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 [redacted] and [redacted],	)	
Charging Party,	)	HUDALJ:
v.	)	FHEO No.: 07-09-0268-8 07-10-0080-8
Michael Nieman, J.S. Property Management, L.C., and Elders, Inc.,	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant [redacted] filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD or the Department) on or about March 10, 2009, as amended on August 23, 2010, alleging Respondents Michael Nieman, J.S. Property Management, L.C., and Elders, Inc. (Respondents) committed discriminatory housing practices on the basis of sex (female) in violation of Sections 3604(b), (c), and 3617 of the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601, *et seq.* (2010) (the Act).

Complainant [redacted] filed a verified complaint with HUD on or about October 15, 2009, as amended on August 23, 2010, alleging Respondents committed discriminatory housing practices on the basis of sex (female) in violation of 42 U.S.C. §§ 3604(b), (c), and 3617.

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). Pursuant to 24 C.F.R. §§ 103.400(a)(2)(i) and 103.405, the Assistant Secretary has delegated to the General Counsel, who has redelegated to the Regional Counsel (73 Fed. Reg. 68442 (Nov. 18, 2008)), 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 his or her designee.

By Determination of Reasonable Cause of September 29, 2010[1], 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 sex and has authorized and directed the issuance of this Charge.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and as set forth in the aforementioned Determination of Reasonable Cause, Respondents Michael Nieman, J.S. Property Management, L.C., and Elders, Inc. are charged with discriminating against the Complainants based on sex in violation of 42 U.S.C. §§ 3604(b), (c), and 3617 as follows:

A. Applicable Federal Law

1. 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 therewith, because of sex. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).

2. It is unlawful to make any statement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sex, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a) and (b).

3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by Section 3604 of the Act. 42 U.S.C. § 3617; 24 C.F.R. §§ 100.400(b) and (c)(2).

4. 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 Allegations

5. Park Towers Apartments (the subject property or Park Towers) is an 84 unit residential high-rise building located at 500 Sycamore Street, Waterloo, Iowa. The property is designated for low income persons who are elderly or disabled and receives Project Based Section 8 funding from HUD.

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[1]In their complaints filed with HUD, Complainants [redacted] also named Joyce Steffen as a Respondent and alleged Respondents violated 42 U.S.C. § 3604(f) on the basis of disability. In the Determination, HUD concluded that Joyce Steffen was not personally liable for the Respondents' discriminatory conduct and she is, therefore, not named as a party in this Charge of Discrimination. HUD further concluded in the Determination that no reasonable cause existed to believe discrimination occurred on the basis of disability.

6. Complainant [redacted] is a 53-year-old single female who resided at Park Towers from on or about April 30, 2007, until on or about February 5, 2009.

7. Complainant [redacted] is a 41-year-old single female who resided at Park Towers from on or about April 24, 2007, until on or about November 30, 2008.

8. Respondent Nieman, a divorced male, has been employed by Elders, Inc. as the building manager/maintenance supervisor for the subject property since 1994. Respondent Nieman is responsible for the daily on-site management and maintenance of the subject property.

9. Respondent J.S. Property Management, L.C., is the management agent for the subject property. Joyce Steffen, female, owns and operates J.S. Property Management, L.C., and has been affiliated with Park Towers for twenty-two years. She has served as Respondent Nieman's immediate supervisor for the past sixteen years.

10. Respondent Elders, Inc. is the owner of the subject property.

11. Respondents do not have a sexual harassment policy that applies to employees or residents of the subject property or a grievance policy to address tenant complaints or concerns.

12. Respondents J.S. Property Management, L.C., and Elders, Inc. are vicariously liable for the discriminatory actions of their agent Respondent Nieman.

Complainant [redacted]

13. In the initial months of her tenancy, Complainant [redacted] was scared and intimidated by Respondent Nieman because he had yelled at her and made her cry. After about three or four months, on the advice of another tenant, Complainant [redacted] starting standing up to Respondent Nieman's actions by making comments back to him.

14. Thereafter, Respondent Nieman began making unwelcome and offensive sexual comments and gestures to her and insinuated that she could exchange sex for her cable and rent payments. Such conduct continued throughout her tenancy and included the following specific instances of inappropriate comments and gestures:

15. During 2007, when Complainant [redacted] asked Respondent Nieman to fix her air conditioner, he responded that she should ask the man who lived next door to her because she was "doing him." Complainant [redacted] called Respondent Nieman an idiot and walked away.

