DEVELOPMENT OF CASE STUDIES
FOR USE IN TRAINING OF EMPLOYEES
IN THE MULTIFAMILY HOUSING INDUSTRY
TO PREVENT FAIR HOUSING VIOLATIONS

A CREATIVE PROJECT
SUBMITTED
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
MASTERS OF ARTS DEGREE

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ABSTRACT

**CREATIVE PROJECT:** Development of Case Studies for Use in Training of Employees in the Multifamily Housing Industry to Prevent Fair Housing Violations

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This creative project involved the development of a series of case studies in response to the 4 million plus fair housing violations that occur every year. The seven case studies developed were based on actual court cases involving the seven areas of fair housing violations. It is known that the use of case studies in training can be better remembered and more helpful than just explaining the rules. Through this project the researcher hopes to raise awareness of and help prevent these infractions from happening, thus saving undue duress and expense to a property management company.
ACKNOWLEDGEMENTS

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Introduction

On April 11, 1968, President Lyndon Johnson signed the Civil Rights Act of 1968. The Bill is also known as the Fair Housing Act (of 1968). The 1968 act provides for federal solutions while the 1866 act provides for private solutions (civil suits). Forty years after the passage of the Fair Housing Act, the National Fair Housing Alliance (NFHA) estimates more than 3.7 million instances of discrimination annually against African-Americans, Latinos, Asian Americans, and American Indians in rental and sales markets, but less than 1% percent of these violations are reported or even detected (Simonson, 2004). It should also be noted that this estimate is very conservative in terms of accuracy, since it doesn’t take into account discrimination on the basis of sex, religion, color, familial status or other ethnicities. These data do not include discrimination against persons with disabilities, who are the individuals that file the most complaints with HUD each year. There are many other areas of discrimination that are omitted from this statistic (linguistic profiling, insurance, etc.) And if factored in, the estimate of this number might easily break 4 million (Simonson, 2004)

In 2006, between private agencies who reported 17,347 complaints (Fair Housing Trends Report 2007), and public agencies (HUD, state and local government
who reported 10,328 complaints (HUD *The State of Fair Housing, 2006*), there were total of 27,706 housing discriminations complaints that year, up almost 6% from 2005. Housing discrimination is usually broken down into four major areas: Rental discrimination, sales discrimination, lending discrimination and homeowners insurance.

It is apparent however, that one of these areas, rental discrimination, is the most troublesome of the four. According to the NFHA, rental cases continually make up the main source of Fair Housing complaints. In 2006 private Fair Housing groups reported 14,211 complaints of discriminations in the rental market, over 50% of all the complaints for that year (*Fair Housing Trends Report, 2007*) With statistics such as these, it seems imperative that the multi-family industry needs to address this problem.

**Purpose Statement**

The purpose of the creative project is to examine actual cases of rental discrimination and create case studies to use in employee training on how to handle various Fair Housing situations with consistency and how to avoid violating Fair Housing rules and regulations. It is assumed that actual instances explored in the case studies can be better remembered and more helpful than just explaining the Fair Housing rules.
Rationale

While this discrimination is an ongoing problem, whether these instances were accidental or intentional, discrimination occurs in all parts of the rental market from the single unit property to the multi-unit housing community (apartment, condos, townhouses, etc.). In the multi-unit communities, it is usually the company that owns the property that the case is brought against, as well as the individual, be it a property manager, leasing consultant, or even a maintenance tech. The cost of these settlements can range from the tens to hundreds of thousands dollars. When you consider the potential amount of money this can cost a company, one can assume that this is a major concern of these companies, and a problem they would like to avoid. These companies can improve their chances of not having a Fair Housing case brought against them by properly training their staff. The creative project will provide a training exercise that will allow the employees to see and respond to examples from actual cases of what to do and what not to do, and how to maintain consistency among all staff when dealing with Fair Housing issues.
Definitions

For the purpose of this study the following definitions will be used:

- **Case studies** - narratives that provide data and essential information about a specific problem situation, which leads to determining possible solutions

  (Barnes, Christensen, and Hansen, 1994)

- **Discriminatory housing practice** refers to a practice that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act of the following:

- **Handicap** - A physical or mental impairment which substantially limits one or more of such person's major life activities, record of having such an impairment, or being regarded as having such an impairment

- **National Origin** - country from which your forbearers came

- **Color** - shade of skin color within each race

- **Race** - racial origins

- **Familial status** - one or more individuals (who have not attained the age of 18 years) living with a parent or another person having legal custody of such individual or individuals or the designee of such parent or other person having such custody, with the written permission of such parent or other person

- **Sex** - defined as gender

- **Age** - 40 and older

- **Religion** - all aspects of religious observance, practice, and beliefs
**Limitations**

A limitation of the purposed creative project may be creating cases that can illustrate every instance that may occur. Another limitation may be instances that may require management discretion. Meaning cases where the fact given the information, it still may be up to a court ruling and not a clear cut violation.

**Summary**

Based on the number of discriminatory cases filed related to Fair Housing issues the researcher will create a project that can be used by management to train individuals on issues dealing with Fair Housing. This training will in turn help to decrease the number of employees in the residential housing field and their employers from being subjected to a discrimination cases being brought against them. The review of the literature used in the development of the case studies will be found in Chapter 2. The methodology for creating the case studies will follow in Chapter 3. Chapters 4, 5, and 6 will deal with results, discussion, and conclusion.
Chapter 2

Review of Literature

The purpose of this creative project is to create case studies based on actual cases of rental discrimination for use in employee training of how to handle various situations with consistency and how to avoid violating Fair Housing rules and regulations. It is known that actual instances can be better remembered and more helpful than just explaining paper/pen training. The chapter will review information and case studies as a teaching tool, the various types of discrimination in the multi-family industry, and how to develop case studies.

