

**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)
Meki Bracken and Diana Lin,)

Charging Party,)

v.)

Chak Man Fung and)
Jennifer Ho,)

Respondents.)

HUD ALJ No.

FHEO Nos.

05-04-1165-8

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CHARGE OF DISCRIMINATION

I. JURISDICTION

On or around August 18, 2004, Complainants Meki Bracken and Diana Lin, “aggrieved persons” under the Fair Housing Act, as amended (“Act”), filed complaints with the United States Department of Housing and Urban Development (“HUD”), alleging that Respondents discriminated against them by refusing to rent to Complainant Meki Bracken on the basis of her race, by making discriminatory statements, by interfering with Complainant Meki Bracken’s attempt to take possession of a rental unit, and by retaliating against Complainant Diana Lin for aiding Complainant Meki Bracken in her attempt to exercise her fair housing rights, in violation of 42 U.S.C. §§ 3604(a), (c) and 3617.

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) & (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 her designee.

The Office of Fair Housing and Equal Opportunity Region V 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 race, and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS THAT SUPPORT THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and Determination of Reasonable Cause, Respondents Chak Man Fung and Jennifer Ho (collectively referred to as "Respondents") are charged with discriminating against Complainants Meki Bracken and Diana Lin, aggrieved persons as defined by 42 U.S.C. Section 3602(i), based on race in violation of Sections 3604(a), 3604(c) and 3617 of the Act as follows:

A. LEGAL AUTHORITY

1. It is 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. 42 U.S.C. § 3604(a).
2. 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 race, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c).
3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of a person having exercised or enjoyed, or on account of a person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3604 of the Act. 42 U.S.C. § 3617.

B. PARTIES AND SUBJECT PROPERTY

4. At all times relevant to this Charge, the subject property was a three-bedroom condominium unit located at 20 N. State Street, Unit 602, Chicago, Illinois 60602 and leased to three individual renters, each with a separate lease, their own room and rights to the remaining portions of the unit and building amenities. ("subject property")
5. At all times relevant to this Charge, Respondent Chak Man Fung ("Respondent Fung") owned the subject property.
6. At all times relevant to this Charge, Respondent Jennifer Ho ("Respondent Ho") was a tenant at the subject property. In addition, at all times relevant to this Charge, Respondent Ho acted as an agent for Respondent Fung. She paid lower rent than the other tenants and performed various tasks related to management of the subject property, such as responding to rental inquiries, communicating with prospective renters, showing the subject property and providing applications. She also acted as an intermediary between

Respondent Fung and other tenants, collected and delivered monthly rent checks to Respondent Fung and provided maintenance and repair services at the subject property. During the relevant time period, she used Respondent Fung's cellular telephone and, on information and belief, had access to at least one of the email accounts that he used to advertise vacancies at the subject property. Respondent Ho is Asian-American.

7. At all times relevant to this Charge, Complainant Diana Lin ("Complainant Lin") was a tenant of the subject property. In May of 2004, she unsuccessfully attempted to sublease her unit to Complainant Meki Bracken. Respondent Fung subsequently terminated her lease and withheld her security deposit. Complainant Lin is Asian- American.
8. At all times relevant to this Charge, Complainant Meki Bracken ("Complainant Bracken") was seeking short-term housing in Chicago, where she was working as a summer intern at a Chicago law firm. Complainant Bracken was physically barred from moving into the subject property by Respondent Ho. Complainant Bracken is African-American.

C. FACTUAL ALLEGATIONS

9. In or around May or June of 2003, Respondent Fung purchased the subject property.
10. In or around August of 2003, Respondent Fung entered into separate lease agreements with Respondent Ho and Jae Eun Shin, a Korean foreign student, for the rental of rooms at the subject property.
11. In or around September of 2003, Complainant Lin responded to a rental advertisement for the subject property, which directed her to Respondent Ho's cellular telephone number. She spoke to Respondent Ho and viewed the unit escorted by Respondent Ho. Complainant Lin completed an application, which she gave to Respondent Ho. Respondent Ho negotiated the terms of the lease and communicated the approval of Complainant Lin's application to her. Complainant Lin never spoke with Respondent Fung directly about renting a room at the subject property. Complainant Lin moved into the subject property on October 1, 2003.
12. At all times relevant to this Charge, Respondent Ho provided various tenant services on behalf of Respondent Fung. She performed routine repair and maintenance services at the subject property. Respondent Ho also collected and delivered to Respondent Fung the other tenants' rental checks. The other tenants of the subject property communicated their rental concerns to Respondent Ho, who, in turn, communicated them to Respondent Fung. Respondents Ho and Fung were in constant contact. Conversely, Complainant

