

**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	)	
Beverly Dittmar and her minor children,	)	
	)	
Charging Party,	)	HUDALJ:
	)	
v.	)	FHEO No: 07-09-0078-8
	)	
Elite Properties of Iowa, LLC,	)	
and Robert K. Miell,	)	
	)	
Respondents.	)	
_____	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about November 7, 2008, Complainant Beverly Dittmar filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD) on behalf of herself and her three minor children, Cameron Vail, Jenah Vail, and Deenah Dittmar, aggrieved persons, alleging she was injured by discriminatory acts based on sex. HUD initially referred the case to the Cedar Rapids Civil Rights Commission ("CRCRC") on November 7, 2008, and on December 18, 2008, the CRCRC waived the case back to HUD. The complaint was subsequently amended on or about February 12 and April 28, 2009, to name the proper respondents and allege a claim of retaliation. Complainant alleges Respondents violated Section 3617 of the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 (2009) *et seq.* ("the Act") based on retaliation by attempting to terminate her tenancy after she exercised her right to file a fair housing complaint.¹

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 (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional Counsel (73 Fed. Reg. 68442 (Nov. 18, 2008)), 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 his designee.

¹ HUD issued a determination that no reasonable cause exists to believe that Respondents discriminated against the Complainant based on her sex in violation of § 3604(b) of the Act as alleged in the initial complaint.

By Determination of Reasonable Cause of September 25, 2009, the FHEO Region VII Director, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred based on retaliation and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations 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 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 803, 804, 805, or 806 of this title. 42 U.S.C. § 3617; 24 C.F.R. §§ 100.400(b) and (c)(5).
2. Pursuant to the Act, "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

B. Factual Allegations

3. The subject property is a two-bedroom single family home located at 1731 K Avenue NE, Cedar Rapids, Iowa.
4. Complainant Beverly Dittmar and her three children have resided at the subject property since October 7, 2008.
5. At all times relevant to this Charge, Respondent Robert Miell owned the subject property and Respondent Elite Properties of Iowa, LLC ("Elite"), previously known as "Equity Associates" and "Miell Property Management," operated by Respondent Miell, managed the property. Respondent Miell is currently in jail in Iowa after being convicted in U.S. District Court of mail fraud, tax fraud, and perjury.² On May 28, 2009, Respondent Miell filed for Chapter 11 bankruptcy, and the U.S. Bankruptcy Court appointed a trustee on June 9, 2009.
6. Respondent Miell made all major business decisions (e.g., eviction and other related matters) related to the operation of Respondent Elite.

² Respondent Miell was convicted in January 2009 of these charges stemming from an insurance scheme involving some of his properties. He was imprisoned on May 8, 2009, and currently awaits sentencing in a Linn County, Iowa jail.

7. On or about October 7, 2008, Complainant signed a two month lease with Respondents to live at the subject property. At the conclusion of the lease period, it renewed monthly unless either party gave a written 30-day notice.
8. On or about April 1, 2009, Respondents verbally notified Complainant they had terminated her lease without providing any reason or explanation for the termination.
9. At all times relevant to this Charge, Complainant was a tenant in good standing who promptly paid her rent as required by her lease. Respondents had never issued Complainant any lease violations or warnings related to her tenancy.

Events Preceding Respondents' Retaliatory Attempts to Terminate Complainant's Tenancy