Case Studies

Case study methods begin with real-life problems found in the workplace and rely on active engagement by students to determine possible solutions. Using cases provides a learning activity that mirrors the decision-making process needed in the workplace and helps students understand that learning must go beyond simply learning material to do well on examinations (Jonassen, 2004). This strategy is effective in helping students learn about a topic and develop problem-solving strategies and critical-thinking skills (Barnes, Christensen, & Hansen, 1994; Bonwell & Eison, 1991; Davis, 1993). Students are able to apply theory to practice when the case study provides them with an authentic or real-life context for the problem or dilemma. In addition, they learn
to identify the important issues and the impact of possible solutions (Quarstein & Peterson, 2001)

The review examined the content of case studies and how to write the cases to be used in training. Specifically, the researcher looked at cases in which judgment has already been made. The researcher focused on the rental aspect by looking at discrimination against the seven protected classes (Handicap, National Origin, Color, Race, Familial status, Sex, Age, and Religion).

**Fair Housing Violations**

To examine different types of discrimination, the researcher looked at prohibited practices as defined by the Fair Housing Act and HUD. Those included:

- Failure to accept and process an application or consider an offer to lease from a member of a protected class;
- Uses of different qualifying criteria, rental standards or procedures from those that apply to other applicants or residents;
- Using different provisions in leases of protected class members;
- Limiting, denying, or delaying use of facilities, services or privileges of the community because of protected class;
- Discouraging or refusing a person from inspecting or leasing an apartment home;
- Discouraging in word or conduct by exaggerating negative aspects, misinforming about availability, or neglecting to mention desirable features of the apartment or community;
• Employing codes to segregate or reject applicants, as well as refusing to deal with apartment locators or agents because their clients are in a protected class;

• Using phrases, words, pictures, illustration symbols, or forms that suggest apartments are or are not available to a protected class;

• Expressing to apartment locators, agents, employees, prospective residents or any person a limitation toward or a preference for a protective class member;

• Selecting media or locations for advertising that leaves out particular parts of the housing market about housing opportunities;

• Providing false or inaccurate info regarding availability of an apartment for rent to anyone;

• Threats, intimidation, or interference with the residents, visitors or associates or the residents enjoyment of an apartment home because of their protected classification;

• Threats of termination or a negative effect against an employee, as well as adverse action against an apartment locator or agent because of effort to assist a person seeking to rent an apartment home;

• Intimidating or threatening a person because they are engaged in encouraging a person or making the aware of their rights granted or protected by the Fair Housing act; and

• Retaliation against any person because they made a complaint, assisted, testified, or participated in any way in a proceeding under the Fair Housing act.

The creative project will present cases illustrating variations of all these infractions. The researcher plans to review cases that have been already judged, so that the verdict will define why it was a violation of Fair Housing. Also this will make it easier to examine where the case might have gone from proper procedure to a violation.
Cases based on not only the different classes discriminated against will be reviewed but also on the type of prohibited practice that occurred. If available, the punishment in terms of monetary value as well as any other punishments will be mentioned to stress the severity of a Fair Housing violation.

**Writing Case studies**

Why the importance of using cases studies? Case studies put life into teaching Fair Housing practices. Teaching the laws of Fair Housing and HUD can only take you so far. The use of case studies bridges theory and practice and by using a wide range of cases, one can provide training to new employees in the industry. Good case studies are logical, as in defining the problem as accurate as it can. To write a good case study, you have to understand and convey the problem, the process, and the solution.

**Summary**

This literature review examined the use of case studies in teaching or training. By carefully examining and explaining the Fair Housing violations in each case, the actions and results, these things can be interchanged and best remembered and referenced to help the participant. The following chapter will describe the methodology used in developing these case studies.
Chapter 3
Methodology

As stated before, there is an estimated over 4 million case of rental discrimination against minorities each year in the rental market, yet less than 1% of those are reported. The problem lies in not only the action of the discriminations, but also the results of those discriminated against, both the ones reported and the ones that are not reported. For the ones that are not reported, these can still damage the reputation of a business, as word of mouth will spread of these practices. For the ones that are reported, these can not only have the result of bad word of mouth being spread, but also can tarnish the image of a company, as well as cost them a substantial amounts of money. This chapter describes the process used to develop a series of case studies that deal with the seven protected classes of Fair Housing discrimination.

Sampling of Cases

To make the case studies authentic, it was decided to use as the bases for the development of the case studies already judged cases. Following a review of a number of judicated cases the researcher selected a representative sample of cases to develop into case studies. Cases were selected based on the seven protected classes. A copy of
each of the cases selected for development into a case study is found in Appendix A.

**Format of Case Studies**

The case studies were developed in a way they can be used by management in the multi-family housing industry in the training of their employees regarding Fair Housing practices. The cases developed had two different formats. The formats call for the participants in training to provide responses at different stages during the use of the case studies. Responses from participants are in bold:

**Scenario 1** – > include a question for participant to respond to as what to say or do -> additional information on the cases was presented - > participants were again asked to stop and continue with the discussion regarding a Fair Housing violation - > the court judgment was given with the reason why it was a violation of Fair Housing.

**Scenario 2** – > Violation described - > include a question for participant to respond to as what to say or do Action taken - > propose what type of scenario would fit this violation - > offer correct scenarios.

**Scenario 1** as a case study was developed and began with a description of issues related to Fair Housing violation, giving the background and facts of the case, such as who’s involved, where, when, and then the violation that occurs. At this point there is a
break in the story for discussion, asking respondents what they would do given the facts of the situation, sometimes paired with a “what if” question. Then the case study goes into more detail of what actually occurred. This is following by another break with additional questions to stimulate more discussion. At the end of the case study the court ruling on what occurred is presented.

For Scenario 2 as the case study was developed and began with a description of the violation. At this point there is a break in the story for discussion, asking respondents if they can identify what would cause this violation in certain areas for renting apartments. After discussion additional information is provided, respondents are asked whether or not they believe a violation has occurred, and if so, what. Finally more information is given to ask once more if or what fair housing violation occurred, and then a court ruling is given.

