

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

2008 SEP 19 P 1:20

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of himself and the)
National Fair Housing Alliance)
)
Charging Party,)
)
v.)
)
Rodney Foreman and Coldwell)
Banker—Joe T. Lane Realty, Inc.,)
)
Respondents.)

OFFICE OF ADMINISTRATIVE
LAW JUDGES

FHEO Nos. 04-05-0767-8
04-05-0770-8
04-05-1241-8

CHARGE OF DISCRIMINATION

I. **JURISDICTION**

On or about April 13, 2005, Complainant National Fair Housing Alliance (“NFHA”) filed two verified complaints with the United States Department of Housing and Urban Development (“HUD”), and on July 22, 2005, HUD’s General Deputy Assistant Secretary for Fair Housing and Equal Opportunity (“FHEO”), pursuant to 42 U.S.C. § 3610(a), also filed a complaint with HUD, all of which alleged that Rodney Foreman (“Foreman”) and Coldwell Banker—Joe T. Lane Realty, Inc. (“Agency”) violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the “Act”), by making discriminatory statements, steering, and restricting homes choices based on race, color, or national origin, in the case of the NFHA complaints, and based on race or color, in the case of FHEO’s complaint.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person or the Secretary of HUD 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 authority to issue such a charge has been delegated to HUD’s Assistant General Counsel for Fair Housing Enforcement. 67 Fed. Reg. 44,234, 44,234 (July 1, 2002); 54 Fed. Reg. 13,121, 13,122 (Mar. 30, 1989).

The Director of the Office of Systemic Investigations, on behalf of HUD’s Assistant Secretary for Fair Housing and Equal Opportunity (70 Fed. Reg. 38, 971, 38, 971 (July 6, 2005)) has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and FHEO's Determination of Reasonable Cause, Respondent Foreman and Respondent Agency are charged with violating 42 U.S.C. § 3604(a), (c), and (d) based on race, color, or national origin as follows:

1. It is unlawful to refuse to sell after the making of a bona fide offer, to refuse to negotiate for the sale, or otherwise make unavailable or deny, a dwelling to any person because of race or color. 42 U.S.C. § 3604(a); *see also* 24 C.F.R. §§ 100.60, 100.70.
2. It is unlawful to make any statement with respect to the sale of a dwelling unit that indicates any preference, limitation, or discrimination based on race, color, or national origin. 42 U.S.C. § 3604(c); *see also* 24 C.F.R. § 100.75.
3. It is unlawful to represent to any person because of race or color that any dwelling is not available for inspection or sale when such dwelling is in fact so available. 42 U.S.C. § 3604(d); *see also* 24 C.F.R. § 100.80.
4. Complainant National Fair Housing Alliance is a national non-profit membership organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Washington, DC. NFHA is a nationwide alliance of private, non-profit fair housing organizations, including member organizations in Georgia. NFHA's stated mission is to work to eliminate housing discrimination and ensure equal opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy, and enforcement. NFHA is an aggrieved person as defined by 42 U.S.C. § 3602(i).
5. At all times relevant to the allegations herein, Respondent Rodney Foreman, who is white, was a real estate salesperson with Coldwell Banker – Joe T. Lane Realty, Inc., with offices located at 9411 S. Main Street, Jonesboro, Georgia, 30236.
6. At all times relevant to the allegations herein, Respondent Coldwell Banker – Joe T. Lane Realty, Inc. was a State of Georgia real estate corporation and holder of the licenses of real estate salespersons including Respondent Rodney Foreman.
7. Between October 10, 2003 and August 7, 2004, Complainant NFHA conducted paired fair housing testing of Coldwell Banker – Joe T. Lane Realty, Inc. The testers posed as potential homebuyers relocating to the Atlanta area. For each of the testing pairs, one tester was white and the other was black.
8. On or about July 24-25, 2004, Respondent Foreman assisted a white male tester (tester 301A) in viewing single-family homes in Jonesboro, Georgia. During the

course of showing the properties to the white tester on those dates, Foreman made several discriminatory statements, including those detailed below, many of which indicate steering.

