

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	)	
National Fair Housing Alliance,	)	
	)	HUD ALJ No.
Charging Party,	)	FHEO Nos. 05-05-1439-8
	)	05-05-1440-8
v.	)	
	)	
John DeJohn, John Wassinger, and S&S	)	
Group, Ltd., d/b/a ReMax East-West,	)	
	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about August 22, 2005, Complainant National Fair Housing Alliance ("NFHA") filed verified complaints with the United States Department of Housing and Urban Development ("HUD Complaints"), alleging that Respondent John DeJohn, Respondent S&S Group, Ltd., doing business as ReMax East-West, broker Dennis Sluga, broker Donald Stibbe, and "other [unidentified] agents" violated the Fair Housing Act as amended in 1988, 42 U.S.C. §3601 *et seq.* (the "Act"), on the basis of race or color and national origin by: otherwise making housing unavailable through the practice of steering, in violation of 42 U.S.C. §3604(a); the provision of inferior services in connection with the selling of residential real property in violation of 42 U.S.C. §3604(b); making discriminatory statements in violation of 42 U.S.C. §3604(c); and making false representations concerning the availability of dwellings in violation of 42 U.S.C. §3604(d). On April 7, 2008, HUD Complaint number 05-05-1439-8 was amended to add S&W Elmhurst, LLC, doing business as ReMax East-West as a respondent¹ and to amend the summary of allegations. On the same day, HUD Complaint number 05-05-1440 was also amended to add as respondents S&W Elmhurst,

¹ S&S Group, Ltd. was involuntarily dissolved on April 13, 2007; NFHA named S&W Elmhurst, LLC as its successor in interest d/b/a ReMax East-West.

LLC, doing business as ReMax East-West, and real estate agents Linnawaty Ang, Bernie Buss, and John Wassinger.²

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) and (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 his 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 a discriminatory housing practice has occurred in this case based on steering, and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaints and Determination of Reasonable Cause, Respondents John DeJohn, John Wassinger, and S&S Group, Ltd., d/b/a ReMax East-West are charged with discriminating against Complainant National Fair Housing Alliance, an aggrieved person as defined by 42 U.S.C. §3602(i), based on race or color and national origin in violation of 42 U.S.C. §3604(a), (b), (c) and (d) of the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. §3604(a); *see also*, 24 C.F.R. §100.70. Pursuant to 24 C.F.R. §100.70,

“It shall be unlawful, because of race, color, religion, sex, “handicap,” familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development. Prohibited actions under this section, which are generally referred to as unlawful steering practices, include, but are not limited to:

² HUD's investigation concluded that Buss did not violate the Act and that the allegations against Ang were not jurisdictional. As a result of the issuance of HUD's No Reasonable Cause Determination with respect to Ang and Buss, they are not named in this Charge.

A. Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, "handicap," familial status, or national origin, or because of the race, color, religion, sex, "handicap," familial status, or national origin of persons in the community, neighborhood or development.

B. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, "handicap," familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

C. Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, "handicap," familial status, or national origin."

2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, religion, sex, familial status, or national origin. 42 U.S.C. §3604(b); *see also*, 24 C.F.R. §100.65.
3. 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 unit that indicates any preference, limitation, or discrimination based on race, color, religion, sex, "handicap," familial status, or national origin, or an intention to make any such preference, limitation or discrimination. 42 U.S.C. § 3604(c); *see also*, 24 C.F.R. § 100.75.
4. It is unlawful to represent to any person because of race, color, religion, sex, "handicap," familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available. 42 U.S.C. § 3604(d); *see also*, 24 C.F.R. § 100.80.

B. PARTIES AND OTHER RELEVANT ENTITIES

5. Complainant NFHA is a national non-profit membership organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Washington, D.C. NFHA is a nationwide alliance of private, non-profit fair housing organizations, including member organizations in Illinois. NFHA and its members represent the interests of home seekers and homeowners, including those in metropolitan Chicago, and other parties in need of assistance to enforce their rights to equal housing. NFHA and its member organizations work to promote fair housing across the

United States. NFHA's mission is to work to eliminate housing discrimination and to ensure equal opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy and enforcement. As part of its fair housing enforcement efforts, Complainant NFHA conducts fair housing "tests" to determine whether covered entities are engaging in discriminatory housing practices.