Summary

The researcher is confident that this creative project will have a positive effect on the consciousness of people in the industry and help them to diminish the number of discriminations from happening through the use of the case studies in training programs with their employees, with the ultimate goal of eliminating these from happening ever again.
Chapter 4

Results

Based on the large number of Fair Housing violations, many of which go unreported the case studies developed for this creative project were designed to serve as a training tool for the multi-family housing industry. The purpose of the creative project was to examine actual cases of rental discrimination and create case studies to use in employee training on how to handle various Fair Housing situations with consistency and how to avoid violating Fair Housing rules and regulations. In this chapter the seven case studies developed are described.

Fair Housing Case Studies

For the creative project a series of seven case studies were developed for use by management in the multi-family housing industry for the training of staff. The topics for the seven case studies are as follows:

- Case Study #1: A Comforting K-9
- Case Study #2: 2+1= Eviction?
- Case Study #3: Depends on Where You Are From
- Case Study #4: A Double Whammy
- Case Study #5: ‘Saved’ from Persecution
- Case Study #6: Still Going Strong
- Case Study #7: Unwanted Affection
Content of Case Studies

As the case studies were developed the introduction included a brief description of issues related to case study, giving the background and facts of the case, such as who’s involved, where, when, and then the violation that occurs. At this point there is a break in the story for discussion, asking respondents what they would do given the facts of the situation, sometimes paired with a “what if” question. Then the case study goes into more detail of what actually occurred. This is following by another break with additional questions to stimulate more discussion. At the end of the case study the court ruling on what occurred is presented. The seven case studies are found in Appendix B.

Validity of the Case Studies

Since the case studies are all based on actual court cases involving Fair Housing violations the researcher feels that the contents of the case studies fairly and accurately depict situations in which the employees in the multi-family housing industry might find themselves as they work with potential residents and other clients. Management using these case studies in training can feel comfortable using these case studies during the training of new employees.
Summary

The cases selected for use are real and involved a variety of situations. The case studies developed cover the seven areas of discrimination on the basis of sex, religion, color, familial status or other ethnicities as set forth in the Fair Housing Act of 1968.
Chapter 5
Discussion

The purpose of the creative project was to examine actual cases of rental discrimination and create case studies to use in employee training on how to handle various Fair Housing situations with consistency and how to avoid violating Fair Housing rules and regulations. It is known that actual instances can be better remembered and more helpful than just explaining the Fair Housing rules. This creative project hopes to raise awareness of and help prevent these infractions from happening. And since these violations can create duress to a property management company, as well as can cost money, I feel it could be an integral part of a training program. In this section, based on the research from the literature review, a compare and contrast will be made based on the case studies.

Case Studies as an Instrument for Learning

As stated in the literature review, case study methods begin with real-life problems found in the workplace and rely on active engagement by students to determine possible solutions. Using cases provides a learning activity that mirrors the decision-making process needed in the workplace and helps students understand that learning must go beyond simply learning material to do well on examinations. This
strategy can be effective in helping students learn about a topic and develop problem-solving strategies and critical-thinking skills. Based on the feedback I’ve received from my peers who have and/or are working in the multi-family industry that I have given these cases to, this would appear to be a correct statement. Students are able to apply theory to practice when the case study provides them with an authentic or real-life context for the problem or dilemma. In addition, they learn to identify the important issues and the impact of possible solutions. This was achieved in the cases created, by dividing the case studies into sections and stopping to ask analytical questions throughout the use of the case study. This process creates the opportunity for critical thinking on the part of those using the cases in question and allows them to use what they’ve learned about Fair Housing and apply that knowledge to a real cases and determine what the outcome should be and why.

**Using the Case Studies in the Multi-family Housing Industry**

To the researcher’s knowledge such case studies do not currently exist. As a future manager in the multi-family housing industry I plan to use the case studies in training of employees under my supervision. The researcher will investigate ways in which the cases can be shared with others through presentations and articles regarding
use of case studies in training. Also by using technology, this could be used as a great tool for teaching this to a broader audience.

Summary

The development of these case studies has created a means by which employees in the multi-family housing industry can have the opportunity to learn Fair Housing rules through the use of actual case studies based on real cases.
Chapter 6
Conclusions and Recommendations

According to the NFHA, rental cases continually make up the main source of Fair Housing complaints. In 2006 private Fair Housing groups reported 14,211 complaints of discriminations in the rental market, over 50% of all the complaints for that year. The purpose of the creative project was to examine actual cases of rental discrimination and creating case studies to use in employee training on how to handle various Fair Housing situations with consistency and how to avoid violating Fair Housing rules and regulations. It is assumed that actual instances can be better remembered and more helpful than just explaining the Fair Housing rules. Each of the previous 5 chapters looks into the problem, the research in the review of literature, the method used, results, and discussion about the results.

Recommendations

In retrospect, the researcher wishes there would have been more cases where the line between Fair Housing violations was more undefined. To those who are fairly knowledgeable in Fair Housing would not have a hard time coming up with a correct response as to whether or not most of these cases are a violation or not. However, with the format of the case studies they should encourage critical thought and discussion
among employees during their use. The researcher wishes there could have been more cases where the verdict came out to be no violation at, unfortunately, these cases aren’t given the attention and publicity of cases where a violation was made.

The researcher would like to take this project a step further by testing the cases with new employees in the multi-family industry. Following these tests the researcher plans to continue with the development of additional cases. I also wish and hope to be able to expand and add more cases as time goes beyond the completion of the project.

**Summary**

The case studies developed as a part of the creative project are representative of the issues that are prevalent in the multi-family housing industry. Through the work on this creative project the researcher has become much more knowledgeable regarding Fair Housing violations in the multi-family industry.
Reference List


Appendix A

Case Studies

For

Training in

Fair Housing
Case Studies
For Training in Fair Housing
By
JaMarcus Fanning
Introduction

This collection of case studies was developed in response to the 4 million plus Fair Housing violations that occur every year. While less than 1% of these are even reported, the fact that they happen can be very costly to Property Managers and Property Management Companies, and therefore it is important that steps be taken to increase fair housing training.

