

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 Donna	:	
Saunders, Rafael Perales and	:	
██████████ minor aggrieved	:	
grandson of Donna Saunders by	:	
and through Donna Saunders,	:	
his legal guardian,	:	
	:	
Charging Party,	:	
	:	HUD ALJ No.
v.	:	FHEO Nos. 03-08-0318-8
Wheeling Housing Authority	:	
	:	
Respondent	:	
	:	

CHARGE OF DISCRIMINATION

I. JURISDICTION

Donna Saunders (Complainant Saunders) submitted a timely complaint with the United States Department of Housing and Urban Development (HUD) on March 31, 2008¹, alleging that the Wheeling Housing Authority (Respondent) committed discriminatory housing practices on the basis of race and color against her, her son, Rapheal Perales and grandson, ██████████, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (the Act).

The HUD Office of Fair Housing and Equal Opportunity (FHEO) investigated the complaint of discrimination and concluded that there is reasonable cause to believe that discriminatory acts were committed.

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of an aggrieved person 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 (73 Fed. Reg. 68441), who retains and redelegates this authority to the Regional Counsel (73 Fed.Reg.

¹ The complaint of discrimination was dual-filed with the West Virginia Human Rights Commission. On or about July 1, 2010, HUD reactivated the complaint.

68442), the authority to issue a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (the Assistant Secretary) or his or her designee.

The FHEO Director for Region III, the Assistant Secretary's designee, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and, therefore, has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

A. Statutory and Regulatory Provisions

1. It is unlawful to refuse to sell or rent, or refuse to negotiate for the sale or rental, or otherwise make unavailable or deny, a dwelling to any person on the basis of race or color. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a) (2010).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling on the basis of race or color. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a) (2010).

B. Parties and Properties

1. At all times pertinent to this Charge, Donna Saunders, who is Black, was a resident of Hil-Dar Apartments (Hil-Dar), a public housing complex owned by Respondent in Wheeling, West Virginia. Saunders, who has been a tenant at Hil-Dar since 1969, lives at 1096 Hil-Dar Street in Wheeling, West Virginia.
2. Rafael Perales, who is Black, is the son of Donna Saunders and was a resident of Hil-Dar until he was evicted by Respondent in October of 2007, and banned from the property in May of 2008.
3. [REDACTED] is the grandson of Donna Saunders and lives at Hil-Dar Apartments. Complainant Saunders adopted [REDACTED] and is his legal guardian. Complainant [REDACTED] is Black.
4. At all times pertinent to this Charge, Respondent owned, operated and managed multifamily housing developments, including an 89-unit complex called Hil-Dar Apartments located in Wheeling, West Virginia.

C. Factual Allegations

1. Complainant Saunders has been a tenant of Hil-Dar Apartments since 1969. Saunders has lived with Complainants Perales and [REDACTED] at Hil-Dar

Apartments.

2. In 2006, Raymond Asbury and his family, who are White, moved into Hil-Dar. The Asbury household includes Raymond Asbury, Carrie West and three minor children: [REDACTED]
[REDACTED]
3. In 2006, Kathy Green and her family, who are Black, moved into the Hil-Dar Apartments. The Green household consists of Kathy Green, and minor children, [REDACTED]. On October 23, 2008, Kathy Green filed a complaint of discrimination against Respondent alleging discrimination on the basis of race and color in violation of the Fair Housing Act and Title VI of the Civil Rights Act of 1964. A Charge of Discrimination has also been issued on behalf of Ms. Green and [REDACTED].
4. At all times relevant to this Charge, Wendy Sturm was Respondent's Property Manager at Hil-Dar until May, 2008. Respondent claims that Ms. Sturm left for medical reasons. Tammy Clark acted as the interim Property Manager until Edward Dodd was hired as Property Manager on or about August 25, 2008.
5. On September 14, 2007, a White tenant of Hil-Dar Apartments called police to her apartment and reported that Complainant Rafael Perales threatened to harm her.
6. On September 27, 2007, the State of West Virginia filed a criminal complaint against Complainant Perales based upon the September 14, 2007 incident identified in the preceding paragraph. The complaint alleged that Perales "*did unlawfully attempt to commit a violent injury and did unlawfully commit an act which places another in reasonable apprehension (sic) of immediately receiving violent injury.*"
7. On October 5, 2007, the White tenant identified in the preceding paragraphs filed a written complaint with Respondent against Complainant Perales, alleging that Perales threatened her.
8. On October 10, 2007, Complainant Perales was released on bail after being charged with a misdemeanor offense of assault.
9. On October 23, 2007, Respondent issued a lease termination letter to Complainant Saunders which provided that: (1) the lease was violated when Rafael Perales threatened the health and safety of another tenant and her children; and (2) police were called and the responding police officer completed a report. Complainant Saunders was not offered the opportunity for an informal hearing by Respondent.
10. On October 23, 2007, Complainant Saunders called police to report a burglary

at her apartment the previous evening during which prescription drugs and costume jewelry were taken and video game equipment was damaged. Complainant Saunders reported to the police that she believed [REDACTED] was responsible for the burglary.

