

**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)
Melissa Kothe,)
)
Charging Party,)
)
v.)
)
Stacy Sturdevant, Jimmy Arnold,)
Kendra Clements, AIMCO Properties, L.P.,)
NHPMN Management, LLC, and)
Central Park Towers II Limited Partnership,)
)
Respondents.)
_____)

FHEO No.: 07-05-0395-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about May 24, 2005, Melissa Kothe (Complainant), filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD), alleging Respondents Stacy Sturdevant, Central Park Towers II Associates, and NHPMN Management, LLC violated the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (2007) (hereafter, the Act), by retaliating in violation of 42 U.S.C. § 3617. On or about September 11, 2006, the complaint was amended to clarify the allegation and to add Jimmy Arnold, Kendra Clements, AIMCO Properties, L.P. and Central Park Towers II Limited Partnership as Respondents and remove Central Park Towers II Associates as a Respondent.

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) (2007). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234 (Jul. 1, 2002)), 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 her designee.

By Determination of Reasonable Cause of April 19, 2007, the FHEO Region VII Director, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on retaliation 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 allegation contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents are charged with discriminating against the Complainant based on retaliation in violation of 42 U.S.C. § 3617 (2007) of the Act as follows:

A. Applicable Federal Law

1. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Section 3603, 3604, 3605, or 3606 of the Act. 42 U.S.C. § 3617 (2007); 24 C.F.R. § 100.400(b), (c) (4) and (5) (2007).

B. Background

2. Complainant Melissa Kothe was employed by Respondent AIMCO Properties, L.P. (AIMCO) as a Resident Services Coordinator (social worker) at Central Park Towers (CPT), the subject property, from March 15, 2004, until Respondents terminated her on May 3, 2005. Respondents alleged Complainant improperly certified a tenant's grandson as living with the tenant on a landlord letter to the Kansas Department of Social and Rehabilitation Services (KDSRS).
3. Respondent Stacy Sturdevant was employed by Respondent AIMCO as the Senior Community Manager for CPT from January 22, 2003, until Respondents terminated her on July 5, 2005, for "violation of company policy." Respondent Sturdevant was responsible for overseeing daily operations of the subject property and supervised Complainant.
4. Respondent Kendra Clements has been employed by Respondent AIMCO as the Director of Human Resources for the Western Affordable Region since March 21, 2005. Respondent Clements' office is located in Irving, Texas. Respondent Clements was responsible for employee issues in her territory involving hiring, staffing, and investigation and termination of employees. Complainant's termination action fell under Respondent Clements' area of responsibility.

5. Kelly Whitney has been employed by Respondent AIMCO since approximately 1999. Ms. Whitney, whose office is located in North Kansas City approximately 6 miles from CPT, became the Regional Property Manager for CPT on April 15, 2005. Ms. Whitney served as Respondent Sturdevant's direct manager.
6. Respondent Jimmy Arnold has been employed by Respondent AIMCO as a Regional Vice-President of Capital West Operations since March 2002. Respondent Arnold's office is located in Irving, Texas. Respondent Arnold serves as Ms. Whitney's supervisor.
7. Brenda Davidson is a disabled former tenant at CPT who resided there in a one-bedroom apartment from July 29, 2004, until October 1, 2005. At issue in the Complainant's employment termination action was the housing status of Ms. Davidson's grandson, Trevor Trober, age 16, who Complainant certified as residing with Ms. Davidson.
8. CPT is located at 15 N. 10th Street in Kansas City, Kansas. Built in 1975, CPT, a twelve-story high rise building consisting of 195 units, is a 100% Project Based Section 8 property for the disabled and/or elderly. During the time at issue, Respondent Central Park Towers II Limited Partnership owned CPT. Respondent NHPMN Management, LLC managed the property during the time at issue and until July 29, 2005. Respondent NHPMN Management, LLC is an affiliate of Respondent AIMCO.
9. Complainant participated in two instances of protected fair housing activity on or around April 21-22, 2005, the week before Respondents terminated her. Complainant's participation in these two instances of protected fair housing activity gave rise to her employment suspension on April 27, 2005, and her subsequent termination on May 3, 2005. Respondent Sturdevant elevated the matter regarding Ms. Davidson to upper management as a pretext for retaliation.