10. On or about November 7, 2008, Complainant filed her original fair housing complaint against Respondent Miell based on her sex, alleging Respondent Miell refused to allow her to move into a three bedroom apartment and unjustly charged a \$645.00 security deposit.
11. After HUD referred the case to the CRCRC as required by HUD regulations, the CRCRC waived the case back to HUD in a waiver letter dated December 18, 2008, stating: "[T]he respondent is problematic and very defiant. We feel the full authority and resources of your office would be better suited to deal with this matter."
12. On or about February 6, 2009, HUD Investigator Eric Robinson interviewed Respondent Miell by phone. While answering questions, Respondent Miell became upset and abruptly hung up.
13. On or about March 3, 2009, Investigator Robinson again interviewed Respondent Miell by phone.
14. On or about March 13, 2009, HUD Investigator Connie Radcliff, newly assigned to investigate the complaint after Investigator Robinson accepted another job, spoke by phone to Respondent Miell. During the call, Investigator Radcliff scheduled Respondent Miell's in person interview and an on-site investigation for March 19, 2009 at Respondents' office in Cedar Rapids.
15. During the telephone call, Respondent Miell commented to Investigator Radcliff, among other statements, that the investigation was a waste of time and money, the allegations were a "lynching" rope, and he hoped Investigator Radcliff would get a badge from the Wizard of Oz.
16. On the morning of March 19, 2009, Investigator Radcliff arrived at Respondents' office. During the on-site investigation, Respondent Miell provided some, but not all, of the documents Investigator Radcliff asked to review. While Investigator Radcliff

interviewed one of Respondents' employees, Respondent Miell left the office without notice and did not answer his phone or return messages left by the investigator asking him to contact her.

17. At or around 6:15 p.m. on March 19, 2009, Respondent Miell called Investigator Radcliff and explained he had not anticipated being absent for so long and provided a telephone interview. At the conclusion of his interview, Respondent Miell stated Complainant's claim was frivolous.
18. On or about April 1, 2009, less than two weeks after HUD's onsite investigation in Cedar Rapids, one of Respondents' employees refused to accept Complainant's rent at Respondents' rental office. To Complainant's surprise, the employee told Complainant that Respondents had terminated her lease effective March 1st and she was supposed to have vacated the property by March 31, 2009.
19. On a number of occasions during the HUD investigative process and prior to April 1, 2009, various certified letters to Respondents, including the HUD notification letter and a data request letter, were returned to HUD as unclaimed.

Events Following Complainant's April 1, 2009, Visit to Respondents' Office

20. On or around April 2, 2009, Investigator Radcliff contacted Respondent Miell and asked why he terminated Complainant's lease. He stated there was no reason for his decision, that her lease was for three months and it was up at the end of March 2009, and "it is just time to move on." Investigator Radcliff informed Respondent Miell the Complainant might amend her complaint to allege retaliation.
21. On or about April 3, 2009, Greg Vail, father of two of Complainant's children, attempted to pay Complainant's rent at the Respondents' office. Respondent Miell informed Mr. Vail the lease had been terminated, Respondent would not accept the rent payment, and Complainant needed to sign a letter stating she would vacate the property by the end of April 2009. On the same date, Complainant checked the Respondents' website and saw that the subject property, which she was presently occupying, was listed as available for rent as of April 1, 2009.
22. On or about April 6, 2009, Complainant received a "notice to quit" letter from Respondent Miell, dated March 1, 2009, but post marked April 2, 2009. The letter, which was Complainant's first official notice related to the eviction, notified Complainant she must vacate her home within three days, that she had failed to vacate after a 30-day notice, and that she was now a hold over tenant.
23. Respondents never provided Complainant a 30-day notice as asserted in the notice to quit. The notice to quit was improperly backdated to March 1, 2009, but postmarked over a month later. Respondent Miell's attempted eviction of Complainant was triggered by the culmination of events up to and including Investigator Radcliff's on-site investigation which occurred on March 19, 2009.

