under any other exemptions relating to housing for older persons, pursuant to 42 U.S.C. § 3607(b); 24 C.F.R. §§ 100.300-100.308.
5. At no time during the events of this complaint did Respondent Tegtmeyer act with a good faith belief that the housing facility qualified for an exemption relating to housing for older persons thereby shielding him from liability from civil monetary damages pursuant to 42 U.S.C. § 3607(b)(5); 24 C.F.R. § 100.308.
6. Pursuant to the Act, "familial status" means 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); 24 C.F.R. § 100.20.
7. Pursuant to the Act, "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

B. Factual Background

8. The subject property is unit 722, a condominium at Latvian Tower, a seven-story condominium building located at 3003 Paddock Place in Omaha, Nebraska.
9. Complainant James Brown and his partner, Complainant Jeffrey Daubman, owned the subject property from December 2002 to February 2008.
10. Respondent LTCA, incorporated in June 1979, is the governing body for all unit owners which consist primarily of older adults who own and independently market their individual units. The LTCA Amended Master Deed & Declaration and its By-Laws explicitly prohibit the sale of condominiums to families with children which are defined as persons under the age of 16, as follows:

No Unit shall be sold or leased for any period to any person who, at the date of said purchase or lease, has children who will occupy or reside in the Unit one hundred and eighty (180) days or more in any one calendar year. For the purpose of this paragraph 19 (1) "Children" shall mean persons under the age of sixteen (16) years or such younger age as may be established by the Board of Directors.

The LTCA By-Laws also prohibit residents from owning pets.

11. Respondent Karl Tegtmeyer, a resident, was elected president of the LTCA Board in May 2007 and was serving in that capacity at the time Complainants sold their property in February 2008.
12. On or around December 4, 2003, Complainants listed the subject property for sale. Realtor Ken Coats was the first agent to represent the Complainants and originally listed the property at \$479,950.
13. In or around March 2005, when the price of the unit was \$419,950, Dan and Susan Wooldridge (hereafter, the Wooldridges), a married couple with daughters under the age of 16 residing with them, viewed the subject property in person. The Wooldridges, who were financially qualified to purchase the unit, liked its location which was situated only two blocks from their daughters' biological father. They subsequently viewed picture images of the unit on several occasions.
14. Subsequent to viewing the unit, the Wooldridges requested information about the property's covenants, association fees, and other policies. After their agent informed them of the restriction prohibiting children under the age of 16, the Wooldridges decided not to pursue purchasing the property because of the discriminatory provision, despite otherwise giving serious consideration to making an offer. The Wooldridges bought a different home in May 2006 for approximately \$405,000.

15. After Mr. Coats was unable to sell the property, the Complainants hired Realtor Linda Anderson. She originally listed the subject property at \$409,000 on May 19, 2006.
16. In or around August and September 2007, Mrs. Aleta Schleich, whose 14-year-old daughter resided with her, viewed the subject property approximately three times when the price was \$299,000. Mrs. Schleich, who was financially qualified to purchase the unit, indicated to her agent that she loved the condominium and might be interested in purchasing it, though her financial planner advised her to sell her current home first.
17. Mrs. Schleich's agent expressed her client's interest in the unit to Ms. Anderson who then discovered the restriction prohibiting the sale of any unit to families with children under age 16 in the LTCA Master Deed and By-Laws.
18. Ms. Anderson contacted Respondent Tegtmeier by telephone on or about September 6, 2007, to discuss the restriction against children and the possible sale of the unit and to inform Respondent Tegtmeier that the policy was unlawful.
19. During the phone call with Ms. Anderson, Respondent Tegtmeier responded he knew about fair housing laws, but he could do what he wanted and that Ms. Anderson "had to do what she had to do, and he had to do what he had to do" which prompted Ms. Anderson to suggest he contact a real estate attorney for clarification on fair housing laws.
20. Subsequent to the September 6, 2007, telephone discussion, Ms. Anderson sent Respondent Tegtmeier a HUD fact sheet which explained the requirements for the senior housing exemption under the Fair Housing Act.
21. Despite her previous genuine interest in the property, after learning of the restriction against children under age 16, Mrs. Schleich decided not to place an offer on unit 722, citing the major reason as the policy restricting children. She has yet to purchase a new home.
22. After Respondent Tegtmeier's discussion with Ms. Anderson, he called a special meeting of the LTCA Board on or around September 8, 2007, due to immediate concerns regarding the possible sale of Complainants' unit to Mrs. Schleich. During the meeting, the owners discussed that the potential sale conflicted with the Declaration and By-Laws, and a majority present voted that Respondent Tegtmeier should contact legal counsel.
23. During the month of October 2007, the Complainants attempted to negotiate the prohibitions against children and pets with the LTCA Board. Instead, the Board informed Complainants they were investigating the possibility of converting the facility into 55 or older housing.
24. By letter dated November 8, 2007, Complainants' private attorney encouraged Respondents Tegtmeier and the LTCA to change their practice restricting children by explaining the conflict between the Master Deed restriction and the Fair Housing Act.