Protected Activity: Participation in HUD interview on April 22, 2005

10. HUD Civil Rights Analysts (CRAs) Michele Green and Rich Nemchik interviewed Complainant in Respondent Sturdevant's Office at CPT on Friday, April 22, 2005, in reference to a housing discrimination complaint, filed by former tenant Paula Pavlich against Respondent Sturdevant and the other Respondents. Respondents' then attorney, Elizabeth Martin, was present via conference call.
11. During the interview with Complainant, CRA Nemchik questioned her about a May 11, 2004, memorandum written by an employee of Wyandot Center, a local mental health care provider. The memorandum documented an incident alleging that Respondent Sturdevant used inappropriate and disrespectful language toward a tenant and attempted to provoke the tenant into a fight. The memorandum noted that Complainant was present during the alleged incident.

12. During the HUD interview, CRA Nemchik asked Complainant if she had ever heard or observed Respondent Sturdevant screaming, yelling or using disrespectful language toward Paula Pavlich or other tenants of CPT.
13. After hearing CRA Nemchik's question, Complainant broke eye contact with the CRAs and began writing on a piece of paper. Complainant then passed the handwritten note to CRA Nemchik. The note stated that she (Ms. Kothe) would be fired from her job if she answered any questions concerning Respondent Sturdevant's behavior during the incident. CRA Nemchik passed the note to CRA Green and requested a short break. Ms. Martin agreed to take a break, and CRA Nemchik turned off the telephone.
14. With Ms. Martin off the phone, Complainant verbally stated to the CRAs that she would be fired if she answered CRA Nemchik's question. The CRAs informed Complainant that she would have to answer the question when the interview resumed, and Complainant stated again that she would be fired.
15. CRA Nemchik resumed the interview with Ms. Martin present via conference call and asked his question again: "Have you ever observed and/or heard Stacy Sturdevant screaming, yelling, or using disrespectful language toward the Complainant [Paula Pavlich] and/or other tenants? If so, explain."
16. Complainant hesitated but finally answered the question by saying: "Yes, I do not want to elaborate any," and "[t]he May 11, 2004 memo from [the Wyandot Center employee] is pretty much how I remember it." The interview then terminated.
17. Following the afternoon interview, Complainant and Respondent Sturdevant had a brief encounter during which Respondent Sturdevant asked her what the CRA had asked her. Complainant did not provide her all the details.
18. The next time the topic of the HUD interview came up was after Complainant returned to work the following Monday, April 25, 2005. Complainant reported Respondent Sturdevant questioned her about the HUD interview and inquired about the types of questions the CRAs asked including whether they had questioned her about Respondent Sturdevant's relationship with Wyandot Center.
19. Complainant stated Respondent Sturdevant got angry and red faced, rolled her eyes, and gave Complainant dirty looks when Complainant would not answer all of her questions. According to Complainant, Respondent Sturdevant, through her body language and tone of voice, gave Complainant the impression she should not have said anything to HUD.¹

¹At the time of the HUD interview on April 22, 2005, at least nine CPT tenants had, in recent months, filed fair housing complaints against Respondent Sturdevant and/or the other Respondents or had contacted HUD about the possibility of filing such a complaint. Complainant, in her capacity as a social worker, stated she had advised several of these tenants of their right to file HUD complaints.

Protected Activity: Encouraging and/or making others aware of Fair Housing Rights