As a part of a creative project completed at Ball State University a collection of case studies was developed. The collection of case studies was designed to help property managers to focus on the seven protected classes during fair housing training of new employees. These protected classes are:

- Handicap
- National Origin
- Color
- Race
- Familial status
- Sex
- Age
- Religion

The case studies are intended for use by property managers during the Fair Housing training of all new employees to a property. The cases studies are designed to be used in different ways, depending on the number of employees being trained at any given time. After presentation of the general information on fair housing the employee could be given the cases to go through on their own or if a group, the manager could proceed to use these in a group setting. The cases were developed using a couple of different formats. They are:

Scenario 1 as a case study was developed and began with a description of issues related to Fair Housing violation, giving the background and facts of the case, such as who’s involved,
where, when, and then the violation that occurs. At this point there is a break in the story for discussion, asking respondents what they would do given the facts of the situation, sometimes paired with a “what if” question. Then the case study goes into more detail of what actually occurred. This is following by another break with additional questions to stimulate more discussion. At the end of the case study the court ruling on what occurred is presented.

For Scenario 2 as the case study was developed and began with a description of the violation. At this point there is a break in the story for discussion, asking respondents if they can identify what would cause this violation in certain areas for renting apartments. After discussion additional information is provided, respondents are asked whether or not they believe a violation has occurred, and if so, what. Finally more information is given to ask once more if or what fair housing violation occurred, and then a court ruling is given.
Case Study #1: A Comforting K-9

Description of Issues Related to Case Study

Ron White is a tenant at College Playground Apartments located in Muncie, IN. He is also a student and the local university, Jar State University (JSU). For the summer of 2008, Ron went home for the summer to work, save some money and deal with some personal problems in his life. Ron subleased his apartment (with approval) for the summer and still had a lease to live at college playground the following semester.

College Playground has in place a policy prohibiting dogs to live at the community.

Around May 18, 2008, Mr. White wrote a letter to College Playground that he would be returning in August when his sublease would be moving out.

With his letter, was another letter dated May 14th from his Psychologist, Dr. Sue White (no relation). In that letter, Dr. White stated that she has treated Ron for over a year now for Dysthymic Disorder and Generalized Anxiety Disorder, disorders that significantly impair Mr. White’s day-to-day functioning. During this time, Ron has made great strides and improvements primarily because of companionship of Ron’s dog, Harper. Dr. White stated that because of the companionship between Harper and Ron, Harper qualifies as a “service animal for Mr. White” because she was important in maintaining Ron’s mental health. Dr. White finished her letter by stating “I believe it is crucial that Mr. White be allowed to keep Harper with him when he returns to his apartment this fall.”

What Would You Do?

As a Community manager, answer the following questions

How would you respond to Ron White’s request? When responding, consider these questions.
  - Is depression a true disability?
  - Do you have enough information to make a decision on the request? If not, what other information would be helpful?
  - Is there a Fair Housing issue with this request?
  - Other
What Really Happened?

Around August 2, 2008, College Playgrounds responded with a letter to Mr. White stating that they did not have sufficient information and documentation regarding his mental impairments of chronic depression and anxiety to determine whether to honor his request to keep his dog as an accommodation.

A few days later, Dr. White wrote another letter to College Playground, elaborating on the disorders that Ron had and how this had disrupted his sleep, causing him to be late for work, possibly jeopardizing his employment. His anxiety and depression also lead to weight gain, fatigue, irritability, loss of concentration and isolation. Dr. White reported that this condition often caused Ron to stay in bed all weekend.

In this same letter, Dr White said that once Ron got Harper his “mood dramatically improved” and he (Harper) distracted Ron from the stress and anxiety of his demanding job. Dr. White wrote that Harper was responsible for reducing Ron’s depression and that his apartment once again felt like a home and not like a “prison cell.”

Dr. White further stated that these symptoms had started to arise again lately at the fear of not being able to have Harper when he returns to his apartment, and that it was his professional conclusion that Ron need Harper or “serious negative consequences to his mental and physical health” may occur.

On August 25th College Playground countered by telling Ron that he hadn’t given them evidence that what he had was a disability that would give him entitlement to a reasonable accommodation for a pet.

Ron (frustrated) had the City of Muncie’s Department of Health and Mental Hygiene informed College Playground that Harper had been registered and listed as “a Service Dog in Department of Health & Mental Hygiene (DOHMH) database.” The City of Muncie enclosed a gold colored Service Dog tag with its letter, informing Mr. White that it had provided the Service Dog tag and a regular Muncie dog license tag without charge because Harper assisted a person “with a documented disability.”

On or about September 17, 2008, College Playground served Ron with a “NOTICE OF INTENT TO TERMINATE LEASE” because in the early part of August 2008, Ron violated “the February 10, 2004 House Rules, Rule # 1, which prohibits a pet in the building without the prior written permission of the Board of Directors....”

Your Opinion Counts.

- Is this Fair Housing violation?
- If so, what is the violation?
- Where was the infraction made in this instance?
Conclusion: HUD charged College Playground with a violation of the Fair Housing Act because the unreasonable delay in providing Mr. White with a timely response to his request to have Harper live with him, as well as their attempt to evict Ron from his home because he moved into his apartment with Harper, constitutes a discriminatory refusal to make a reasonable accommodation in College Playgrounds rules, policies, practices, or services, when such an accommodation was necessary to afford Mr. White with an equal opportunity to use and enjoy his dwelling.
Case Study #2: 2+1= Eviction?

Description of Issues Related to Case Study

Arnold and Emily Chavez, husband and wife, jointly own Mayan Manor Apartments, the subject property, a 16 unit complex located at 304 Mayan Road NW. Albuquerque, New Mexico 87107. Their son Mark Chavez manages the property as well as lives there.