16. In or around December 2007, Complainant [redacted] was crying when Respondent Nieman stopped by her unit with an exterminator. Complainant [redacted] told Respondent Nieman she was crying because she was unable to pay for rent and cable, which Respondent had recently turned off for failure to pay. As Respondent Nieman was leaving, he insinuated

that he would exchange rent and cable for sexual favors by stating, "You know what you can do about that."

17. Around the same time in approximately December 2007, Complainant [redacted] was getting on the elevator while Respondent Nieman was standing outside the elevator. Respondent Nieman grabbed his crotch and said, "I know you want some of this." Complainant [redacted] replied, "I don't do little men" and closed the elevator doors.

18. In or around January 2008, Complainant [redacted] and Respondent Nieman were on the elevator together. Respondent Nieman stated, "Boy, your nipples are showing good through that shirt." Complainant [redacted] did not respond.

19. Later in 2008, Respondent [redacted] again insinuated that he would exchange rent for sexual favors when Complainant [redacted] appeared at Respondent Nieman's office window and reported that her mom was coming to pay her rent. Respondent Nieman responded, "Your mom doesn't have to pay your rent, you know what you can do." Complainant [redacted] rejected Respondent [redacted] by telling him she doesn't do little white men and walked away.

20. On or around July 19, 2008, Complainant [redacted] called Respondent Nieman in the evening to request that he unlock her unit after she had forgotten her apartment keys. Respondent Nieman stated that there was a $20 charge, but added, "You know what you can do." Complainant [redacted] stated she reminded Respondent Nieman she did not have any money and that she just wanted to get into her unit. When Respondent Nieman arrived, he unlocked her unit and left.

21. During a conversation at Respondent [redacted]' office window, Respondent Nieman began to discuss the 'myth' about the size of black and white men's penises. Complainant [redacted] stated she did not know, as she had never been with a white man. Respondent Nieman responded, "There can always be a first time." Complainant [redacted] responded that he couldn't handle her and walked away.

22. In one instance after Complainant [redacted] had referred to Respondent Nieman as a little man, Respondent Nieman told Complainant [redacted] he was not little where it counted, and he could show her.

23. Complainant [redacted] repeatedly rejected Respondent Nieman's unwelcome sexual comments, offers, and advances.

24. Around October 2008, Complainant [redacted] started looking for new housing, which she secured in January 2009, after she learned she had reached the top of the Waterloo Housing Authority Section 8 voucher waiting list.

25. In around late January 2009, Complainant [redacted], while at the subject property, thanked Respondent Nieman for providing a good reference to her new landlord. Respondent Nieman indicated that it was true since Complainant [redacted] was a good tenant who kept

to herself and paid her rent. Complainant [redacted] asked Respondent Nieman, "Are you going to miss me," a phrase Complainant uses as a farewell. Respondent Nieman said no and Complainant [redacted] asked him why not? Respondent Nieman replied, "Because you won't give me no pussy." Complainant [redacted] walked off.

26. Complainant [redacted] began moving her belongings out of the subject property during mid to late January 2009, and finished moving out on or around February 5, 2009.

27. On February 11, 2009, Complainant [redacted] reported Respondent Nieman's sexual harassment to the Waterloo Police Department, the Waterloo Commission on Human Rights and Ms. Steffen. Complainant [redacted], who was very upset, emotional, and crying on the phone with Ms. Steffen, told her that Respondent Nieman had sought favors for rent and had sexually harassed her.

28. Respondent Nieman's repeated offensive sexual comments and advances made Complainant [redacted] feel nervous, uncomfortable, and afraid and were sufficiently severe and pervasive to unreasonably interfere with her tenancy.

29. Complainant [redacted] is an aggrieved person under the Act. As a result of Respondents' actions, Complainant [redacted] experienced a hostile and burdensome housing environment that was significantly less desirable than if the conduct had not occurred, and, consequently, she suffered damages including but not limited to emotional distress, embarrassment, humiliation, inconvenience, and economic loss.

Complainant [redacted]

30. In or around August or September 2007, when Complainant [redacted] asked Respondent Nieman if her niece could stay with her at the property, Respondent Nieman commented that she could stay because her niece was good to look at on camera, referring to the property's security cameras.

31. During approximately late May 2008, Complainant [redacted] started dating Clyde [redacted]. In or around June 2008, when Respondent Nieman was in Complainant [redacted] unit, Complainant [redacted] asked Respondent Nieman if her boyfriend could move in with her. Respondent Nieman responded, "What are you going to do for me?" Complainant [redacted] told Respondent Nieman, "I don't know. What do you want?" Respondent Nieman stated, "You know what I want." Complainant [redacted] told Respondent Nieman, "I don't know. I will have to think about that." Complainant [redacted] stated she knew Respondent Nieman wanted a sexual favor.

