

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)
Fair Housing Contact Service, Inc.,)
Charging Party,)
v.)
Keith Duncan,)
Respondent.)

HUD ALJ No.
FHEO No. 05-09-1289-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 12, 2009,¹ Complainant Fair Housing Contact Service, Inc. (“Complainant FHCS”) filed a verified complaint with the United States Department of Housing and Urban Development (the “HUD Complaint”), alleging that Respondent Keith Duncan (“Respondent”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. §3601 *et seq.* (the “Act”), by advertising in a discriminatory manner in violation of 42 U.S.C. §3604(c).

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 retained and re-delegated to the Regional Counsel (73 Fed.Reg. 68442) 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 sex (female) and familial status, and has authorized and directed the issuance of this Charge of Discrimination (“Charge”).

¹ On August 14, 2009, the complaint was amended to include a familial status allegation, to correct Respondent’s address and to accurately reflect the date the advertisement was viewed and printed by Complainant FHCS’ staff.

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, Respondent Keith Duncan is charged with discriminating against Complainant Fair Housing Contact Service, Inc., an aggrieved person as defined by 42 U.S.C. §3602(i), based on sex (female) and familial status in violation of 42 U.S.C. §3604(c) of the Act as follows:

1. 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.
2. At all times relevant to this Charge, Respondent was the sole owner and manager of the property located at 607 West Ford Avenue, Barberton, Ohio ("subject property").²
3. Upon information and belief, the subject property is a two-unit, multi-family dwelling. The available unit, at the time in question, was located on the second floor ("subject unit") of the subject property. Upon information and belief, Respondent rented the lower level unit to a single male tenant.
4. Complainant FHCS is a not-for-profit corporation in Ohio that was formed in order to support open housing in the greater Akron region so that all persons, regardless of race, religion, national origin, sex, familial status, or disability, can secure and afford housing in the neighborhood of their choice. Its programs and activities include assisting individuals pursuing legal rights and remedies related to fair housing, housing assistance and counseling, attorney referrals, community education and outreach, housing research, assistance in filing discrimination complaints, and fair housing discrimination investigations.
5. As part of Complainant FHCS' enforcement program, Complainant FHCS conducts investigations into discriminatory advertising and engages in monitoring rental listings on various websites, including craigslist.org.
6. On or about August 20, 2008, Complainant FHCS' staff conducted an investigation into discriminatory internet advertising for Akron-area rental housing on craigslist.org. As part of this search, Complainant FHCS' staff viewed a rental advertisement on craigslist.org posted by Respondent on or about August 19, 2008 ("subject rental advertisement"). The subject rental advertisement stated the following:

² Upon information and belief, in addition the subject property, Respondent owns another rental property located at 250 and 252 16th Street NW, Barberton, Ohio and his residence, located on Serfass Road in Doylestown, Ohio.

“\$450 BARBERTON 1 BEDROOM APT ALL UTILITIES PAID (607 WEST FORD AVE) (map)

NICE UPSTAIRS 1 BEDROOM APT INSIDE ENTRANCE LIVING ROOM KITCHEN BEDROOM & LARGE BATH WITH SHOWER NO PETS!!! **MAKES A VERY NICE APT FOR SINGLE GUY TENANT MUST PAY A \$450.00 SECURITY DEPOSIT & SIGN A 1 YEAR LEASE 330-208-2500.** (Emphasis added.)