Nancy Michelson and Bryan Gomes are a young couple who moved into the Mayan property on September 18, 2007. They signed a month-to-month lease for a one bedroom unit which stated occupancy was not to exceed two per bedroom.

For the duration of the lease, Mark only spoke to Bryan, not Nancy.

In January 2008, the Chavez’s learned that Nancy Michelson was pregnant.

On or about May 29, 2008. Respondent Michael Chavez approached Gomes and questioned him about Michelson’s pregnancy. Bryan Gomes confirmed that Michelson was pregnant, to which Mark Chavez responded that would be a problem per the terms of the lease. Confused, Bryan asked why there would be a problem with the lease as Nancy was only pregnant and had not had the baby yet. Mark responded that it didn’t matter because she was pregnant. He further went on to say that he could evict them because Nancy’s pregnancy was against their binding contract they has signed on the lease agreement.

What Would You Do?

As a Community manager, answer the following questions

- How would you respond to Nancy’s pregnancy? When responding, consider these questions.
  - Is the pregnancy a violation of their lease?
  - Do you have enough information to make a decision on the pregnancy? If not, what other information would be helpful?
  - Is there a Fair Housing issue with her pregnancy?
  - Other?
**What Really Happened?**

Later that same day, Mark issued Mr. Gomes and Ms. Michelson with a 30-day notice to terminate the rental agreement. He attached a copy of the residential rental agreement with Section 8 of the lease highlighted. That 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: Bryan Gomes and Nancy Michelson.’

Mark Chavez admitted he issued the non-renewal of lease notice because he felt the couple would be in violation of the two-per-bedroom lease agreement as a result of Michelson’s pregnancy.

Mark never questioned Nancy about the due date of her child, nor did he offer Bryan and Nancy the opportunity to move to a two-bedroom unit. At the time of Mr. Gomes and Ms. Michelson occupancy, there were no two-bedroom units available for rent.

**Your Opinion Counts.**

- Is this Fair Housing violation?
- If so, what is the violation?
- Where was the infraction made in this instance?
Conclusion: HUD charged the Chavez’s stating: ‘by otherwise making unavailable and denying the subject property to the couple because of their familial status, Respondents Arnold Chavez, Emily Chavez, and Mark have violated 42 U.S.C § 3604(a)’

Because of Respondent Mark Chavez’s discriminatory conduct, Nancy Michelson and Bryan Gomes have suffered damages, including emotional distress, economic loss, inconvenience, and loss of a housing opportunity. The discrimination and subsequent housing situation negatively impacted the couple by making them feel uncomfortable, unwanted and frustrated.
Case Study #3: Depends on Where You Are From

Description of Issues Related to Case Study

Eastfall Village Apartments, L.P. is a for-profit limited partnership registered with the State of Washington. Eastfall Village Apartments, L.P. is the owner of Eastfall Village Apartments. Seattle Housing Authority is the general partner of Eastfall Village Apartments, L.P.

Bee Property Management managed Eastfall Village Apartments located at 3724 N. Cook Street in Seattle, Washington. Joe Workman was the vice president and general manager of operations for Bee Property Management. Ms. Karen Limes was responsible for the management of Eastfall Village Apartments, including the approval of new residents and the approval of transfers by existing residents to new apartments.

The units at Eastfall Village Apartments fall under the category of 42 U.S.C. § 3602(b).

“dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;”

In other words, government assisted housing.

Eastfall Village Apartments first opened in the summer of 1997. In the beginning, applicants could receive an apartment immediately, but eventually the number of applicants was greater than the number of available units. Bee Property Management then went to a waiting list of individuals interested in renting an apartment at Eastfall Village Apartments.

In December 1999, Natalie Peach, a tenant at Eastfall Village Apartments, began working for Bee Property Management as an assistant resident manager. Ms. Peach was supervised by Karen Limes. Ms. Peach is of Russian national origin and speaks Russian. One of her duties was to serve as translator for conversations between Russian residents and applicants, who could not speak English, and Ms. Limes, who could not speak Russian.

Ms. Limes charged applicants of Russian national origin for initial tenancy or transfer an additional fee that was not charged to applicants who were not of Russian national origin. Those who paid the fee were given apartments at Eastfall Village Apartments even though non-Russian applicants were on the waiting list who had inquired about an apartment earlier.
Mike and Nedra Andreev immigrated to the United States from Russia in December 1999. They are of Russian national origin. In early 2000, they contacted Eastfall Village Apartments, and asked if there was an apartment available for immediate occupancy. They were required to make a $200 payment to Karen Limes, which was in addition to the regular fees required of new residents, and moved into Eastfall Village Apartments approximately two weeks later, in February 2000.

In July 1997, Erma and Vlad Petrov moved into a two-bedroom unit at Eastfall Village Apartments. They had one child that lived with them at the time. The complex had just opened and there was no waiting list. Erma and Vlad Petrov are of Russian national origin. In or about March 2000, Ms. Petrov contacted the Eastfall Village Management office and requested a transfer to a larger apartment. Ms. Petrov was pregnant and was concerned that her two-bedroom apartment would be cramped with four people, and she preferred a larger apartment. Ms. Petrov was told that she could have a three-bedroom apartment if she paid $300 to Ms. Limes. Ms. Petrov went to the management office, and, in the presence of Ms. Peach, paid Ms. Limes $300. The Petrovs, however, never received a three-bedroom apartment.

In or about April 2000, Mike and Nedra Andreev wanted to move to a second-floor apartment. Ms. Andreev contacted Karen Limes and asked if they could transfer to a different unit at Eastfall Village Apartments. Ms. Limes told Ms. Andreev that Ms. Andreev would need to pay $200 in order to transfer to a new apartment, even though other residents were on a waiting list for a two-bedroom. Ms. Andreev paid the fee and they moved into a second-floor apartment on May 5, 2000. Neither time were the Andreev’s told that they would have to be placed on a waiting list before they could move in or transfer to a new apartment at Eastfall Village Apartments.