20. On or before April 21, 2005, Complainant advised tenant Linda Cook to contact HUD or and an attorney regarding her eviction. Ms. Cook initially contacted HUD on April 21, 2005, and later filed a fair housing complaint based on disability against Respondent Sturdevant.
21. On Wednesday, April 27, 2005, at approximately 10:00 a.m., Complainant and Ms. Dena Knapp, a co-worker, were standing in front of CPT having a conversation and smoking. During the conversation, Complainant told Ms. Knapp that she had advised tenant Linda Cook to call HUD or an attorney concerning her eviction.
22. Upon telling Ms. Knapp about her advice to Ms. Cook, Complainant realized Respondent Sturdevant had walked up behind her and had overheard the latter part of the conversation.
23. In front of Ms. Knapp, Respondent Sturdevant became very upset at Complainant and stated: "You did what?" Then, standing about 18 inches away from Complainant, Respondent Sturdevant asked Complainant in an angry voice if she needed to be restrained and then ordered her that under no circumstances was she to give tenants advice about contacting HUD or attorneys. Respondent Sturdevant stormed away and walked back into the building.
24. Ms. Knapp and Complainant, who Ms. Knapp described as "upset," returned to their duties.

Key events leading up to Complainant's termination

25. On or about September 7, 2004, in the year before her termination, Complainant, as part of her required duties at CPT, filled out and signed a routine landlord letter on behalf of tenant Brenda Davidson for the KDSRS. Among other matters, the letter certified that Trevor Trober resided with her. The purpose of the KDSRS letter was to assist in determining Ms. Davidson's eligibility for state assistance.
26. On or about April 13, 2005, Ms. Davidson, for unknown reasons, brought up with Complainant and/or Respondent Sturdevant the issue of her grandson living with her. In doing so, she declared she had management's signature on documents to prove her grandson lived with her. Unsure of Ms. Davidson's point, Respondent Sturdevant requested Ms. Davidson's file from Complainant and was unhappy when she saw that the Complainant had signed the KDSRS letter confirming Trevor resided at CPT. Her unhappiness apparently stemmed from the mistaken belief that persons under age 18 were not allowed to formally reside in the building, designed for the elderly and disabled.

27. Respondent Sturdevant questioned Complainant about the letter, and Complainant responded by informing her that despite the age restrictions, they had a duty to report Trevor lived there, because they both knew he did live there, he had been approved to live there, and Ms. Davidson's income was dependent on that fact.
28. Respondent Sturdevant, who left the office mad, did not discuss what she intended to do with the information about Ms. Davidson and did not mention the KDSRS issue to Complainant again until April 27, 2005, after Complainant engaged in protected fair housing activity. Respondent Sturdevant also did not mention the KDSRS matter to any other management official until April 27, 2005, the day Respondent Sturdevant overheard that Complainant had advised a tenant to seek legal or HUD assistance.

Complainant's Suspension:

29. As part of her duties as Regional Property Manager, Ms. Whitney, Respondent Sturdevant's supervisor, was at CPT on April 27, 2005, the same day Respondent Sturdevant confronted Complainant about her advice to tenant Linda Cook. On that day, Respondent Sturdevant, upset about Complainant's participation in the HUD interview and her advice to Ms. Cook, approached Ms. Whitney with Brenda Davidson's KDSRS letter in hand and stated: "[I]ook what Melissa did," implying that Complainant had falsified the letter.
30. As a result of Respondent Sturdevant bringing up the KDSRS matter and asking what she should do, Ms. Whitney, along with Respondent Sturdevant, contacted Respondent Arnold who requested they fax the KDSRS documents to him and Respondent Clements. Ms. Whitney also called Ms. Clements.
31. Upon receipt of the fax, Respondent Arnold reviewed it, and, relying on Respondent Sturdevant's allegation that Complainant had falsified documents, instructed Ms. Whitney to suspend Complainant. Respondent Sturdevant then typed a letter to Complainant entitled "MATTER OF RECORDS" which set out Complainant was suspended.
32. At approximately 3:30 p.m., Respondent Sturdevant and Ms. Whitney met with Complainant in Complainant's office to notify her of the suspension and the reason for it.
33. During the meeting, Complainant explained to Ms. Whitney that Ms. Davidson's grandson did, in fact, live with Ms. Davidson.
34. Despite Complainant's explanation and within hours of Respondent Sturdevant's confrontation with Complainant about her advice to Ms. Cook, Ms. Whitney and Complainant signed the MATTER OF RECORDS memo dated April 27, 2005, at 3:30 p.m. which documented that Complainant was suspended with pay until further notice, and Respondents were investigating her for falsifying documents to KDSRS.