Lin rarely, if ever, communicated with Respondent Fung until she was ready to vacate her unit.

13. On or around April 21, 2004, Complainant Lin contacted Respondent Fung via telephone and informed him that she had purchased a home and would be moving out near the end of May. She mentioned that she would like to sublease her unit for the remainder of the lease term. In response, on April 22, 2004, Respondent Fung sent an email to Complainant Lin authorizing her to sublease the unit, stating, in relevant part, "For the rest of your leasing period, please sublet your room to someone you can trust. Please sublet your room under the same rules and conditions layout [sic] in our lease..." These were the only conditions placed on Complainant Lin's right to sublet her room. Respondent Fung also advertised Complainant's room for rent in the hopes that if both of them advertised the unit, the unit would sublet more quickly.
14. From April 29 to May 8, 2004, Complainant Lin received about thirty responses from the various advertisements. She also showed the subject unit to about six women, two of whom were referred from Respondent Ho in response to advertisements placed by Respondent Fung. None of the women who viewed the unit were African-Americans. None expressed interest in renting the subject property.
15. On May 9, 2004, Complainant Bracken, who was searching for short-term housing in Chicago while she worked a summer internship at a law firm, contacted Complainant Lin.
16. On May 10, 2004, Complainant Lin showed the subject unit to Complainant Bracken, without Respondent Ho present. Complainant Bracken agreed to sublease the unit and filled out an application, which Complainant Lin had previously obtained from Respondent Ho.
17. Later on May 10, 2004, Complainant Lin emailed Respondent Fung, stating that Complainant Bracken, who made \$25 per hour, was interested in the unit. She further offered to fax him Complainant Bracken's application, and informed him that Complainant Bracken needed the room by May 13. Respondent Fung did not reply to this email until May 17.
18. On May 12, 2004, Complainant Lin arranged a meeting between Complainant Bracken and Respondent Ho. Respondent Ho, upon first seeing Complainant Bracken, appeared surprised. Within minutes, she left Complainants Lin and Bracken, returning to her room. Although Complainant Bracken stayed for at least fifteen minutes, Respondent Ho did not come out from her room again until Complainant Bracken started to leave.

19. After Complainant Bracken left, Respondent Ho admonished Complainant Lin stating “you should’ve told me that Meki was black—I would’ve told you I don’t want to rent to blacks.” She reminded Complainant Lin that a black woman had once accused Respondent Ho of discriminating against her when Respondent Ho refused to rent to her, and that a lawyer told Respondent Ho that refusing to rent to the woman was not illegal. Finally, Respondent Ho claimed that their roommate, tenant Shin, was “afraid of blacks.” Respondent Ho then called Respondent Fung and spoke to him in Cantonese in an animated, upset manner. The phone records confirm that Respondent Ho called Respondent Fung four times after 7:30 p.m. that day.
20. A few hours after his May 12, 2004 phone calls with Respondent Ho, Respondent Fung posted a new rental advertisement online, discounting the rent for Complainant Lin’s room at the subject property by \$55 (from \$650 to \$595). The advertisement requested that interested persons “Email Jennifer.”
21. On May 13, 2004, Respondent Fung emailed Complainant Lin, rejecting Complainant Bracken because Respondent Ho would not be able to “get along well” with her. He stated, “I think we can’t just force Jennifer to accept Meki as her roommate. Could you please continue to show the room to anyone who might be interested?” He offered to share the difference if Complainant Lin would lower her rent to attract a sublet, and informed her that he was placing new advertisements. The email concluded with, “Hope we can find someone soon!” That day, Respondent Fung placed yet another advertisement for Complainant Lin’s room at the subject property in the *Chicago Reader*, which was printed on the following day.
22. On May 14, 2004, Respondent Ho showed Complainant Lin’s unit to a prospective renter, a white woman, without giving notice to Complainant Lin.
23. After consulting with an acquaintance who worked for the Chicago Commission on Human Relations, Complainant Lin determined that she could not reject Complainant Bracken because Respondent Ho’s rejection was motivated by discrimination. On the afternoon of May 14, Complainant Lin entered into a sublease agreement with Complainant Bracken and provided her with the keys to the unit. Complainant Bracken, in turn, provided two rent checks, each in the amount of \$650, as well as one \$650 check for the security deposit.
24. On May 16, 2004 at 3 a.m., Complainant Lin sent an email to Respondent Fung informing him that Respondent Ho’s rejection of Complainant Bracken was motivated solely by Complainant Bracken’s race. Complainant Lin further informed him that rejecting Complainant in deference to Respondent Ho’s discriminatory preferences would be illegal under various local, state and federal laws. Finally, she notified Respondent Fung that Complainant Bracken would be taking possession of Complainant Lin’s room at the subject