24. On or about April 20, 2009, Complainant received notice of an eviction hearing requiring her appearance in the Linn County, Iowa District Court on April 22, 2009. In the notice, Respondents demanded possession of the subject property, stating Complainant had failed to vacate and was a hold over tenant.
25. On April 22, 2009, Complainant attended the eviction hearing and the judge informed her that she would be evicted on April 27, 2009. The judge indicated she was not interested in any information related to Complainant's HUD case, deeming it hearsay.
26. On or about April 25, 2009, Complainant received another notice to quit from Respondents that was undated but postmarked April 22, 2009, stating "your lease is terminated and you are now a holdover tenant."
27. By April 28, 2009, Complainant knew that her eviction date had passed and was halfway moved out of her home. Complainant was emotional and crying a lot and had no place to go. Her children felt insecure.
28. On or about April 28, 2009, Complainant received a notice from the Linn County District Court dated April 27, 2009, dismissing the previously issued eviction judgment because of "bad dates on the notices." On that same day, Respondent Miell initiated another eviction hearing against Complainant, and HUD faxed Respondent Miell an amended fair housing complaint alleging retaliation.
29. On or about May 1, 2009, Mr. Vail again attempted to pay Complainant's rent at the Respondents' office, but Respondent Miell refused to accept it.
30. On or about May 4, 2009, in response to a telephone inquiry from Investigator Radcliff, Respondent Miell informed the investigator that he planned to proceed with evicting the Complainant.
31. On or about May 5, 2009, Respondent Elite's website showed that the subject property was still listed for rent.
32. On or about May 5, 2009, the second eviction hearing, for which Complainant did not receive prior notice and therefore did not attend, was held. The judge, however, dismissed the eviction after Respondent Miell failed to appear.
33. On or around May 6, 2009, the Complainant received a "3-Day Notice to Pay Unpaid Rent" from Respondent Miell, dated May 5, 2009, demanding unpaid rent in the amount of \$645.00.
34. On or about May 7, 2009, Respondent Miell, whose eviction proceedings against Complainant had just been dismissed for the second time, informed Investigator Radcliff that Complainant could now remain at the subject property if she paid rent for both April and May with cash or a money order. Respondent Miell concluded the conversation by

stating that Complainant's fair housing case was frivolous and she could "bring it up to the Supreme Court and President Obama."

35. On or about May 8, 2009, Complainant received the official notice from Linn County, Iowa District Court setting out that the eviction was "dismissed--no show by Plaintiff [Respondent Miell]" and was date stamped May 6, 2009.
36. On or about May 8, 2009, federal authorities placed Respondent Miell in custody, and he remains in jail awaiting his sentencing. Respondent Elite, now managed by the appointed bankruptcy trustee, has resumed accepting Complainant's rent.
37. Respondent Miell offered no legitimate, nondiscriminatory reasons for his attempts to evict Complainant from her home.
38. Respondent Miell was upset at Complainant for asserting her fair housing rights, displayed disregard for the HUD investigative process, failed to fully cooperate, and resented that HUD was investigating what he thought was a frivolous complaint.
39. Less than two weeks after the HUD onsite investigation, Respondents abruptly notified Complainant of the intention to evict her. Respondents continued in their efforts to evict Complainant from her home, and such retaliatory actions were because she had participated in the fair housing complaint process.
40. As a result of Respondents' discriminatory conduct, Complainant and her children suffered damages including emotional distress, embarrassment, humiliation, inconvenience and economic loss.

C. Fair Housing Act Violations

41. By verbally notifying Complainant of the termination of her tenancy and refusing to accept Complainant's rental payments on April 1, April 3, and May 1, 2009; issuing notices to quit and to pay unpaid rent; and initiating eviction proceedings against Complainant, Respondent Miell unlawfully retaliated against Complainant for making a complaint and participating in a proceeding under the Fair Housing Act in violation of 42 U.S.C. § 3617; 24 C.F.R. §§ 100.400(b) and (c)(5).

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), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3617 and prays that an order be issued that:

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the Act, 42 U.S.C. §§ 3601 *et seq.*;

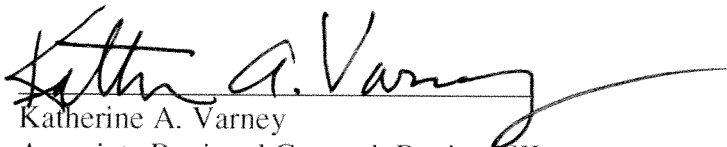
2. Enjoins Respondents, their agents, employees, and successors, and all other person in active concert or participation with them from unlawfully retaliating against any person in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainant and her children for their damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Imposes a \$16,000 civil penalty against each Respondent for each violation of the Act they are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671.

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

Respectfully submitted,



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