Complainant's Termination:

35. Approximately six days after Complainant's suspension, and after only a cursory review of the matter, Respondents Arnold and Clements terminated Complainant's employment on May 3, 2005, relying almost entirely on Respondent Sturdevant's rendition of the facts. The stated reason for the termination was the falsification of Ms. Davidson's KDSRS document.

Respondent Sturdevant used the KDSRS matter as a pretext for retaliation

36. Despite the stated reason for the action taken against Complainant, the Complainant did not falsify the KDSRS form. Numerous documents and interviews established that Trevor Trober lived at CPT with Ms. Davidson at the time Complainant filled out the KDSRS letter, and Respondent Sturdevant knew he lived there. Respondent Sturdevant used the alleged falsification of the KDSRS matter as a pretext to retaliate against Complainant because Complainant had participated in a HUD interview and had advised tenants, including Linda Cook, to file fair housing complaints.
37. Management's cursory review of the issues and failure to investigate the matter led to the premature and unsubstantiated decision to terminate Complainant. Such unlawful action was the direct result of Respondent Sturdevant's retaliatory motives because Complainant engaging in protected fair housing activity.

C. Fair Housing Act Violations

38. By Respondent Sturdevant reporting to superiors that Complainant allegedly falsified documents and Respondents subsequently terminating Complainant based on that information, Respondents retaliated against Complainant for her participation in a proceeding under the Fair Housing Act in violation of 42 U.S.C. § 3617 (2007); 24 C.F.R. § 100.400(b) and (c)(5) (2007).
39. By Respondent Sturdevant reporting to superiors that Complainant allegedly falsified documents and Respondents subsequently terminating Complainant based on that information, Respondents retaliated against Complainant for encouraging other persons to exercise their fair housing rights in violation of 42 U.S.C. § 3617 (2007); 24 C.F.R. § 100.400(b) and (c)(4) (2007).
40. By angrily ordering Complainant not to give tenants advice about contacting HUD or attorneys under any circumstances, Respondent Sturdevant intimidated and interfered with Complainant because Complainant had encouraged other persons to exercise their fair housing rights in violation of 42 U.S.C. § 3617 (2007); 24 C.F.R. § 100.400(b) and (c)(4) (2007).

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) (2007) of the Act, hereby charges Respondents with engaging in a discriminatory housing practice in violation of Section 3617 of the Act, and prays that an order be issued that:

1. Declares the discriminatory housing practice of the Respondents, as set forth above, violates the Act, 42 U.S.C. §§ 3601 *et seq.* (2007);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from retaliating against any person who aids or encourages other persons in the exercise or enjoyment of their fair housing rights or participates in protected activity under the Act;
3. Awards such damages as will fully compensate the Complainant for her embarrassment, humiliation, emotional distress, inconvenience, lost wages, attorney's fees, and other economic loss caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2007); and
4. Awards in vindication of the public interest an \$11,000 civil penalty against Respondent Sturdevant and a \$5,000 penalty against each of the other Respondents for each violation of the Act that Respondents are found to have committed pursuant 42 U.S.C. § 3612(g)(3) (2007).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2007).

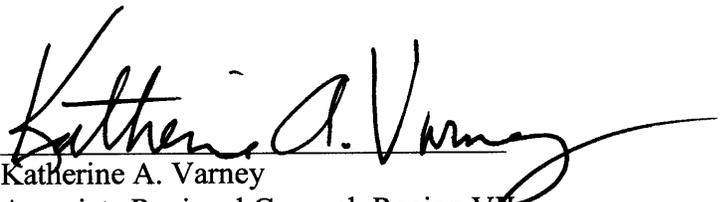
Respectfully submitted,



Thomas J. Coleman
Regional Counsel, Region VII



Gayle E. Bohling
Deputy Regional Counsel, Region VII


Katherine A. Varney
Associate Regional Counsel, Region VII


Alphonso L. Eason, Attorney-Advisor
U.S. Department of HUD
Region VII
Office of Counsel
400 State Avenue
Kansas City, KS 66101-2406
Telephone: (913) 551-5442
Fax: (913) 551-5857

Date: April 20, 2007