

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)	
Silver State Fair Housing Council,)	
)	
Charging Party,)	FHEO No. 09-09-0938-8
)	
v.)	
)	
Elko Daily Free Press,)	
Lee Enterprises, Inc.,)	
)	
Respondents.)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 6, 2009, Complainant Silver State Fair Housing Council (“Complainant”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Respondent *Elko Daily Free Press* and Respondent Lee Enterprises, Inc. (“Respondents”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the “Act”), by printing, publishing, or causing to be made, printed, or published advertisements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination in violation of 42 U.S.C. § 3604(c).¹

¹ On or about April 27, 2009, Complainant also filed a complaint with HUD (FHEO No. 09-09-0901-8) alleging that Property Manager Vicki L. Carter of Wallace Mobile Home Park (“Property Manager”) and Nelson M. Wallace Trust, Owners of Wallace Mobile Home Park (“Wallace Trust”), violated the Act by refusing to rent to families with children, by posting a discriminatory advertisement that discouraged families with children from applying for a rental, and by applying discriminatory rental terms and conditions based on familial status in violation of 42 U.S.C. §§ 3604(a), (b) and (c). On March 16, 2009, Complainant filed a complaint in the United States District Court, District of Nevada, Case No. 3:09-cv-00140, against Respondents, Property Manager and Wallace Trust alleging discrimination based on familial status in violation of the Act. HUD, Complainant, Property Manager and Wallace Trust executed a Conciliation Agreement resolving FHEO No. 09-09-0901-8, effective August 4, 2009.

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 re delegated 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 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. HUD's efforts to conciliate the complaints 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 HUD complaint and Determination of Reasonable Cause, Respondents *Elko Daily Free Press* and Lee Enterprises, Inc. are charged with discriminating against Complainant Silver State Fair Housing Council, aggrieved person as defined by 42 U.S.C. § 3602(i), based on familial status in violation of 42 U.S.C. § 3604(c) of the Act as follows:

1. It shall be 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, 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.
2. At all times relevant to this Charge, Complainant Silver State Fair Housing Council ("SSFHC") was a nonprofit Nevada corporation organized under the laws of the State of Nevada. SSFHC works to eliminate housing discrimination and to ensure equal housing opportunities for all people by providing a variety of services directed toward education and enforcement including, among other things: 1) investigating allegations of discrimination; 2) conducting investigations of housing facilities to determine whether equal opportunity in housing is provided; 3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; 4) providing outreach and education to the Nevada community, including housing providers and consumers, regarding fair housing; and 5) monitoring and training housing providers that have previously engaged in discriminatory housing practices.
3. At all times relevant to this Charge, Respondent Lee Enterprises, Inc. was a corporation organized under the laws of the State of Delaware and an owner and operator of Respondent *Elko Daily Free Press*. At all times relevant to this Charge, Respondent Lee Enterprises, Inc. provided news, information and advertising to 53

markets throughout the United States. At all times relevant to this Charge, Respondent *Elko Daily Free Press* was a free, Elko, Nevada daily newspaper with a daily circulation of 5,803.

4. On November 7, 2008, a HUD investigator contacted SSFHC to report a fair housing violation. The HUD investigator reported that while conducting an investigation on an unrelated case, the investigator observed a rental advertisement in the print edition of the *Elko Daily Free Press* for November 4, 2008, that read, "Private park. City View! 2bd/2bth, washer, dryer included. No kids, No Pets. \$875/month. Call 9am to 9pm 738-5932."
5. On November 7, 2008, SSFHC checked the online edition of the *Elko Daily Free Press* and located an advertisement for an "Adult Park" that listed the same phone number as the November 4, 2008 print advertisement.
6. In response to the HUD investigator's report, SSFHC investigated the advertised property using fair housing testers. Tester A called the number listed in both the print and online advertisements posing as a potential renter seeking housing for herself and her two daughters. Tester B called the number listed in both the print and online advertisements posing as a potential renter seeking housing for herself, her husband and her mother-in-law.
7. On November 12, 2008, Tester A called (775) 738-5932 to inquire about the unit advertised in the *Elko Daily Free Press* on November 4, 2008. When Tester A revealed that she was seeking housing for herself and her two daughters, Property Manager Vicki L. Carter said, "This is an adults only mobile home park." The Property Manager also told Tester A that, "I'm sorry but I do not rent to anyone with children," or words to that effect. The property manager added that the unit advertised in the November 4, 2008 newspaper had already been rented. The Property Manager ended the call, stating that there was an available unit at another location that did accept children.
8. On November 12, 2008, Tester B called (775) 738-5932 and left a message for Property Manager Vicki L. Carter, inquiring about the unit advertised in the *Elko Daily Free Press* on November 4, 2008. The Property Manager returned Tester B's call on November 13, 2008. Tester B told Property Manager Carter that she was seeking housing for herself, her husband and her mother-in-law. The Property Manager replied, "No kids, huh?" The Property Manager told Tester B that the unit advertised in the November 4, 2008 newspaper had already been rented, but that she was expecting another unit to become available soon in December.
9. By printing, publishing, or causing to be made, printed, or published advertisements with respect to the rental of a dwelling that indicate a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination, Respondents *Elko Daily Free Press* and Lee Enterprises, Inc. discriminated against Complainant SSFHC in violation of 42 U.S.C. § 3604(c).

10. As a result of Respondents' discriminatory conduct, Complainant SSFHC has suffered damages, including economic loss due to diversion of its resources: 1) to investigate and determine the existence, nature and extent of Respondents' discriminatory housing practices; 2) to educate and perform outreach to counteract the effects of Respondents' discrimination; and 3) to protect the fair housing rights of Complainant's members, associates and constituents from Respondents' discrimination. This diversion of Complainant's resources and Respondents' discriminatory housing practices have frustrated SSFHC's mission to ensure equal housing opportunity for Nevada residents.

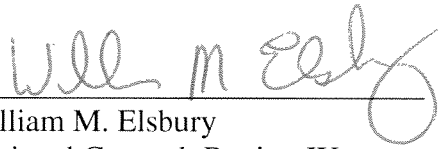
III. CONCLUSION

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 discriminatory housing practices in violation of Section 3604(c) of the Act, and prays that an order be issued that:

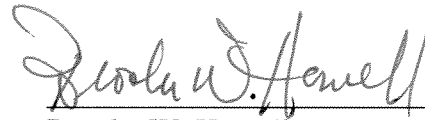
1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Fair Housing Act, as amended 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from printing, publishing, or causing to be made, printed, or published advertisements with respect to the rental of a dwelling that discriminate on the basis of familial status;
3. Awards such damages as will fully compensate Complainant SSFHC, including but not limited to compensatory damages and any and all other damages caused by Complainant's diversion of its resources: 1) to investigate and determine the existence, nature and extent of Respondents' discriminatory housing practices; 2) to educate and perform outreach to counteract the effects of Respondents' discrimination; and 3) to protect the fair housing rights of Complainant's members, associates and constituents from Respondents' discrimination pursuant to 42 U.S.C. § 3604(c); and
4. Assesses a civil penalty against Respondents for each violation of the Act that the Respondents have 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).

Respectfully submitted,



William M. Elsbury
Regional Counsel, Region IX



Brooke W. Howell
Attorney
Office of Regional Counsel
Region IX
U.S. Department of Housing and
Urban Development
600 Harrison Street, 3rd Floor
San Francisco, CA 94107
Tel: (415) 489-6513
Fax: (415) 489-6517

Date: September 28, 2009.