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, Charging Party, on behalf of BillieJo Baity and Housing Opportunities Made Equal, v. Judith Serio and RE/MAX North, Respondents.	FHEO Nos. 02-09-0659-8; 02-09-0660-8

CHARGE OF DISCRIMINATION

JURISDICTION

On May 18, 2009, BillieJo Baity and Housing Opportunities Made Equal ("HOME") filed verified complaints with the United States Department of Housing and Urban Development ("HUD"). Ms. Baity and HOME alleged, among other things, that RE/MAX North Associate Broker Judith Serio ("Respondent Serio" or "Ms. Serio") made statements with respect to a rental property indicating a preference, limitation, or discrimination on the basis of familial status, in violation of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601 *et seq.* ("Act"). HOME also alleged that Ms. Serio refused to rent an apartment to one of its testers based on familial status in violation of the Act.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and 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 (24 CFR §§ 103.400 (a)(2)(i), 103.405)), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441-68442) (Nov. 18, 2008), the authority to issue such a Charge, following a determination of reasonable cause.

The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaints were unsuccessful. See 42 U.S.C. § 3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

1. It is unlawful to make, or cause to be made, a statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status. 42 U.S.C. § 3604(c).

2. It is unlawful to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a).

PARTIES

3. Complainant BillyJo Baity is a woman with five children who resides in Lockport, New York. Prior to moving to Lockport, Ms. Baity resided in Clarence, New York.

4. Complainant HOME is a non-profit corporation located at 700 Main Street, Buffalo, New York. HOME is dedicated to providing equal housing opportunities to all persons without regard to race, color, religion, sex, handicap, familial status or national origin. HOME engages testers to conduct fair housing testing, which is a simulation of housing transactions to evaluate compliance with the Act.

5. Respondent Judith Serio is a licensed real estate broker and an Associate Broker with RE/MAX North.

6. Respondent RE/MAX North is a real estate agency in the business of selling and renting real estate. It is located in Amherst, New York.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. On or about December 29, 2008, Ms. Baity, responding to an advertisement for an available rental apartment at 8275 Grenier Road, Clarence, New York ("Clarence Apartment"), contacted Respondent Serio, the listing agent, to schedule a viewing of the Clarence Apartment.

8. The Clarence Apartment is located in a two-family house and is a "dwelling" within the meaning of the Act and is not exempt from coverage under 42 U.S.C. § 3604(c).

9. Later on December 29th, Ms. Baity met with Ms. Serio and viewed the Clarence Apartment.

10. On or about December 30, 2008, Ms. Baity sent Ms. Serio a completed application for the Clarence Apartment.

11. Thereafter, Ms. Baity called Ms. Serio to follow-up on her application and Ms. Serio told Ms. Baity that her application was being reviewed.

12. On or about January 6, 2009, Ms. Serio telephoned Ms. Baity and left the following recorded message:

    "BillieJo this is Judy Serio calling um
    Regarding the rental over at 8275 uh uh Greiner Road
    I am sorry to say that um we did rent it to a couple um
    The the lady is um has been ill and is um is really is not in the shape to deal with um children
    As many children as you have um God Bless you
    But you know and it is a tough situation
    It is a great place for children um she does have 4 or 4 bedroom there but
    Um just um I mean I had visited with her the other day
    And was really surprised to see how downhill she's gone
    As far as her health is concerned
    So um I think that um
    The way this is sit right now sitting right now is that
    There is a young couple that wanted it
    And we have rented it to them
    Ok but thank you so much for your rental application
    And for taking the time to come to see it
    Thanks bye."

13. On or about January 8, 2009, Ms. Baity contacted Complainant HOME and reported that Respondents had engaged in discriminatory conduct based on her children's race and her familial status.

14. On or about January 9, 2009, HOME engaged two testers to determine whether Respondents treated potential rental applicants differently based on their race, color and familial status.

15. On or about January 14, 2009, during the course of a telephone conversation with Ms. Serio, one of HOME's testers expressed an interest in an available rental apartment located in Tonawanda, New York ("Tonawanda Apartment").

16. Ms. Serio then asked the tester who the apartment was for and when the tester responded for herself and her husband and children, Ms. Serio stated that the Tonawanda Apartment was owned by an elderly woman who was not happy about having children live there.

17. On or about January 15, 2009, the HOME tester met with Ms. Serio and again inquired about renting the Tonawanda Apartment. Ms. Serio stated that the apartment

was owned by an 84 year old woman who lived on the property and wasn't happy about having children in the apartment.

18. The Tonawanda Apartment is a "dwelling" within the meaning of the Act and is not exempt from coverage under 42 U.S.C. §§ 3604 (a) and (c).

19. As a result of Ms. Serio's discriminatory statement based on familial status, Ms. Baity has suffered emotional distress.

20. Ms. Serio's refusal to negotiate for the rental of, or otherwise make unavailable or deny, the Tonawanda Apartment to a HOME tester and her discriminatory statements based on familial status to the HOME tester have caused harm to HOME by, among other things, interfering with its efforts and programs intended to bring about equality of opportunity in housing and forcing it to devote scarce resources to identify and counteract Respondents' unlawful housing practices thereby diverting time and money from its other functions and goals.

FAIR HOUSING ACT VIOLATIONS:

1. Respondent Serio has violated the Act because she made a statement with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on familial status. 42 U.S.C. § 3604(c).

2. Respondent Serio has violated the Act because she refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a).

3. Respondent RE/MAX North is liable for the violation of Complainants' rights under 42 U.S.C. § 3604 (a) and (c) because, at all relevant times, Ms. Serio was acting within her authority as an agent or apparent agent of RE/MAX North.

CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of 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) and (c) 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, 42 U.S.C. §§ 3601-3619;

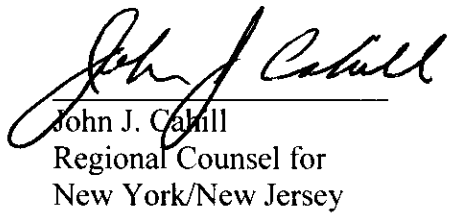
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of familial status against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g) (3);

3. Awards such damages pursuant to 42 U.S.C. § 3612(g) (3) as will fully compensate Complainants for emotional distress and loss of civil rights caused by Respondents' discriminatory conduct;

4. Awards a civil penalty against Respondents for violation of the Act, pursuant to 42 U.S.C. § 3612(g) (3) and 24 CFR § 180.671; and

5. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g) (3).

Respectfully submitted,



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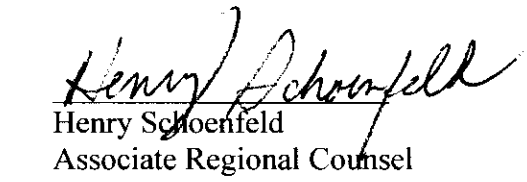

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