The letter explicitly explained that the covenant was a clear violation of the Act and requested, in part, that Respondents remove the restriction against children and respond within five business days. Respondents never responded.

25. In approximately November and December 2007, when the price of the unit remained at \$299,000, Bob and Carolyn Daisley (hereafter, the Daisleys), whose 14-year-old son resided with them, viewed the subject property on two occasions. Ms. Anderson informed the Daisleys' agent of the restriction against children but encouraged him to have his clients write an offer anyway.
26. On December 12, 2007, Respondent Tegtmeier convened another special Board meeting to discuss changing the Master Deed and By-Laws, among other items. Respondent Tegtmeier stated if the Master Deed and By-Laws were changed to allow pets and children, he would resign as president.
27. Thirteen out of twenty-two unit owners were present at the December 12, 2007, meeting and voted to proceed with changing the Master Deed and By-Laws to become a 55 or older building, though the Master Deed states that 80% of unit owners must approve such an Amendment.
28. On December 16, 2007, the Daisleys, who were financially qualified to buy the unit, provided a written offer for the unit for \$279,900 with an earnest check for \$5,000. They conditioned their offer on their ability to have their son reside with them and to have their dog in the home.
29. Complainants did not formally respond to the offer from the Daisleys because it was conditioned on allowing the Daisleys to keep their dog, which was contrary to a legally permissible provision within the LTCA By-Laws. The Daisleys were willing to negotiate this contingency, but this was not communicated to Complainants.
30. But for the policy precluding children under the age of 16 as residents, the Daisleys would have continued their pursuit to purchase the condominium even if that meant finding someone to take their dog. On or about January 8, 2008, the Daisleys purchased a different home for \$237,500.
31. On Monday, December 17, 2007, Complainant Brown filed an electronic fair housing complaint with HUD.
32. On or about February 22, 2008, Complainants sold their unit to a buyer without children for \$239,500.
33. No children reside at Latvian Tower nor have any units been sold to families with children who resided there more than 180 days per year.

34. Complainants were continually frustrated in their efforts to sell their unit because of the existence of the discriminatory provision excluding families with children in the LTCA Master Deed and Declaration and By-Laws.
35. Complainants were further frustrated in their efforts to sell the unit because of Respondents' representation and enforcement of the discriminatory provision in that the Respondents refused or failed to remove the restriction, or provide Complainants assurance, as requested, that the restriction would not be enforced.
36. Such discrimination continued throughout the course of Complainants' attempts to sell the property.
37. As a result of Respondents' discriminatory actions, Complainants, aggrieved persons, suffered damages, including lost profits and inconvenience, and incurred additional expenses to maintain the unit for sale as well as economic loss related to ownership, including taxes, insurance, association fees, and utilities. Additionally, they incurred legal fees and travel costs.