property on Sunday, May 16 and requested that he inform Respondent Ho and Jae Eun Shin accordingly.

25. On May 16, 2004, at 10:28 a.m., Respondent Fung responded to Complainant Lin's email. He stated that while he had no discriminatory motives, Respondent Ho should be allowed to "discriminately choose" with whom she would live because they would be sharing the subject property. He further stated his belief that it is not illegal to honor Respondent Ho's wish to not "live with blacks in the same house" and that it would be immoral to compel Respondent Ho to do so.
26. On May 16, 2004, at 10:57 a.m. and 11:08 a.m., respectively, two telephone calls were made from Respondent Fung's telephone to Respondent Ho's telephone. The telephone records indicate that the conversations lasted 15 minutes.
27. On May 16, 2004, at or around 2 p.m., Complainant Bracken arrived at the subject property with her belongings in her car. She unlocked the door, but was unable to get it open. Despite her prolonged knocking, nobody opened the door. Complainant Bracken, however, could see someone moving inside through the peephole, and heard music playing.
28. Later, two of Complainant Bracken's friends arrived to assist her with her move. At that time, Complainant Bracken attempted to push the door open, but discovered that a heavy object was blocking the door. Furthermore, she could see under the bottom of the door that the person inside the subject property was continuously adjusting the object to keep the door blocked. After trying for an hour to get in, Complainant Bracken finally took her belongings from the hallway back to her car and left the subject property.
29. Complainants Lin and Bracken both repeatedly called Respondents Ho and Fung on May 16, 2004 in an attempt to gain Complainant Bracken entry to the subject property, but Respondents neither answered their phone, nor returned their calls.
30. In testimony given to HUD under oath, Respondent Ho admitted that she was the person who blocked Complainant Bracken's entry from inside the subject property on May 16.
31. On May 17, 2004, Respondent Fung posted yet another advertisement for Complainant Lin's room at the subject property online, again offering a \$55 rent discount. The advertisement directed interested persons to "Email Jennifer."

