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 Starla Overbee and Fair Housing of the Dakotas,	)	
Charging Party,	)	
v.	)	FHEO Nos. 08-08-0119-8 and 08-08-0131-8
Richard Rogers, Phyllis Rogers, and Triple R. Industries, Inc.	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about March 3, 2008, complainant Fair Housing of the Dakotas ("Complainant FHD"), and on or about March 4, 2008, complainant Starla Overbee ("Complainant Overbee") filed verified complaints with the United States Department of Housing and Urban Development (the "HUD Complaints"), alleging that Respondents Richard Rogers, Phyllis Rogers, and Triple R. Industries, Inc. ("Respondents") violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the "Act"), by discriminatory refusal to rent and discriminatory statements based upon familial status and race in violation of 42 U.S.C. §3604.

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 VIII 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 cases based on familial status and race, 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 Complaints and Determinations of Reasonable Cause, Respondents Richard Rogers and Phyllis Rogers are charged with discriminating against Complainants Starla Overbee and Fair Housing of the Dakotas, aggrieved persons as defined by 42 U.S.C. §3602(i), based on familial status and race in violation of 42 U.S.C. §§3604(a) and (c) of the Act as follows:

1. It shall be unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604(a).

2. It shall be 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).

3. At all times relevant to this Charge, Respondents Richard Rogers and Phyllis Rogers owned and managed the property located at 115-121 North Trapp Avenue, Sioux Falls, South Dakota 57104 ("subject property") through their company, Triple R Industries, Inc.

4. The subject property contains sixteen apartment units in two separate buildings and four street addresses. Each unit contains one bedroom and one bathroom.

5. From January 1, 2006, through December 31, 2007, eight of the tenants were over the age of 55 and ten were under the age of 55. At no point during that time period were there any children residing at the subject property.

6. No families with children have ever resided at the subject property.

7. At all times relevant to this Charge, Starla Overbee and Fair Housing of the Dakotas were the Complainants. Starla Overbee ("Complainant Overbee" or "Overbee") is an individual residing in the Sioux Falls, South Dakota area. Fair Housing of the Dakotas ("Complainant FHD" or "FHD") is a non-profit organization committed to the prevention and elimination of housing discrimination in North and South Dakota. FHD serves the people of the State of South Dakota as well as those living in the

Sioux Falls area by offering fair housing education, counseling, referral services, and engaging in investigative and/or enforcement activities.

8. Complainant Overbee and Complainant FHD are aggrieved persons as defined by 42 U.S.C. §3602(i) of the Act.

9. In late May 2007, Complainant Overbee moved into Apartment #7 at the subject property. Prior to moving into the unit she was told by Respondent Phyllis Rogers that they (Respondents) did not rent to families with children or to "Africans," or words to that effect. Complainant Overbee informed Respondent Phyllis Rogers that she had a bi-racial grandson (African-American/Caucasian) who would be visiting her several times per week. Complainant Overbee asked Respondent Phyllis Rogers if her bi-racial grandson's visits would be a problem and Respondent Phyllis Roger responded it would not be.

10. Complainant Overbee resided at the subject property for approximately two months. In late July or early August, Respondent Richard Rogers approached Complainant Overbee about her grandson residing in her unit. At some point during that conversation, Respondent Richard Rogers told Complainant Overbee that they (Respondents) did not rent to people with children or words to that effect.

11. Shortly after the encounter between Respondent Richard Rogers and Complainant Overbee, Complainant Overbee contacted Respondent Phyllis Rogers regarding her encounter with Respondent Richard Rogers. Respondent Phyllis Rogers defended Respondent Richard Rogers and inferred that Respondent Richard Rogers had probably heard her grandson in the unit.

12. On or about August 8, 2007, Respondent Phyllis Rogers came to Complainant Overbee's unit seeking the overdue August rent. During the ensuing conversation, Complainant Overbee informed Respondent Phyllis Rogers that she would be moving out. Respondent Phyllis Rogers told her she had to be out that evening. Over the weekend of August 10, 2007, Complainant Overbee moved out of the subject property.

13. On or about August 8, 2007, Complainant Overbee contacted Fair Housing of the Dakotas seeking their assistance as a victim of a discriminatory housing practice.

14. Based upon the information provided by Complainant Overbee, FHD began investigating her claims, as well as the rental practices of the Respondents. As part of their investigation, FHD contacted several current and former tenants of the Respondent by mail.

15. On or about September 12, 2007 FHD sent a mailing to tenants at three of the then-known properties managed by the Respondents. The mailing educated the tenants on their fair housing rights, and requested the tenants contact FHD. FHD received information from seven current and former tenants of the Respondents.

