

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)
Nicole Michelbach and Brian Garcia,)
Charging Party,)
)
v.)
)
Armando Chavez, Eralia Chavez,)
and Michael Chavez,)
Respondents.)
_____)

FHEO No. 06-08-0968-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 25, 2008, Nicole Michelbach and Brian Garcia (Complainants) filed a verified complaint with the United States Department of Housing and Urban Development (HUD), alleging that Armando Chavez, Eralia Chavez, and Michael Chavez (Respondents) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), by discriminating based on familial status, in violation of 42 U.S.C. § 3604(a). The complaint was amended on October 7, 2008 to add Eralia Chavez as an additional respondent. The complaint was amended again on December 22, 2008 to remove the 42 U.S.C. § 3604(b) allegation.

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). The Secretary has delegated to the General Counsel (73 Fed.Reg. 68439, 68440), who has re delegated to the Regional Counsel (73 Fed.Reg. 68441, 68442) the authority to issue such a Charge, following a determination of reasonable cause by HUD.

By determination of reasonable cause on January 8, 2009, the Director of the Office of Fair Housing and Equal Opportunity for the Southwest HUB, 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 familial status, 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 complaint and the aforementioned Determination of Reasonable Cause, Respondents Armando Chavez, Eralia Chavez, and Michael Chavez are charged with discriminating against Complainants Nicole Michelbach and Brian Garcia, aggrieved persons, based on familial status in violation of 42 U.S.C. § 3604(a) of the Act as follows:

1. It is unlawful to refuse to rent after the making of a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604 (a).
2. Respondents Armando and Eralia Chavez, husband and wife, jointly own the subject property and are located at 708 Dolores Drive, NW Albuquerque, NM 87105.
3. Respondent Michael Chavez, son of Respondents Armando and Eralia Chavez, manages the subject property for his parents and at all relevant times, resided at the subject property.
4. The Aztec Manor Apartments, the subject property, is a 16 unit complex located at 403 Aztec Road NW, Albuquerque, New Mexico 87107.
5. Complainants Nicole Michelbach and Brian Garcia are a young couple who moved into the subject property on September 18, 2007. Complainants signed a month-to-month lease for a one bedroom unit which stated occupancy was not to exceed two per bedroom.
6. At all relevant times, Complainant Brian Garcia was the only complainant who spoke directly to Respondent Michael Chavez.
7. In January 2008, Complainants learned Complainant Michelbach was pregnant.
8. On or about May 29, 2008, Respondent Michael Chavez approached Complainant Garcia and questioned him about Complainant Michelbach's pregnancy.
9. Complainant Garcia confirmed Complainant Michelbach was pregnant, to which Respondent Michael Chavez responded that would be a problem per the terms of the lease.
10. Complainant Garcia asked why there would be a problem with the lease as Complainant Michelbach was only pregnant and had not had the baby yet.
11. Respondent Michael Chavez responded that it did not matter because she was still pregnant. He further stated he could evict Complainants for Ms.

Michelbach's pregnancy because they were under a binding contract by signing the lease agreement.

12. Later that same day, Respondent Michael Chavez provided Complainants with a 30-day notice to terminate the rental agreement. Attached to the notice was a copy of the residential rental agreement with Section 8 entitled "Use" highlighted. The relevant section stated: "Resident agrees to use the premises only for a private residence with no more than two persons in occupancy. In addition to Resident, the premises may only be occupied by the following persons: Brian Garcia and Nicole Michelbach."
13. Respondent Michael Chavez admitted he issued the non-renewal of lease notice because he felt Complainants would be in violation of the two-per-bedroom lease requirement as a result of Complainant Michelbach's pregnancy.
14. Respondent Michael Chavez never questioned Complainants about the due date of their child.
15. Respondent Michael Chavez did not offer Complainants the opportunity to move to a two-bedroom unit. At the time of the complainants' occupancy, there were no two-bedroom units available for rent.
16. By otherwise making unavailable and denying the subject property to the Complainants because of their familial status, Respondents Armando Chavez, Eralia Chavez, and Michael Chavez violated 42 U.S.C. § 3604(a).
17. Because of Respondent Michael Chavez's discriminatory conduct, Complainants Nicole Michelbach and Brian Garcia have suffered damages, including emotional distress, economic loss, inconvenience, and loss of a housing opportunity. The discrimination and subsequent housing situation negatively impacted Complainants by making them feel uncomfortable, unwanted, and frustrated.

III. CONCLUSION

WHEREFORE, the Secretary of the United States 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 Armando Chavez, Eralia Chavez, and Michael Chavez with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(a) of the Act, and prays that an Order be issued that:


1. Declares that the discriminatory housing practices of Respondents Armando Chavez, Eralia Chavez, and Michael Chavez as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;
2. Enjoins Respondents Armando Chavez, Eralia Chavez, and Michael Chavez, their agents, employees, and successors, and all other persons in active concert or

participation with them from discriminating because of familial status against any person in any aspect of the purchase or rental of a dwelling;

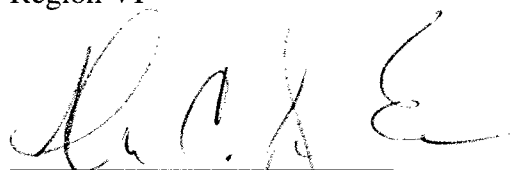
3. Awards such damages as will fully compensate Complainants Nicole Michelbach and Brian Garcia, aggrieved persons, for their damages, including compensation for economic loss and emotional distress caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3604(a); and,
4. Awards a civil penalty against Respondents Armando Chavez, Eralia Chavez, and Michael Chavez for each violation of the Act 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 J. Daley
Regional Counsel
Office of General Counsel
Region VI



Alma Hernandez-Blackwell
Attorney-Advisor
U.S. Department of Housing
and Urban Development
Office of General Counsel
801 Cherry Street
Unit # 45, Ste. 2500
Fort Worth, TX 76102
Phone: (817) 978-5603
Fax: (817) 978-5563

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