Karen Limes accepted fees, which were in addition to the regular fees required of new residents, from other Russian applicants, as well as the Andreevs, and the Petrovs.

She did not solicit such payments from non-Russian applicants.

What Would You Do?

As a Community manager, answer the following questions

- What would you do in Ms. Peach position? When responding, consider these questions.
  - Who is being discriminated against and how?
  - Do you have enough information to make a decision? If not, what other information would be helpful?
  - Would Ms. Peach be in any trouble if this went to court?
  - Other?
What Really Happened?

On or about May 30, 2000, Natalie Peach informed Joe Workman of Bee Property Management that Karen Limes was requesting and accepting additional fees from Russian residents and applicants in return for renting them apartments.

When Karen learned that Natalie had complained, she told Natalie that she would be fired and evicted from her apartment if Karen got in trouble for soliciting and accepting extra payments from Russian applicants.

Two days after Natalie told Mr. Workman about what was happening, Mr. Workman fired Natalie Peach from her position as an assistant resident manager at Eastfall Village Apartments. When Mr. Workman fired Ms. Peach, he had been informed from another Bee employee that Ms. Peach's statements of Karen Limes accepted extra payments from Russian applicants were true.

On or about June 9, 2000, Bee Property Management served Natalie Peach a three-day notice to quit and vacate the premises demanding that she leave her apartment or face eviction proceedings. The decision by Bee Property Management to fire Natalie Peach and serve a three-day notice to vacate the premises on Natalie Peach was made in retaliation for her complaining that Karen Limes was soliciting and accepting additional payments from Russian applicants.

After Ms. Peach was fired, Karen Limes continued to be employed by Bee Property Management as an area manager with responsibility for managing Eastfall Village Apartments. Karen Limes was not disciplined by Bee Property Management for accepting extra payments from Russian applicants.

Your Opinion Counts.

- Is this Fair Housing violation?
- If so, what is the violation?
- Where was the infraction made in this instance?
**Court Ruling**

The conduct of Defendants Bee Property Management, Seattle Housing Authority, Eastfall Village Apartments, L.P., and Karen Limes described signify:

A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, pursuant to 42 U.S.C. § 3614(a); and

A denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance, pursuant to 42 U.S.C. § 3614(a).

All were found guilty of:

Refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of national origin;

Discriminating against any person in the terms, conditions or privileges of rental of a dwelling because of national origin; and

coercing, intimidating, threatening, or interfering with persons, including the complainants, in the exercise or enjoyment of any right granted or protected by 42 U.S.C. §§ 3603, 3604, 3605, or 3606.
Case Study #4: A Double Whammy

Description of Issues Related to Case Study

Clark Leftler was the owner of a two bedroom, one-bathroom unit in a nine-unit complex consisting of two duplexes, a triplex and two townhouse units. It is located 2648 S.E. 141 Avenue, Portland, Oregon. Todd Leftler and Jane Leftler, the parents of Clark, managed the subject property for their son.

Randy Nelly is a black male. His girlfriend, Diane Howard is a white female. On Monday, May 31, 2004, Todd Leftler asked Howard’s mother, Kelly Howard if she knew of any potential tenants and she said her daughter Diane. Todd Leftler told her that there was a vacancy at his son’s complex. Mr. Leftler encouraged Ms. Howard to have her daughter come see the apartment. Mrs. Howard knew the managers, Mrs. Leftler and Mr. Leftler, since her other younger daughter already was renting property managed by them and owned by Clark Leftler.

On the same day, Diane Howard and Randy Nelly, accompanied by Ms. Howard’s mother, went to see the property. Todd Leftler showed them the unit and told Howard and Nelly that the apartment was theirs if they wanted it. He did not ask for a deposit. Todd Leftler informed them he did not need references because he knew Howard’s parents. Howard said she needed to check into storing some of her belongings. Todd Leftler gave Diane Howard a rental application and told her to call him if she wanted the apartment.

On June 1, 2004, Diane Howard called the managers and spoke to Mrs. Leftler, who said she had shown the unit the night before to another woman, who had given her money to hold the apartment. Mrs. Leftler asked if Diane would be interested in an identical unit in a different duplex, which would be available at the end of the month. Later that day, Diane went to the subject property with her mother. Diane told Mrs. Leftler that she wanted to rent the subject property, but she was not interested in the other unit.
What Would You Do?

As a Community manager, answer the following questions

- Has a Fair Housing violation been made at this point in your opinion?

What Else Happened?

On the morning of June 2, 2004, Mr. Leftler called Diane’s mother and told her that they had decided not to rent to the other applicant. He said that if Randy and Diane were still interested in the original unit to meet him at the property with her checkbook. Kelly relayed the conversation to her daughter Diane. Diane called Mrs. Leftler later on the morning of June 2, 2004, and told her she wanted the unit and would give her a rent check. Mrs. Leftler said she could meet him at the unit at 1:00 p.m. that day. Later that day Diane and her mother Kelly met Mr. Leftler at the subject property. When they arrived at approximately 1:00 p.m., Mr. Leftler immediately said there was a problem. He explained that several long-term tenants had threatened to move if he rented to her, because her boyfriend, Randy, was black. He explained that a previous black male tenant had caused problems.

What Would You Do?

As a Community manager, answer the following questions

- How would you respond to the situation, as well as the unhappy residents threats? When responding, consider these questions.
  - Do these residents have a legitimate complaint?
  - Do you have enough information to make a decision? If not, what other information would be helpful?
  - Is there a Fair Housing issue?
  - Other?

What Really Happened?

Diane told Mr. Leftler that it was against the law to discriminate. Mr. Leftler replied that he knew it was, but these people were long-term tenants and he had to go with them. Mr. Leftler then called Mrs. Leftler. The two had a brief conversation. Mr. Leftler then gave the phone to Diane. Mrs. Leftler stated to Diane that she was sorry, but they could not rent the apartment to her.

Diane again told to Mr. Leftler that what he was doing was against the law. Mr. Leftler replied that he knew that. Diane and her mother left.