32. The next day, Complainant [redacted], who was worried if she rejected Respondent Nieman he would not let Clyde move in and would evict her, wrote Respondent Nieman a note telling him she would give in to him.

33. Later that same day, Respondent Nieman came to her apartment and told Complainant [redacted] that he wanted a "blow job." They went into Complainant [redacted] bedroom and

she performed oral sex on him. Afterward, Complainant [redacted] cleaned up Respondent Nieman with a rag and he left.

34. After Complainant [redacted] provided Respondent Nieman the requested sexual favor, her boyfriend moved in with her and she never received any lease violations or warnings regarding her boyfriend living with her.

35. After Complainant [redacted] succumbed to Respondent Nieman's sexual request, he made offensive sexual comments to her numerous times when he saw her at the subject property, including, when she wore certain clothing, "ooh and ah," "I know what to do with that," and "Your breasts look good," and "You're looking hot today."

36. Complainant [redacted] responded to the comments with, "No, I don't think so, Mike" or she would blush and be quiet. The comments occurred throughout Complainant [redacted] tenancy and stopped around the time she gave her 30 day notice to move out on November 10, 2008.

37. Complainant [redacted] reported that the sexual encounter with Respondent Nieman made her feel "icky" and caused her to stay in her unit until he left for the day to avoid seeing him because it reminded her of how he had taken advantage of her sexually.

38. Complainant [redacted] moved from the subject property on or around November 30, 2008, because she was tired of avoiding Respondent Nieman, dealing with issues at Park Towers and she had an opportunity to move into a double wide trailer.

39. Complainant [redacted] did not report Respondent Nieman's misconduct to any of the Respondents because she did not know anyone was over him and there was not anyone else to turn to.

40. Complainant [redacted] felt intimidated and afraid of Respondent Nieman, and her tenancy was significantly and negatively affected by the unwelcome sexual encounter with him and his numerous unwelcome sexual comments. Respondent Nieman's offensive conduct was sufficiently severe and pervasive to unreasonably interfere with her tenancy.

41. Complainant [redacted] is an aggrieved person under the Act. As a result of Respondents' actions, Complainant [redacted] experienced a hostile and burdensome housing environment that was significantly less desirable than if the conduct had not occurred, and, consequently, she suffered damages including but not limited to emotional distress, embarrassment, humiliation, inconvenience, and economic loss.

Others:

42. In addition to Complainants [redacted], Respondent Nieman made unwanted sexual comments to and engaged in unwelcome sexual acts or provided housing benefits or services in exchange for sexual favors to at least two other female tenants at the subject property.

C. Fair Housing Act Violations

43. By Respondent Nieman engaging in severe and pervasive conduct by making repeated unwelcome sexual comments and advances to Complainant [redacted], Respondents subjected her to a hostile housing environment based on sex in violation of 42 U.S.C. § 3604(b).

44. By Respondent Nieman making offers to exchange sexual favors for rent or other housing benefits and making sexual comments to Complainant [redacted], Respondents unlawfully made discriminatory statements based on sex in violation of 42 U.S.C. § 3604(c).

45. By Respondent Nieman making repeated offensive sexual comments and advances to Complainant [redacted], Respondents intimidated and interfered with her in the exercise or enjoyment of her rights granted or protected by 42 U.S.C. § 3604 based on sex in violation of 42 U.S.C. § 3617.

46. By Respondent Nieman engaging in severe and pervasive conduct by engaging in unwelcome sexual conduct and making repeated unwelcome sexual comments to Complainant [redacted], Respondents subjected her to a hostile housing environment based on sex in violation of 42 U.S.C. § 3604(b).

47. By Respondent Nieman making sexual comments to and requesting that Complainant [redacted] exchange sexual favors for housing benefits, Respondents unlawfully made discriminatory statements based on sex in violation of 42 U.S.C. § 3604(c).

48. By Respondent Nieman making repeated offensive sexual comments and advances to Complainant [redacted], Respondents intimidated and interfered with her in the exercise or enjoyment of her rights granted or protected by 42 U.S.C. § 3604 based on sex in violation of 42 U.S.C. § 3617.

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(b), (c), and 3617, 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 retaliating or discriminating because of sex against any person in any aspect of the 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 $16,000 civil penalty against each Respondent for each violation of the Act they are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671.

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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