32. On May 18, 2004, Respondent Fung emailed Complainant Lin, terminating their lease agreement and requesting that she surrender her room and return her keys to Respondent Ho.
33. The subject unit remained vacant until July, when Fiona Fang entered into a lease. Fiona Fang is a person of Asian descent.
34. As a result of Respondents' discriminatory acts, Complainant Bracken suffered economic loss, emotional distress and the loss of a unique housing opportunity. Complainant Bracken had come to Chicago from Alabama. When Respondent Ho barred her from moving into the subject property, Complainant Bracken was stranded in an unfamiliar city with no place to stay. She incurred hotel expenses while she looked for alternate housing. For a time, she was forced to impose upon an acquaintance, where she slept on the hard floor. She continued her search, and viewed four other apartments, but found that she was unable to secure suitable housing for the short period of time for which she needed it. Ultimately, she had to stay with Complainant Lin—a stranger—at her new home, a small condominium, where she lacked privacy and never felt settled. She was often tired and stressed throughout the summer because of the inadequate sleeping arrangement. Complainant Lin's new condominium was also farther from Complainant Bracken's work, causing her to accrue extra transportation expenses. Moreover, Complainant Bracken had never suffered direct racial discrimination before, and the experience left her feeling frustrated, confused, self-conscious and judged. For her, it ruined Chicago, the city she had hoped to make her new home.
35. As a result of Respondents' discriminatory acts, Complainant Lin suffered economic loss and emotional distress. Unable to sublet her unit to Complainant Bracken, Complainant Lin was forced to pay the rent for the subject property and her mortgage simultaneously, which created heavy economic, as well as emotional, burden. In addition, Respondent Fung never returned her security deposit. The ordeal was time-consuming. Complainant Lin felt guilty about what happened to Complainant Bracken and, as a result, felt compelled to allow Complainant Bracken—a stranger—to stay in her new home, which was inconvenient and uncomfortable. Furthermore, the incident caused Complainant Lin, who considers herself a civil rights advocate, an extraordinary amount of stress. She lost sleep and lost weight. Respondents' overt acts of discrimination further triggered her unpleasant memories of childhood racial hostilities.

D. FAIR HOUSING ACT VIOLATIONS

36. When Respondent Ho rejected Complainant Bracken as sublessee on the basis of her race and physically barred Complainant Bracken from moving into the subject property, Respondent Ho violated 42 U.S.C. § 3604(a).

37. When Respondent Ho told Complainant Lin that she refused to “rent to blacks,” Respondent Ho violated 42 U.S.C. § 3604(c) by making racially discriminatory statements expressing a preference or limitation against renters who are black.
38. When Respondent Ho physically barred Complainant Bracken from moving into the subject property, Respondent Ho violated 42 U.S.C. § 3617 by interfering with Complainant Bracken’s exercise of her fair housing rights.
39. When Respondent Fung ratified Respondent Ho’s racially motivated discrimination by refusing to rent the subject property to Complainant Bracken and by supporting Respondent Ho’s interference against Complainant Bracken’s entry, Respondent Fung violated 42 U.S.C. §§ 3604(a) and 3617. Additionally, Respondent Fung is vicariously liable for Respondent Ho’s discriminatory acts of rejecting Complainant Bracken as a sublessee because of her race, making discriminatory statements to Complainant Lin and physically barring Complainant Bracken from moving into the subject property, in violation of 42 U.S.C. §§ 3604(a), (c) and 42 U.S.C. § 3617.
40. When Respondent Fung emailed a statement to Complainant Lin that expressed a discriminatory policy allowing his tenants to discriminate against prospective tenants on the basis of race, and further expressed his intention to honor Respondent Ho’s discriminatory bias against Complainant Bracken on the basis of Complainant Bracken’s race, Respondent Fung violated 42 U.S.C. § 3604(c).
41. When Respondent Fung terminated Complainant Lin’s lease, asked her to surrender her keys, and kept her security deposit in retaliation for her aiding and encouraging Complainant Bracken’s exercise and enjoyment of her fair housing rights, Respondent Fung violated 42 U.S.C. § 3617.

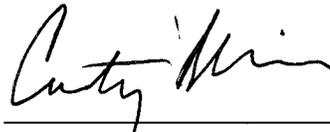
III. CONCLUSION

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 Chak Man Fung and Jennifer Ho with engaging in discriminatory housing practices as set forth above and prays that an order be issued that:

- A. Declares that Respondents’ discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
- B. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them, from discriminating against any person based on race in any aspect of the sale, rental, occupancy, use or enjoyment of a dwelling;

- C. Awards such monetary damages as will fully compensate Complainants for their economic losses and emotional distress, including but not limited to, all out-of-pocket expenses, medical expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, the loss of a housing opportunity and any and all other damages caused by Respondents' discriminatory conduct;
- D. Imposes an \$11,000 civil penalty against each Respondent for each violation of the Act; and
- E. Awards such additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully Submitted,



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