

**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 the Southwest Fair)	
Housing Council,)	
)	
Charging Party,)	
)	
v.)	HUD ALJ No.
)	FHEO No. 09-08-0480-8
Recreational Center, Inc. and Scottsdale)	
Shadows Regimes I-VII, inclusive,)	
)	
)	
Respondents.)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On January 18, 2008, Complainant, the Southwest Fair Housing Council (SWFHC), filed a complaint with the United States Department of Housing and Urban Development (“HUD” or “Department”), alleging that the Respondents, Recreational Center, Inc. (RCI) and Scottsdale Shadows Regimes I-VII, inclusive, discriminated in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (“the Act”). The complaint alleged that the Respondents published discriminatory statements that indicate a preference or limitation on the basis of familial status in violation of 42 U.S.C. § 3604(c).¹

On February 13, 2008, the Complainant executed a first amended complaint to include the seven (7) Scottsdale Shadows Regimes’ delegates to the RCI Board of Directors.

On October 7, 2008, the Complainant executed a second amended complaint to properly identify the individual Scottsdale Shadows Regime delegates to the RCI Board of Directors.

¹ The complaint also alleged that the Respondents discriminated in the terms, conditions, privileges, or services and facilities at Scottsdale Shadows; published discriminatory advertising, statements and notices; and interfered, coerced or intimidated on the basis of race, national origin and familial status in violation of 42 U.S.C. §§ 3604 (a), 3604(b), 3604(c) and 3617 of the Act. Pursuant to its investigation, the Department issued a no reasonable cause determination with respect to the §§ 3604 (a), 3604(b) and 3617 allegations.

The Act authorizes the Secretary of HUD to issue 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)-(2). The Secretary of HUD has delegated to the General Counsel (24 C.F.R. § 103.400 (a)(2)(i) and § 103.405), the authority to issue such a Charge of discrimination. The General Counsel has re-delegated to the Regional Counsel the authority to issue such a Charge (74 FR 62803-01, 2009 WL 4249923 (F.R.)) following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), or his or her designee.

The FHEO Region IX Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on familial status, and has authorized and directed the issuance of this Charge of Discrimination. *See* 42 U.S.C. § 3610(g)(2). HUD’s efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C. § 3610(b).

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD’s investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondents RCI and Scottsdale Shadows Regimes I-VII, inclusive, are charged with discriminating against Complainant SWFHC, based on familial status in violation of 42 U.S.C. § 3604(c) of the Act as follows:

A. Statutory and Regulatory Provisions

1. 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. § 100.75.
2. “Familial status” means one or more individuals under the age of eighteen being domiciled with a parent or legal guardian. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.20.

B. Parties and Properties

3. At all times relevant to this Charge, Complainant SWFHC is an *Aggrieved Person* as defined by 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
4. At all times relevant to this Charge, Complainant SWFHC has been and is a private, non-profit fair housing organization that works to ensure fair housing by providing a variety of services directed toward education and fair housing enforcement. SWFHC utilizes funding from federal, state, and local resources to eliminate housing discrimination and ensure equal housing opportunities for all people. As part of their mission to eliminate housing discrimination, SWFHC conducts investigations into discriminatory housing practices, including discriminatory advertising, in violation of the Fair Housing Act.

5. At all times relevant to this Charge, Respondent RCI has been and is a State of Arizona not-for-profit corporation.
6. Respondent RCI owns and maintains all of the common areas, roadways, administration and community center building, pools, tennis courts, golf course and outside parking areas (excluding those owned by the specific Regimes) at Scottsdale Shadows located at 7800 East Camelback Road, Scottsdale, Arizona 85251 (“Subject Property”).
7. Respondent RCI is the management agent for each of the seven (7) Scottsdale Shadows Regimes I-VII, inclusive, at the subject property.
8. At all times relevant to this Charge, Respondents Scottsdale Shadows Regimes I-VII, inclusive, have been and are the seven (7) homeowners’ associations (HOA) at the subject property. Each Regime maintains its own Board of Directors and Officers.
9. Each Regime owns its own Regime buildings and common areas (areas common to all residents living in the Regime buildings.) The Regimes own the grounds 10 feet from their respective buildings; RCI owns all other areas at Scottsdale Shadows.
10. The Subject Property is a high-rise condominium complex consisting of 840-privately owned dwelling units located in thirteen towers. Each unit is a “dwelling” as defined by 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
11. Respondent Scottsdale Shadows Regime I is the HOA for Building 21 at the subject property.
12. Respondent Scottsdale Shadows Regime II is the HOA for Buildings 22 and 23 at the subject property.
13. Respondent Scottsdale Shadows Regime III is the HOA for Buildings 24 and 25 at the subject property.
14. Respondent Scottsdale Shadows Regime IV is the HOA for Buildings 26 and 27 at the subject property.
15. Respondent Scottsdale Shadows Regime V is the HOA for Buildings 28 and 29 at the subject property.
16. Respondent Scottsdale Shadows Regime VI is the HOA for Buildings 30 and 31 at the subject property.
17. Respondent Scottsdale Shadows Regime VII is the HOA for Buildings 32 and 33 at the subject property.