16. In their statements and interviews, at least four current and former tenants stated that when they moved into the subject property, or shortly thereafter, Respondent Phyllis Rogers told them she did not rent to families with children or words to that effect.

17. In their statements and interviews, at least two current and former tenants stated that when they moved into the subject property, or shortly thereafter, Respondent Phyllis Rogers told them she did not rent to "Blacks," "Africans," African-Americans, or words to that effect.

18. On or about September 17, 2007, Respondent Phyllis Rogers contacted Complainant FHD to complain about FHD contacting their tenants. At some point during that conversation, Respondent Phyllis Rogers informed FHD that the apartments at the subject property were only large enough for one person and that children made noise that bothered other tenants. During the conversation, Respondent Phyllis Rogers stated "kids can visit but cannot live there [subject property]," or word to that effect. Respondent Phyllis Rogers also stated that they had a self-imposed occupancy limit of one person per unit.

19. Respondents admit that prior to being contacted by FHD their policy was to exclude children from residing at the subject property and they were unaware that it was illegal to prevent families with children from living in their apartments. Respondents also admitted they have not rented to families with children in the past.

20. Despite their claimed self-imposed occupancy limit of one person per unit, at least one other unit at the subject property had two individuals, a husband and wife, residing in it.

21. Prior to October 2007 Respondents had never rented a unit at the subject property to an African-American tenant.

22. Respondents first rented to an African-American tenant in October 2007, after FHD's initial contact with Respondents and their tenants. Respondents also rented to a second African-American tenant in May 2008, well after the HUD Complaints were filed. A third African-American resided at the subject property, and although the exact dates of tenancy are unclear, it is clear that he resided at the property after Respondents were contacted by FHD.

23. Respondents' property does not meet the criteria to be an exempt property for housing for older persons. *See* 42 U.S.C. §3607(b)(2).

24. In or about June 2007, when Respondent Phyllis Rogers informed Complainant Overbee of her preference to not rent to families with children, Respondents violated 42 U.S.C. §3604(c).

25. In or about June 2007, when Respondent Phyllis Rogers informed Complainant Overbee of her preference not to rent to African-Americans, Respondents violated 42 U.S.C. §3604(c).

26. On or about September 17, 2007, when Respondent Phyllis Rogers informed a staff member of FHD that they did not rent to families with children and that children make noise that would bother other tenants, Respondents violated 42 U.S.C. §3604(c).

27. On or about September 17, 2007, when Respondent Phyllis Rogers informed a staff member of FHD that they did not rent to families with children and that children make noise that would bother other tenants, Respondents violated 42 U.S.C. §3604(a).

28. By maintaining a policy that excluded families with children from residing at the subject property, Respondents violated 42 U.S.C. §3604(a).

29. When Respondent Phyllis Rogers informed tenants that they did not rent to African-Americans Respondents violated 42 U.S.C. §3604(c).

30. When Respondent Phyllis Rogers informed tenants that children were not allowed to reside at the subject property Respondents violated 42 U.S.C. §3604(c).

31. As a result of Respondents' discriminatory conduct, Complainant Overbee has suffered damages, including but not limited to, economic loss, loss of housing opportunities, and inconvenience.

32. As a result of Respondents' discriminatory conduct, Complainant FHD has suffered damages, including economic loss through diversion of its resources, and frustration of its mission to achieve equal housing opportunities. Complainant FHD incurred damages, including but not limited to, counseling costs, filing costs, investigation costs, and other miscellaneous costs as a direct result of the Respondents' discriminatory conduct.

33. The Respondents' discriminatory conduct denied rental-housing opportunities to families with children and to African-Americans and deprived Sioux Falls, South Dakota citizens of living in non-segregated communities.

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 42 U.S.C.§ 3610(g)(2)(A) (2004) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(a) and (c) of the Act, and prays that an order be issued that:

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

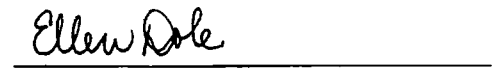
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of familial status or race against any person in any aspect of the rental of a dwelling;

3. Awards such damages as will fully compensate Complainant Overbee and Complainant FHD for their actual damages, inconvenience, and economic loss caused by Respondents' discriminatory conduct; and

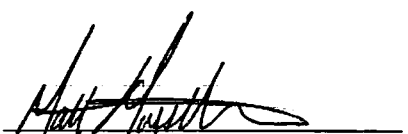
4. Assesses civil penalties pursuant to 24 C.F.R. § 180.671(a)(1) against Respondents of sixteen thousand dollars ($16,000) for each violation of the Act for which the Respondents are liable.

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,



Ellen Dole
Regional Counsel, Region VIII



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