11. On October 24, 2007, Complainant Rafael Perales called police and reported that he was assaulted by Raymond Asbury.
12. On October 25, 2007, Respondent filed a civil suit against Complainant Saunders in Magistrate Court of Ohio County, West Virginia, alleging wrongful occupation of a residential rental property based on the breach of her lease agreement as a result of criminal activity that threatened the health, safety and right to peaceful enjoyment of another tenant.
13. On December 11, 2007, Respondent issued a lease termination letter to Complainant Saunders, based on a delinquency in her December monthly rental payment of \$182.00.
14. On December 28, 2007, less than thirty (30) days after the December 11, 2007 lease termination letter was issued to Ms. Saunders, Respondent filed a civil suit against Complainant Saunders in the Magistrate Court of Ohio County, West Virginia (Magistrate Court), alleging wrongful occupation of a residential rental property based on a rental delinquency of \$182.00.
15. On January 11, 2008, the Magistrate Court ordered the eviction of Complainant Saunders based upon the one month's arrearage. Complainant Saunders appealed the decision to Ohio County Circuit Court (Circuit Court).
16. On March 6, 2008, the Circuit Court vacated the eviction order of the Magistrate Court and restored Complainant Saunders to tenancy.
17. Both White and Black tenants, including Complainants Saunders and Perales, complained, in writing and orally, to Respondent about the racial harassment and the threatening conduct of Raymond and [REDACTED] toward Black tenants at Hil-Dar.
18. On or about November 19, 2007, Kathy Green, a Black Hil-Dar tenant, reported to the Respondent that Raymond Asbury cursed at her 16 year-old son, called him a "nigger," and threw his coat off to fight her son.
19. On or about November 21, 2007, Green reported to Respondent that [REDACTED] called her daughter a "nigger."
20. On November 21, 2007, Wendy Sturm issued a lease violation notice to the Asbury household that stated the following: *"You are being issued this notice as your actions on Tuesday, November 20, 2007 created a disturbance for*

another tenant as they were getting off the school bus. Screaming racial slurs and instigating a fight with a minor is in direct violation of your Lease and will not be tolerated. If this type of behavior continues the Wheeling Housing Authority will be forced to take further action including Lease Termination."

21. In April of 2008, Complainant Perales gave a written statement to Wendy Sturm and alleged that [REDACTED] hit him in the head with a rock. On April 24, 2008, Perales described the incident to the police, who took a report. Complainant Perales advised Ms. Sturm that he had contacted police about the incident. There is no written documentation about this incident or any other complaints about the Asburys made by Perales, in the Asbury tenant file maintained by Respondent.
22. On April 28, 2008, Complainant Perales informed police that Raymond Asbury had assaulted him several times over a period of a few days. In addition, the police report of the incident notes that Perales claimed that *"Asbury has had several male subjects threaten to beat him up."*
23. In May of 2008, Complainant Perales saw [REDACTED] come out of his apartment with a chainsaw and threaten to cut another tenant. Perales stated that Wendy Sturm knew about the incident.
24. According to Respondent's records, on or about May 15, 2008, Mr. Asbury again called Kathy Green's son a "nigger" and told him that he and the Respondent's Property Manager, Ms. Sturm, were *"working to get all of the niggers off the hill."* Kathy Green reported the incident to Respondent.
25. On May 20, 2008, Kathy Green complained to Wheeling Police about Asbury's threats.
26. On or about May 21, 2008, Ms. Green reported that Mr. Asbury again made racial slurs about her son.
27. Complainant Saunders complained to Wendy Sturm *"constantly"* about Raymond Asbury's threatening behavior and his calling Black tenants *"nigger"*. Respondent failed to take any action against Asbury.
28. Raymond Asbury admitted to calling tenants at Hil-Dar *"niggers"* on various occasions.
29. Raymond Asbury stated that he helped Wendy Sturm get Complainant Perales evicted after the incident involving the White tenant in September 2007.
30. On May 21, 2008, Respondent issued a lease termination letter to the Asbury household, based upon the Kathy Green's complaint. Unlike the October 23, 2007 lease termination letter provided to Ms. Saunders, the lease termination

letter issued to the Asburys provided them with the right to an informal hearing.