C. Factual Allegations

18. Until January 2008, the Scottsdale Shadows community website at www.scottsdalershadows.com used the term "active adult community" to describe the subject property.
19. Each of the seven (7) Scottsdale Shadows Regimes is governed by its own *Declaration of Covenants, Conditions and Restrictions* ("CC&Rs").
20. At all times relevant to this Charge, Section 2.1(b) of the CC&Rs for Scottsdale Shadows Regime I states, in part, "Any single person or the head of any family occupying an apartment unit in this horizontal property regime shall be thirty-nine (39) years of age or older at the time of occupying said apartment unit. No person under the age of sixteen (16) years shall be a resident in any apartment unit."
21. At all times relevant to this Charge, Section 2.1(b) of the CC&Rs for Scottsdale Shadows Regime II states, in part, "Any single person or the head of any family occupying an apartment unit in this horizontal property regime shall be thirty-nine (39) years of age or older at the time of occupying said apartment unit. No person under the age of sixteen (16) years shall be a resident in any apartment unit."
22. At all times relevant to this Charge, Section 2.1(b) of the CC&Rs for Scottsdale Shadows Regime III states, in part, "Any single person or the head of any family occupying an apartment unit in this horizontal property regime shall be thirty-nine (39) years of age or older at the time of occupying said apartment unit. No person under the age of sixteen (16) years shall be a resident in any apartment unit."
23. At all times relevant to this Charge, Section 2.1(b) of the CC&Rs for Scottsdale Shadows Regime IV states, in part, "Any single person or the head of any family occupying an apartment unit in this horizontal property regime shall be thirty-nine (39) years of age or older at the time of occupying said apartment unit. No person under the age of sixteen (16) years shall be a resident in any apartment unit."
24. At all times relevant to this Charge, on page 33 of the CC&Rs for Scottsdale Shadows Regime V, the pertinent provisions state, in part, "Any single person or the head of any family occupying any Unit shall be at least thirty-nine (39) years of age, no person under the age of sixteen (16) shall be a resident of any Unit."
25. At all times relevant to this Charge, on page 37 of the CC&Rs for Scottsdale Shadows Regime VI, the pertinent provisions state, in part, "Any single person or the head of any family occupying any Unit shall be at least thirty-nine (39) years of age, and no person under the age of sixteen (16) years shall be a resident of any Unit."
26. At all times relevant to this Charge, on page 34 of the CC&Rs for Scottsdale Shadows Regime VII, the pertinent provisions state, in part, "Any single person or the head of

any family occupying any Unit shall be at least thirty-nine (39) years of age, and no person under the age of sixteen (16) years shall be a resident of any Unit.”

27. At all times relevant to this Charge, the subject CC&Rs for the seven (7) Scottsdale Shadows Regimes I-VII, inclusive, were not amended and continue to publish the stated age restrictions referenced in Paragraphs 20 through 26, above.
28. The CC&Rs for Scottsdale Shadows Regimes I-VII, inclusive, were published on the Scottsdale Shadows website at www.scottsdale Shadows.com through December 2007; since January 2008, the CC&Rs for Scottsdale Shadows Regimes I-VII have been published at www.scottsdale Shadowsarizona.com.
29. As a result of Respondents’ discriminatory publication, Complainant SWFHC suffered frustration of its mission due to the diversion of resources normally devoted to educational, counseling and referral services in order to investigate this matter. Complainant’s resources were diverted to atypical activities including, but not limited to, use of staff time in the investigation and preparation of investigative documents and investigating the origin of the subject advertisement.

D. Fair Housing Act Violations

30. Under these circumstances, the Respondents’ continued publication in the seven (7) CC&Rs for Scottsdale Shadows Regimes I-VII, inclusive, as described in Paragraphs 20-26, above, discriminated against the Complainant by making statements that indicated a preference, limitation, or discrimination against families with children or an intention to make such a preference, limitation or discrimination with respect to the sale or rental of a dwelling, in violation of 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.

III. CONCLUSION

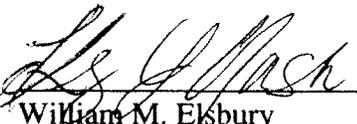
WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of Section 3604(c) of the Act, and prays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

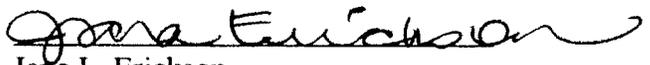
1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and its implementing regulations;
2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating because of familial status against any person in any aspect of the sale or rental of a dwelling;
3. Pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1), assesses a civil penalty against each Respondent for each violation of the Act;

4. Pursuant to 42 U.S.C. § 3612(g)(3), awards such damages as will fully compensate Complainant SWFHC for the diversion of its resources, out-of-pocket expenses devoted to investigating this matter, and frustration of its organizational mission.

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

Respectfully submitted,

for  *Attorney*
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Regional Counsel, Region IX *Regional Counsel*


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