9. Respondent Foreman stated to tester 301A “I wasn’t sure what you were over the phone” and explained that he did not know whether the tester was Caucasian or not.
10. Soon after they met, Respondent Foreman showed tester 301A a listing for a house at 10653 Red Bud Lane in Jonesboro. When the tester expressed interest in the listing, Foreman stated that he could show the tester the house but it is in a black neighborhood, so it’s out. The house is located in a census block that is 76% black, according to 2000 census data. Foreman did not show the tester the house.
11. Respondent Foreman stated to tester 301A that Foreman had made two sets of listings—one in case the tester was white and one in case he was black. The tester observed Foreman going through the stack of listings, picking out those that were allegedly located in black neighborhoods and putting them on the dashboard of his car. Foreman then handed the remaining listings to the tester, explaining that the selected houses were ok.
12. Respondent Foreman explained to tester 301A that Foreman and others were not accustomed to locking their car doors when leaving their vehicles. However, when Foreman subsequently pulled up to a home where black men were working in the driveway, he laughed and stated that he was going to lock his doors this time.
13. Respondent Foreman stated to tester 301A that once blacks move in, property values go down and it becomes impossible to sell your house.
14. After remarking to tester 301A that one of the listings was in a black neighborhood, Respondent Foreman recounted that he had sold a home to a woman whose white son went to a black high school where he was beaten up every day until she moved away three months later.
15. Upon seeing a picture of a black female inside a home that Respondent Foreman was showing to tester 301A, Foreman remarked, “see, I told you.” Foreman explained that he knew that the home was in a black neighborhood and commented that most blacks do not keep their houses up.
16. Respondent Foreman stated to tester 301A that white residents will move out of a neighborhood if black people move in. Foreman cited the Flint River neighborhood as an example because it used to be white and is now black.

17. After passing several run-down and abandoned vehicles in a particular neighborhood, Respondent Foreman told tester 301A that blacks just do not know how to keep their houses up.
18. Respondent Foreman stated to tester 301A that all blacks get "Nehemiah loans" because they allow the borrower to put no money down, but that blacks then do not pay their mortgages and the lenders foreclose on the properties. Foreman commented that he once sold seven properties to blacks with Nehemiah loans in one neighborhood, and that they all foreclosed. Foreman further stated that what blacks do is move in as unmarried couples then get into a fight and, when one member of the couple leaves, the other cannot afford to pay the mortgage.
19. Respondent Foreman stated to tester 301A that all the blacks had moved into his neighborhood and there are pit bulls everywhere.
20. Driving through one neighborhood, Respondent Foreman pointed to some blacks and stated to tester 301A "They're moving in," adding that it looks like it may be all black already. Foreman explained that he did not want the tester's property value to go down and wanted the tester to be able to resell his house. Exiting the area, they drove past an Asian man whom Foreman apparently mistook as black, whereupon Foreman pointed in the man's direction and remarked that there was another black man and explained that is why Foreman was steering the tester away from there.
21. On or about May 24-25, 2004, Respondent Foreman assisted a white female tester (tester 201A) in viewing single-family houses in and around Jonesboro, Georgia. During the course of showing properties to the tester, Foreman made several discriminatory statements, including those detailed below, at least one of which indicates steering.
22. While showing houses to tester 201A, Respondent Foreman pointed to the photo of one that looked nice and stated that the house was located in a "changing" neighborhood and commented that the tester would be a minority there.
23. After reviewing for tester 201A the listing sheet for another house, Foreman stated that the elementary school for the area was really good but the middle and high schools were not as good. Foreman went on to comment that he knew someone who had kids who were white and graduated from the school and that there had been only two white children in the graduating class.
24. After discussing the disadvantageous mortgage terms burdening one family which may eventually result in the family losing their house, Respondent Foreman commented to tester 201A that he hated to say it, but the family was black and the mortgage agent was also black. He then remarked that they just don't take care of each other the way they should.