6. At all times relevant to this Charge, Respondent S&S Group, Ltd., was doing business as ReMax East-West, with its offices located at 191 South Route 83, Elmhurst, DuPage County, Illinois. On information and belief, Dennis Sluga and Donald Stibbe were its broker principals. Respondent Sluga was its president. On or about April 13, 2007, S&S Group was involuntarily dissolved.
7. S&W Elmhurst, LLC is currently doing business as ReMax East-West, with its offices located at 191 South Route 83, Elmhurst, DuPage County, Illinois. On information and belief, S&W Elmhurst, LLC is the successor in interest to S&S Group, Ltd. On information and belief, Donald Stibbe and Respondent Wassinger are its owners and broker principals.
8. ReMax East-West was the first ReMax office opened east of the Mississippi River, and it has been in business since 1983. The ReMax East-West office is located in Elmhurst, Illinois, a predominantly white northwest suburb of the City of Chicago bordering on the eastern edge of the predominately white county of DuPage.
9. At all times relevant to this Charge, Respondents DeJohn and Wassinger were real estate agents affiliated with the ReMax East-West office.

C. FACTUAL ALLEGATIONS

10. In the period from June 2004 through February 2005, NFHA conducted three paired tests involving five agents associated with ReMax East-West.³
11. In September of 2004, NFHA conducted a paired test on Respondent DeJohn. It dispatched two testers, a Hispanic female and a white male. Both testers were given national-origin identifiable names; the Hispanic tester used the name, "Norma Ortiz" and the white tester, used the name, "David Kowalski." Both testers called Respondent DeJohn and inquired about a home located at 1520 Rohde, Berkeley, Illinois. The profiles that NFHA assigned to its testers were nearly identical. Both informed DeJohn that they would be coming into town for two days and would be available both days to view properties, that they were seeking housing in the Chicago area because of job relocation, that

³ NFHA became interested in testing ReMax East-West after a 2002 HUD-sponsored nationwide Housing Market Practices Study—a national research audit to determine the level of housing discrimination in the United States—identified ReMax East-West as appropriate for follow-up investigation.

their jobs were near O'Hare Airport, that they wanted houses with at least three-bedrooms, and that they had been pre-qualified by a lender and had buyers for their current homes. In both tests the testers were from out-of-town and were unfamiliar with Chicago. They also each informed Respondent DeJohn that they had school age children. The only difference in the tester profiles was that the Hispanic tester told Respondent DeJohn that her upper price limit to purchase a home was \$180,000; while the white tester told Respondent DeJohn that his upper price limit was \$175,000.

12. NFHA's Hispanic tester met with Respondent DeJohn on or about September 11, 2004 and NFHA's white tester met with Respondent DeJohn on or about September 20, 2004.
13. Respondent DeJohn refused to show the Hispanic tester properties over two days, explaining that he couldn't "tie up a whole weekend," while he offered to show the white tester homes on both days he was in town.
14. Respondent DeJohn showed the Hispanic tester only three properties while he showed the white tester nine properties and offered to show him more (which opportunity the tester refused).
15. Respondent DeJohn informed the white tester of a website—www.Remax.com—where he could look up prices of homes in different areas, but did not inform the Hispanic tester about the website.
16. Respondent DeJohn offered to show the white tester townhomes, while he did not ask the Hispanic tester whether she was interested in townhomes.
17. Respondent DeJohn stopped to visit with friends while driving with the Hispanic tester to view homes, leaving her in the parked car for several minutes each time; he did not visit with friends while showing homes to the white tester.
18. Respondent DeJohn showed the Hispanic tester properties, or told her that she could afford properties, in communities with sizable minority populations. Conversely, he told her that she could not afford areas that were predominantly white and non-Hispanic. Respondent DeJohn told the Hispanic tester that she would not be able to afford a house in the predominately white communities of Downers Grove, Elmhurst, Lombard, Roselle, and all of DuPage County, but that she could afford a house in the largely minority communities of Bellwood and Melrose Park. As of 2000, according to the U.S. census, the median home values for Lombard and Roselle—two of the communities Respondent DeJohn told the Hispanic tester she could not afford—were then below her upper price limit. The median home values for the areas the Hispanic tester was told were unaffordable were lower than, or in the same price range as, the median values for communities

in which Respondent DeJohn showed the white tester most of the homes shown him.