607 WEST FORD AVE. at 5TH ST.”

7. On or about June 12, 2009, Complainant FHCS filed its fair housing complaint with HUD alleging that the subject rental advertisement posted by Respondent violated Section 804(c) of the Act.
8. In the course of the investigation, Respondent was interviewed by a HUD Equal Opportunity Specialist (“EOS”) several times. During an interview with a HUD EOS on or about July 15, 2009, the EOS explained the anti-discrimination provisions of the Act related to discriminatory advertising to Respondent and explained that the subject rental advertisement posted by Respondent may be discriminatory. In response, Respondent told the HUD EOS, “I don’t care about the Fair Housing Act,” or similar words to that effect. Respondent also told the HUD EOS that the subject unit was “too small” for a family to rent. Nevertheless, Respondent admitted that he subsequently rented the subject unit to two persons, who he described as, “a guy and his girlfriend.”
9. During a subsequent interview, on or about August 17, 2009, Respondent was asked and did not deny that he owns the subject property and posted the subject rental advertisement, limiting rental of the property to a “single guy.” He also did not deny, and the subject advertisement attests, that the subject unit was available for rent at the time that Respondent posted the subject rental advertisement.
10. On or about September 9, 2009, in a subsequent telephone contact with HUD, Respondent admitted that the reason he used the term “single guy” in his advertisement for the subject property is because the other single male tenant residing at the subject property suggested to Respondent that he rent the subject unit to a “single guy.” Moreover, Respondent continued by stating that he did not feel that the subject unit was appropriate for children, due to neighborhood “safety” concerns, and because he did not think that the unit was “large enough” for a family.
11. A rental advertisement is discriminatory on its face against families with children if it uses the limiting and preferential term “single.” See, policy guidance memo from Roberta Achtenberg, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, *Guidance Regarding Advertisements Under §804(c) of the Fair Housing Act*, (January 9, 1995), page 4.

12. By making the following statement in a rental advertisement, "...Makes a very nice apt for *single* guy tenant...", (emphasis added) Respondent expressed a preference, limitation or discrimination based on familial status, or an intention to make such a preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
13. By making the following statement in a rental advertisement, "...Makes a very nice apt for single *guy* tenant...", (emphasis added) Respondent expressed a preference, limitation or discrimination based on sex, or an intention to make such a preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c) of the Fair Housing Act.
14. Complainant FHCS is an aggrieved person within the meaning of 42 U.S.C. § 3602(i), and as a result of Respondent's discriminatory conduct as described above, Complainant FHCS has suffered damages, including frustration of its mission and/or diversion of its resources.
15. As a result of Respondent's discriminatory conduct, Complainant FHCS has suffered damages, including inconvenience, economic loss through diversion of its resources, and frustration of its mission to promote equal housing opportunities in the greater Akron region. Complainant FHCS was forced to divert some of its resources away from other fair housing activities to address Respondent's discriminatory conduct.
16. As a result of Respondent's discriminatory conduct, an unknown number of prospective tenants with children and/or who are female were discouraged from seeking a rental opportunity at the subject property because of the discriminatory language "...Makes a very nice apt for single guy tenant...", in the subject rental advertisement, frustrating Complainant FHCS' mission to promote diverse and equal housing in the greater Akron region. Respondent's expression of his preference against renting to families with children and female renters interfered with FHCS' ability to ensure that its clients are able to seek and obtain housing without being subject to discriminatory statements, or seek and obtain housing of their choice regardless of their familial status and/or sex.

III. CONCLUSION

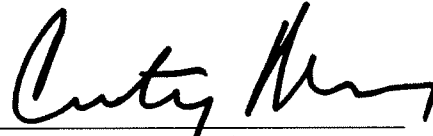
WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent Keith Duncan with engaging in discriminatory housing practices in violation of Section 3604(c) of the Act, and prays that an order be issued that:

1. Declares that the discriminatory housing practice of Respondent, as set forth above, violates the Fair Housing Act, as amended 42 U.S.C. §3601 *et seq.*;

2. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with him from discriminating because of familial status and sex against any person in any aspect of the rental or sale of a dwelling;
3. Awards such damages as will fully compensate Complainant FHCS, an aggrieved party, for its economic loss, inconvenience, and frustration of mission caused by Respondent's discriminatory conduct pursuant to 42 U.S.C. § 3604(c); and
4. Assesses a civil penalty of sixteen thousand dollars (\$16,000) against Respondent for the violation of the Act that 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).

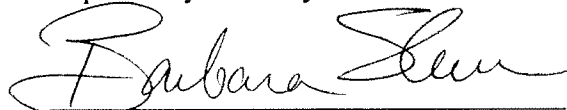
Respectfully submitted,



COURTNEY MINOR
Regional Counsel for Region V



LISA M. DANNA-BRENNAN
Supervisory Attorney-Advisor for Fair Housing



BARBARA SLIWA
Trial Attorney
U.S. Department of Housing and
Urban Development
Office of Regional Counsel-Region V
77 West Jackson Boulevard, Room 2633
Chicago, Illinois 60604-3507
Tel. (312) 913-8613
Fax: (312) 886-4944

Date: 09/15/09