31. On June 3, 2008, Tammy Clark, interim Property Manager, drafted a written report that noted that a White tenant said that [REDACTED] threatened to “shoot other children” the night before. The tenant advised Ms. Clark that he was particularly concerned because he knew the Asburys had guns in their home and he told her that he had seen them cleaning their guns on their porch. In her written report, Ms. Clark noted that she called the police about the incident.
32. Raymond Asbury appealed the May 21, 2008 lease termination notice in a timely manner and requested a hearing. A hearing was held on June 10, 2008. The hearing officer was Tammy Clark, Respondent’s interim Property Manager, who had reported [REDACTED] alleged threat to “shoot other children” to the police.
33. Although the Asbury lease termination notice was issued as a result of Kathy Green’s allegations of threatening behavior by the Asburys, Respondent did not provide notice of the hearing to Green or any of the tenants who had complained to Respondent about the Asburys. No witnesses or documentation were offered at the hearing by the Respondent in support of the eviction. The hearing officer, Tammy Clark, claimed that she was not provided any documentation or testimony by Respondent in support of the lease termination.
34. On June 23, 2008, Hearing Officer Tammy Clark reversed Respondent’s lease termination and reinstated Asbury’s tenancy. Raymond Asbury continues to reside with his family at Hil-Dar.
35. On May 5, 2008, Complainant Perales was banned from Respondent’s properties based on alleged threats to Respondent’s staff.
36. Respondent’s lease contains the following tenant requirement at Section 10K: *“to behave and cause Household Members and guest to act in such a manner which will not disturb other tenant’s peaceful enjoyment of their accommodations or community facilities; to refrain from illegal or other activities which would impair the physical or social environment of the community or scattered site (such specifically prohibited activity shall include, but is not limited to, selling alcoholic beverages from the unit or illegal gambling on the Landlord’s property.”*
37. Respondent’s Admission and Continued Occupancy Policy (ACOP) states that the Wheeling Housing Authority “...will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or peaceful enjoyment of the premises by other residents” and “if [the Housing

Authority]determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.” The ACOP also states that the use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

38. Respondent failed to apply its ACOP and enforce its lease in a fair and consistent manner without regard to race or color. Respondent failed to take prompt and appropriate action with regard to the numerous complaints, often involving the police, that Respondent received about the threats and intimidation that the Asburys were inflicting on other tenants, especially the Complainants.
39. By failing to fairly and adequately address the persistent bad conduct of the Asbury family, Respondent violated its duty, pursuant to its own rules, to maintain health and safety and peaceful enjoyment of the properties it managed thereby subjecting Hil-Dar tenants to a racially hostile atmosphere.
40. As a result of Respondent’s discriminatory actions, Ms. Saunders experienced the stress of possible eviction from housing that she has maintained since 1969 and suffered the threat of the loss of a housing opportunity, economic loss, humiliation, inconvenience and mental and emotional distress.
41. As a result of Respondent’s discriminatory actions, Mr. Perales became homeless. He has suffered the loss of a housing opportunity, economic loss, humiliation, and mental and emotional distress.
42. As a result of Respondent’s discriminatory actions, ██████████ suffered the threat of the loss of his housing, humiliation, and mental and emotional distress.

D. Fair Housing Act Violations

1. Respondent discriminated in the rental of a dwelling on the basis of race when it evicted and banned Complainant Perales and attempted to evict Complainants Saunders and ██████████ yet failed to promptly and adequately address similar lease violations and numerous complaints of harassment and intimidation against the Asbury household in violation of 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a) and (b)(5) (2010).
2. By ignoring the numerous complaints of Complainants Saunders and Perales and other Black and White tenants at Hil-Dar about the intimidating and threatening behavior of the Asburys, Respondent discriminated against Complainants in the terms, conditions, or privileges of the rental of a dwelling on the basis of race or color. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a) (2010).

III. CONCLUSION

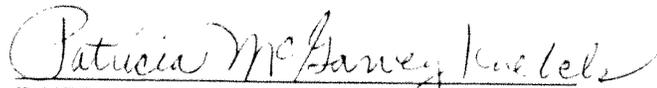
WHEREFORE, the Secretary of Housing and Urban Development, through the Office of Regional Counsel for the Philadelphia Regional Office, and pursuant to 42 U.S.C. §§ 3610(g)(2)(A) and 3612(g)(3), the Charging Party, prays that an Order be issued that:

1. Declares that Respondent's discriminatory housing practices, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19 and its implementing regulations;
2. Pursuant to 42 U.S.C. § 3612(g)(3), enjoins Respondent and all other persons in active concert or participation with it, from discriminating against any person based on race or color in any aspect of a rental transaction;
3. Pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1), assesses a civil penalty against the Respondent for each violation of the Act; and
4. Pursuant to 42 U.S.C. § 3612(g)(3), awards such damages as will fully compensate Complainant Saunders for the threat of the loss of her housing, economic loss, humiliation, and mental and emotional distress associated with Respondent's discriminatory conduct.
5. Pursuant to 42 U.S.C. § 3612(g)(3), awards such damages as will fully compensate Complainant Perales for loss of a housing opportunity, economic loss, humiliation and mental and emotional distress associated with Respondent's discriminatory conduct; and
6. Pursuant to 42 U.S.C. § 3612(g)(3), awards such damages as will fully compensate Complainant [REDACTED] minor child, for the threat of the loss of his housing, humiliation, and mental and emotional distress associated with Respondent's discriminatory conduct.

The Secretary of the United States Department of Housing and Urban Development further prays for such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

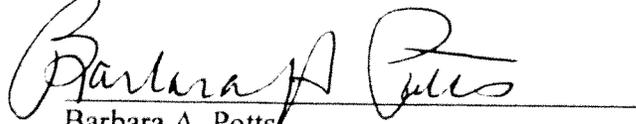
The Secretary further prays for such additional relief as may be appropriate.

Respectfully submitted,



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