The Leftler’s subsequently rented the apartment to a non-black household.
Your Opinion Counts.

- Is this Fair Housing violation?
- If so, what is the violation?
- Could it have been considered a violation in favor of the current tenants if he rented to Mr. Nelly (safety, fear, etc)

Court Ruling

On June 3, 2004, Diane Howard contacted the Fair Housing Council of Oregon (“FHCO”) to report her experience attempting to rent a unit from the Leftler’s. FHCO interviewed Howard. In response to the information provided by Howard, FHCO staff designed and conducted two paired on-site tests for housing discrimination. The first pair consisted of a black woman and a white woman. The second test consisted of a black man and a white man. During the second test, Defendants treated the white male tester in a more favorable way than the black male tester. They then presented this to HUD.

Based on the information gathered in that investigation, HUD determined that reasonable cause exists to believe that a discriminatory housing practice occurred. On December 15, 2005, HUD issued a Charge of Discrimination charging the Leftler’s with engaging in discriminatory housing practices, based on race and sex, in violation of the Fair Housing Act.

"Refused to rent after the making of a bona fide offer, or refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to persons because of race and sex, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C § 3604(a);"
Case Study #5: ‘Saved’ from Persecution

Description of Issues Related to Case Study

LJ Blue Company, Inc. is a for-profit company organized under the laws of New Mexico. LJ Blue is engaged in the business of acquiring, developing, and managing affordable multi-family residential communities in the Southwestern region of the United States. It developed and manages Oasis Palms.

LJ Blue is vicariously liable for the acts and/or omissions of its agents and employees. At all times relevant to the allegations in this case, LJ Blue acted through its agents and employees.

Oasis Palms is a 101-unit apartment complex in Las Cruces, New Mexico that was developed with federal Low Income Housing Tax Credit funds.

Manny Stephens was a Regional Manager for LJ Blue until early-December 2006, responsible for approximately fifteen LJ Blue-managed apartment buildings, including Oasis Palms. Mr. Stephens supervised the onsite managers at the apartment buildings in his region, including Oasis Palms.

What Would You Do?

As a Community manager, answer the following questions

- Name a way resident could be discriminated against in terms of religion in the areas of;
  - Review of Apartment Applications
  - Evictions
  - Security Deposit
  - Late Fees
  - Maintenance
  - Community Amenities
  - Community Rules
What Really Happened?

Mr. Stephens is the pastor of a small branch of a church called “Life’s Purpose Church.” He and his wife are the co-founders of the church. Until approximately late-July 2006, the Life’s Purpose Church held services up to three times a week in the community room at Oasis Palms. Mr. Stephens regularly proselytizes at LJ Blue apartment buildings, including at Oasis Palms. Mr. Stephens and other church members regularly distribute church flyers and information door-to-door at LJ Blue apartment buildings and ask tenants to attend his church. Mr. Stephens and other church members regularly leave church information on Oasis Palms tenants’ doors.

Mr. Stephens conducted church business during substantial periods of time while he was supposed to be performing his duties as regional manager.

What Would You Do?

As a Community manager, answer the following questions

- In your opinion, has a Fair Housing violation been made at this point in your opinion?

What Else Happened?

Border Fair Housing and Economic Justice Center ("Border Fair Housing") combats discrimination that limits housing opportunities in the border regions of the Southwestern United States.

Border Fair Housing received a complaint in July 2006 from an Oasis Palms tenant who believes that Manny Stephens discriminated against her on the basis of her religion. The tenant did not have difficulties with Mr. Stephens until she declined several invitations from him to attend his church. He then began to treat her poorly, restricted her use of the parking lot during church services, and gave her a baseless eviction notice.

Border Fair Housing began an investigation of the allegations. Border Fair Housing and their representatives contacted LJ Blue and its counsel to discuss the discriminatory conduct, address LJ Blue’s Fair Housing obligations, and to ensure the conduct ceased and would not be repeated. The conduct continued.

Mr. Stephens’s discrimination took many forms. The common theme is that Mr. Stephens used his position as Regional Manager to provide housing-related benefits to religious supporters who attended his church, and to punish non-supporters by withholding these benefits and otherwise subjecting them to mistreatment. Examples include;

On at least one occasion, Mr. Stephens explicitly linked approval of a prospective tenant’s application for an apartment at Oasis Palms to her agreement to attend his church. The
prospective tenant satisfied the eligibility requirements for renting an apartment at Oasis Palms and applied for one. She went to the management office on or about May 26, 2006, to check on the status of her application. The onsite manager said that the application was still pending because her supervisor, Mr. Stephens, had not reviewed it yet. Mr. Stephens was in the office, however, and the onsite manager raised the matter with him. Mr. Stephens began to talk about his church. He then told the applicant that there are “ways to get around waiting lists” and that he would approve her application if she would agree to come to the church. She was not interested in the church but, to have an apartment to live in, said that she would attend. Mr. Stephens approved her application immediately and she moved in within days.

For several months, Mr. Stephens did not serve nonpayment or eviction notices on, or begin eviction proceedings against, an Oasis Palms tenant who attended his church and repeatedly failed to pay rent. Tenants who do not attend the church and missed rent payments promptly received eviction notices. Eviction notices for nonpayment of rent were also delivered to a number of tenants who timely paid their rent but do not attend the church. Mr. Stephens told a pregnant tenant who was complaining to him about an allegedly improper notice of eviction for nonpayment of rent that it would be good for her baby if she started attending his church, implicitly suggesting that he would rescind the notice in exchange for her attendance.

Oasis Palms tenants are required to pay a security deposit equal to one month’s rent before occupying their apartments. Mr. Stephens waived or reduced this requirement for a number of tenants who attend his church. Mr. Stephens has not waived or reduced this requirement for tenants who do not attend his church.

Oasis Palms tenants are required to make rent payments at the beginning of each month. Mr. Stephens often waived late fees for tenants who attend his church and did not make timely rent payments. Mr. Stephens did not similarly waive late fees for tenants who do not attend his church.