19. Respondent DeJohn showed both testers homes in Hillside, a community with a sizable minority population. He told the white tester that there was a quarry nearby filled with garbage that sometimes smells and where blasting with dynamite sometimes occurs. When showing the Hispanic tester a home in Hillside, he did not mention the blasting or the garbage smell to her.
20. Respondent DeJohn discouraged the white tester from considering properties in communities with sizable minority populations and also showed him properties in predominately white communities, such as Bartlett, Geneva, and St. Charles, which are located 20 or more miles west/northwest of the ReMax East-West office. He even offered to show the white tester properties in white communities that were as far as 50 miles from the ReMax East-West office. Respondent DeJohn did not offer to show any of these properties to the Hispanic tester, even though the list prices of the properties were within the Hispanic tester's price range, while some of the properties exceeded the white tester's price range.
21. Respondent DeJohn made statements to the white tester encouraging him to take race and ethnicity into consideration when viewing homes. In their first telephone contact, Respondent DeJohn counseled the tester to go online and "find out what the minority population is" for areas he was interested in looking at. Shortly after meeting the white tester, on their way to viewing their first houses in Berkeley and Hillside, the two locales with high concentrations of minorities they visited, Respondent DeJohn informed the white tester, "I don't care if you are a bigot. If we go to an area and you don't like it, just let me know. I can't be a bigot but you can be one." Also while driving around Hillside after the two showings, Respondent DeJohn told the tester, "It's nothing racial or anything like that, but some people don't want to live here because their kids have to cross a busy intersection to get to school," unnecessarily introducing race into a discussion of traffic dangers to small children.
22. Respondent DeJohn, while driving into Bellwood, a community with a large minority population, looked in the direction of a black woman standing in front of an apartment building and told the white tester, "If there is anything you don't like, just let me know and we can go somewhere else."
23. Respondent DeJohn failed to follow up with the Hispanic tester. After he showed the white tester homes on September 20, 2004, he made three attempts to follow-up via telephone with the tester—on September 25, 2004, October 25, 2004, and November 5, 2004; he made no attempts to follow-up with the Hispanic tester after showing her homes on September 11, 2004.

24. In January and February 2005, NFHA conducted a matched test of two agents of ReMax East-West, Respondent Wassinger and agent Joe Sica. Sica worked with NFHA's Hispanic tester in late January 2005 and was not named in any of the HUD complaints filed by Complainant. Respondent Wassinger worked with NFHA's white tester in or around mid-February, 2005.
25. Respondent Wassinger showed NFHA's white tester ten properties over two days in or around mid-February 2005: three in Bensenville, including the one about which she had inquired, two in Roselle, two in Villa Park, two in Elk Grove Village, and one in Lombard. Respondent Wassinger did not show the white tester homes in Addison, but told her that Addison is a "nice place." All of the communities that Respondent Wassinger showed the white tester were predominately white communities at that time, but Bensenville had a significant Hispanic population for the area at 37%. Addison also had a significant Hispanic population at 29%.
26. Respondent Wassinger showed the white tester more homes in Bensenville than any of the other communities he showed her. 2000 Census data for Bensenville indicates that parts of Bensenville have higher populations of Hispanics than other parts of Bensenville. Respondent Wassinger first took the white tester to see a house at 520 Crest in Census Tract 8407.01, which was, at that time, 24.7% Hispanic. It is located in the Johnson School District. He then took her to see a house at 733 W. Main, which is located in Census Tract 8408.02, which was, at that time, 37.6% Hispanic. It is located in the Mohawk School District.
27. In response to the white tester's inquiry as to why the house located at 735 Main in Bensenville had been on the market so long, Respondent Wassinger told the tester that the "heavy Latin influence" in the area made it difficult to sell the house. He later told her that he "would not necessarily suggest the elementary school [there], which is Mohawk, but rather try and find a house in the Johnson elementary area first." The tester asked why, and he replied: "Johnson is just a better school overall, nothing is wrong with Mohawk but Johnson is better." At the end of the showing, the tester told him that the house was really worth the price, with which he agreed before reminding her that she would need to take the schools into consideration.
28. Respondent Wassinger encouraged the white tester to observe the differences in performance between the two schools. The following morning, at Respondent Wassinger's suggestion, the two reviewed Illinois Standards Achievement Test (ISAT) scores for the Mohawk and Johnson schools on the *Chicago Tribune* newspaper's website, and observed that Johnson outscored Mohawk. He then asked her if she knew the background of President Bush's "No Child Left Behind" initiative. She replied negatively, and he explained that children were scored on different subjects, and that even if the child is disabled or ESL [English as a Second Language], the child has to show some