25. Respondent Foreman made discriminatory statements on the basis of national origin to both testers.
26. As Respondent Foreman finished showing tester 201A one house, a dark-skinned woman pulled up next door in a minivan that displayed taxi information and a Hispanic name. Foreman leaned toward the tester and whispered that the neighbor was Mexican.
27. Respondent Foreman remarked to tester 301A that the owner of one house was Asian. After showing the house, Respondent Foreman told the tester about another house the same Asian woman wanted to sell for \$125,000, which Foreman believed was overpriced. In describing his unsuccessful efforts to persuade the owner to lower the price to \$100,000, Foreman recounted in a mocking Asian accent that the woman said that she wouldn't lower the house to \$100,000 and to lower it instead to \$115,000.
28. Respondent Agency is vicariously liable for Respondent Foreman's actions because it controlled, or had a right to control, Foreman's conduct as evidenced by (1) the Agency's state-law obligations to ensure that Foreman not discriminate; and (2) the Agency's actual supervision of Foreman.
29. Georgia law required that Respondent Agency, through its qualified broker, supervise Respondent Foreman so as to prevent him from discriminating in the manner charged herein. *See* Ga. Code Ann. § 43-40-10(1) (supervisory duties); 43-40-18(b) (same); Ga. Code Ann. § 43-40-1(10) (same); Ga. Code Ann. § 43-40-25(b)(1)(A), (C), and (D) (anti-discrimination prohibitions included within the scope of supervision); Ga. Comp. R. & Regs. 520-1-.13(1)(b)(1), (3), and (4) (same).
30. Respondent Agency's qualified broker described himself as the "supervisor" of Respondent Foreman, with whom he admitted having daily interaction and whom he coached on how to sell houses. Foreman stated that he "report[ed]" to the qualified broker and asked him questions, and that the qualified broker was "over" him and trained him. When speaking to one of the testers, Foreman referred to the qualified broker as his "boss." In addition, the qualified broker admits that he signed off on the salespersons' contracts or allowed the salespersons to sign his name for him, was available to all of his salespersons at any time, tried to talk with all of them every day and sent them voice-mails and e-mails about anything he felt was important.
31. In discharging Respondent Agency's supervisory responsibilities over its salespersons, its qualified broker concedes that Respondent Agency did not provide any fair housing training to its salespersons, or require them to attend any outside fair housing training, and that no salesperson ever asked him about fair housing.

32. Respondent Foreman operated out of Respondent Agency's offices, and represented himself as an agent for the Agency through signage, business cards, and other documentation containing the Agency's name. The Agency had the authority to hire and fire Foreman and set his commissions. In addition, it provided the use of office space, furniture, telephones, computers, and printers without charge to Foreman and its other salespersons, gave Foreman the opportunity to show houses in a new subdivision, and reviewed and had to approve any modifications to the standard form sales contract used by the Agency's salespersons, including Foreman.
33. The Mission Statement of Respondent Agency expressly states that "[w]e readily acknowledge that a Fiduciary relationship will exist between our clients and Coldwell Banker Joe T. Lane Realty, Inc., and we will adhere to the Law of Agency in carrying out this relationship in a professional and legal manner." The Agency's qualified broker admits that the Agency permitted its salespersons to hold themselves out as agents for the Agency.
34. Respondents' actions have injured Complainant National Fair Housing Alliance. Respondents' actions have frustrated NFHA's mission to ensure equal availability of housing and housing services, and NFHA has had to divert resources in response to the actions of Respondents.

III. CONCLUSION

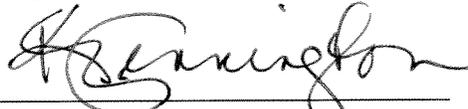
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent Foreman and Respondent Agency with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a), (c), and (d) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent Foreman and Respondent Agency set forth above violate the Fair Housing Act, 42 U.S.C. § 3604(a), (c), and (d);
2. Enjoins Respondent Foreman and Respondent Agency, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of race, color, or national origin against any person in any aspect of the rental or sale of a dwelling;
3. Awards such damages as will fully compensate Complainant NFHA, an aggrieved person, for its economic loss and frustration of mission caused by Respondent Foreman's and Respondent Agency's discriminatory conduct in violation of the Act;

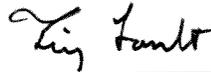
4. Assesses civil penalties pursuant to 24 C.F.R. § 180.671(a)(1) against Respondent Foreman and Respondent Agency of sixteen thousand dollars (\$16,000) each for each violation of the Act for which they are liable; and
5. Awards appropriate relief under 42 U.S.C. § 3612(g)(3) to combat the effects of unlawful housing discrimination including a victim identification and compensation fund and a fair housing education and outreach fund.

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

Respectfully submitted,



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