C. Fair Housing Act Violations

38. By discouraging the Wooldridges from negotiating for the purchase of Complainants' unit because of the existence of the deed and by-law provision prohibiting children under age 16, Respondent LTCA unlawfully made housing unavailable based on familial status in violation of 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50 and 100.70.
39. By discouraging Mrs. Schleich from negotiating for the purchase of Complainants' unit because of the deed and by-law provision prohibiting children under age 16, Respondents Tegtmeier and LTCA unlawfully made housing unavailable based on familial status in violation of 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50 and 100.70.
40. By discouraging the Daisleys from negotiating for the purchase of Complainants' unit because of the deed and by-law provision prohibiting children under age 16, Respondents Tegtmeier and LTCA unlawfully made housing unavailable based on familial status in violation of 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50 and 100.70.
41. By making, printing, and/or publishing the deed and by-law provision prohibiting the sale of units to families with children under age 16, Respondent LTCA unlawfully made discriminatory statements indicating a limitation or discrimination against families with children with respect to the sale of a dwelling in violation of 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50 and 100.75.
42. By expressing to Complainants and Ms. Anderson, a real estate agent, that the LTCA was unwilling to remove the deed and by-law provision prohibiting the sale of Complainants' dwelling to families with children under age 16 or provide assurances that the LTCA would not enforce the restriction, Respondent Tegtmeier unlawfully made discriminatory statements indicating a limitation or discrimination against families with children with

respect to the sale of a dwelling in violation of 42 U.S.C. § 3604(c); 24 C.F.R. §§ 100.50 and 100.75.

43. By representing to others, including Mrs. Schleich and the Daisleys, that Respondents' deed and by-law provision precluded the sale of dwellings to potential buyers with children under age 16, Respondents Tegtmeier and LTCA unlawfully represented that Complainants' dwelling was not available for sale based on familial status when it in fact was available in violation of 42 U.S.C. § 3604(d); 24 C.F.R. §§ 100.50 and 100.80.
44. By enforcing Respondents' discriminatory deed and by-law provision which precluded the sale of dwellings to families with children under age 16, or by failing or refusing to remove the restriction or provide assurance that the restriction as it related to children would not be enforced, Respondents Tegtmeier and LTCA unlawfully represented that Complainants' dwelling was not available for sale based on familial status when it in fact was available in violation of 42 U.S.C. § 3604(d); 24 C.F.R. §§ 100.50 and 100.80.

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), (c) and (d), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Act, 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 them from discriminating because of familial status in any aspect of the sale or rental of a dwelling;
3. Awards such damages as will fully compensate Complainants for their damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Awards a \$14,000 civil penalty against each Respondent, for each violation of the Act that they are found to have 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).

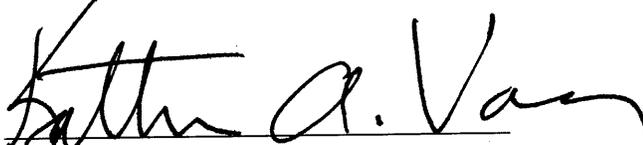
Respectfully submitted,



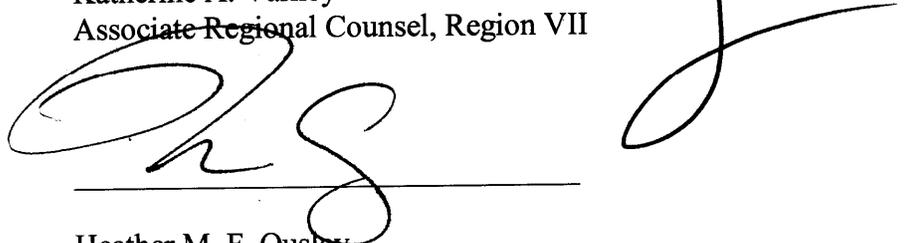
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