improvement not captured on the tests. He then added that it was “difficult to rate schools which [had] such a high level of ESL students since there is a different learning curve for each student.”

D. FAIR HOUSING ACT VIOLATIONS

29. Respondent DeJohn violated 42 U.S.C. §3604(a) when he steered Complainant’s Hispanic tester toward minority communities and away from white communities and Complainant’s white tester toward white communities and away from minority communities, by taking the actions alleged in paragraphs 18, 19, 20, 21, and 22, above.
30. Respondent Wassinger violated 42 U.S.C. §3604(a) when he steered Complainant’s white tester away from an area of Bensenville with more Hispanics and toward an area of Bensenville with fewer Hispanics, by taking the actions alleged in paragraphs 27 and 28, above.
31. Respondent DeJohn violated 42 U.S.C. §3604(b) when he provided inferior service to Complainant’s Hispanic tester, compared to the service that he provided Complainant’s white tester, by taking the actions alleged in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, and 23, above.
32. Respondent DeJohn violated 42 U.S.C. §3604(c) when he made the discriminatory statements alleged in paragraphs 21 and 22, above.
33. Respondent Wassinger violated 42 U.S.C. §3604(c) when he made the discriminatory statement alleged in paragraph 27, above, specifically that a home in Bensenville had not sold because of “heavy Latin influence.”
34. Respondent DeJohn violated 42 U.S.C. §3604(d) when he failed to provide information to Complainant’s Hispanic tester about properties available for inspection and/or sale while showing those available properties to the white tester, as alleged in paragraphs 14, 16, 18, and 20, above.
35. As a result of Respondents’ discriminatory actions, Complainant NFHA has suffered frustration of its mission and diversion of its resources. In devising, conducting, and analyzing the tests, and then preparing and filing these complaints based on the tests, Complainant has expended significant time and resources investigating Respondents and attempting to counteract their discriminatory practices.
36. Respondents’ illegal conduct has frustrated Complainant’s mission as well as diverted its resources from other activities it engages in to fulfill its mission, such as education and outreach, advocacy and other enforcement actions. In addition, Respondents’ discriminatory actions have harmed Complainant

NFHA's member organizations in Illinois, as those organizations also work to eradicate Illinois of housing discrimination.

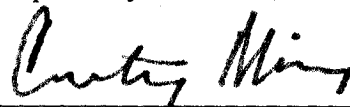
III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in a discriminatory housing practices in violation of 42 U.S.C. § 3604(a),(b),(c), and (d) of the Act, 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, as amended 42 U.S.C. §3601 *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from, on the basis of race, color, or national origin, steering, offering inferior terms and conditions, making discriminatory statements and falsely denying the availability of housing;
3. Awards such damages as will fully compensate Complainant NFHA, an aggrieved party, for its economic loss, inconvenience, and frustration of mission caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3604(a),(b),(c), and (d); and
4. Assesses a civil penalty of sixteen thousand dollars (\$16,000) against each Respondent for the violation of the Act that each Respondent has committed pursuant to 42 U.S.C. §3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2004).

Respectfully submitted,



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