Tenants at Oasis Palms suffer many maintenance and rodent control problems that affect their health and safety such as broken air conditioners, broken refrigerators, inadequate locks, water under carpets, water damage, worn out air conditioner filters, cockroaches, mice, and rats. The maintenance and rodent problems of tenants who attend the Life’s Purpose Church are addressed promptly. Tenants who do not attend the church experience serious difficulties in obtaining satisfactory responses to their complaints about the same issues. An Oasis Palms maintenance worker told tenants that if they attended Mr. Stephens’s church, their maintenance and rodent problems would be addressed sooner.

At Mr. Stephens’s direction, the Life’s Purpose Church held services in the Oasis Palms community room up to three times a week until approximately late-July 2006. A number of tenants attended the services. Mr. Stephens did not permit tenants who did not attend his
church to use the community room for other purposes, or greatly restricted their access to the room.

Oasis Palms does not allow or significantly restricts pets in the building. Mr. Stephens allowed at least one tenant who attends his church to violate this rule. Tenants who do not attend the church were not permitted to violate this rule. This includes at least one tenant with a documented need for a service animal. A number of tenants who do not attend Mr. Stephens’s church received notices of other rule violations that they did not commit. Rules violations can lead to eviction. Border Fair Housing found based upon information and belief, tenants who do attend the church did not receive baseless notices of rules violations.

Prior to and after Border Fair Housing first received a complaint about Mr. Stephens, tenants and employees informed Mr. Stephens’s supervisors at LJ Blue of Mr. Stephens’s intermingling of his roles as Regional Manager and leader of the Life’s Purpose Church. His supervisors were informed in July of 2006 of Mr. Stephens’s differential treatment of tenants based on whether or not they attended his church, but took no action until December 2006.

**Your Opinion Counts.**

- Is this a Fair Housing violation?
- If so, what is/are the violation(s)?
- Could it still be considered a violation if he just didn’t punish non-supporters by withholding benefits and subjecting them to mistreatment?
As stated before, tenants and employees informed LJ Blue of many of Mr. Stephens’ unlawful actions both before and after Border Fair Housing first received a complaint. The day after a meeting between Border Fair Housing’s executive director and LJ Blue officials in early-December 2006, and as a direct result of that meeting, LJ Blue terminated Mr. Stephens’ employment. This was at least five months after LJ Blue was informed of what was happening.

These act violate four amendments in the Fair Housing Act:

A refusal to negotiate for the rental of housing and made housing unavailable on the basis of religion in violation of 42 U.S.C. § 3604(a);

Providing different terms, conditions, and privileges in the rental of housing, as well as different services and facilities in connection therewith, on the basis of religion in violation of 42 U.S.C. § 3604(b);

Indicating a preference, limitation, and/or discrimination on the basis of religion in violation of 42 U.S.C. § 3604(c);

Making misrepresentations regarding the availability of housing on the basis of religion in violation of 42 U.S.C. § 3604(d).
Case Study #6: Still Going Strong

Description of Issues Related to Case Study

Fanning House is a not-for-profit corporation, organized and operating under the laws of California and licensed by the California Department of Social Services, to operate a continuing care retirement community (CCRC). Fanning House owns and operates the retirement housing known as Fanning House, located at 580 Emmanuel Street, Los Angeles, California. Like other CCRCs, Fanning House offers three kinds of housing: independent living apartments, assisted living units, and skilled nursing facilities. Fanning House provides medical care and services to residents in all three kinds of housing, depending on the frequency and intensity of their needs.

Sara Suttle is 88 years of age, and has lived at Fanning House, in the City of Los Angeles, since April 1992. Mrs. Suttle has mobility and vision impairments sufficient to qualify her as a person with a “handicap” or “disability” under the Fair Housing Act. Despite these conditions, she is fully capable of independent living and can fulfill all the obligations thereof.

In 1992, Sara and her husband Ben Suttle decided to move from their family home into a new community that would require fewer housekeeping demands and provide more time for recreation and socializing with friends. At that time, Mr. and Mrs. Suttle were in their early 70s, and neither had an immediate need for medical care and services. The Suttles were looking for housing in a convenient location with dining facilities, laundry, housekeeping and social and recreational opportunities. Fanning House appealed them because they knew additional amenities and services would be available to them when and if they needed them. In April 1992, the Suttles entered into a “continuing care contract” and moved into Apartment #219. The apartment is designated by Fanning House as an “independent living” unit. It is 900 square feet in size, and consists of one bedroom, a living room, alcove office, efficiency kitchen and two bathrooms. As a condition of admission to Fanning House, the Suttles were required to meet various financial requirements, including payment of an “Entrance Fee” in the amount of $181,000, which became fully non-refundable approximately 72 months after admission. In addition, Fanning House required payment of a monthly occupancy fee, which covers the cost of meals, housekeeping and other services. This fee has fluctuated from $2500 to $3500 per month based on services provided.
From 1992 through 2001, the Suttles were actively engaged in recreational, cultural and social activities within Fanning House and in the community. During this time the Suttles made only sparing and occasional use of the medical care and services available from Fanning House.

Ben Suttle died in March 2003. Since her husband’s death, Mrs. Suttle has lived alone in Apartment #219 and paid a monthly occupancy fee, currently set at $3343.

Since 2004, Mrs. Suttle has employed private duty aides to assist her with some basic activities of daily living, such as bathing, dressing and ambulation. The aides know how to assist Mrs. Suttle without undermining her independence and self-reliance. Notwithstanding her limitations, she has continued to meet all of the conditions and requirements for residency in Apartment #219 at Fanning House, with and without the assistance of these aides.

April 25, 2006, Fanning House advised Mrs. Suttle that “Your physical condition and needs require that you be transferred to our on-site Assisted Living area. The level of care that you require exceeds that which may be lawfully provided in your current Independent Living Apartment. This transfer will occur thirty (30) days from today.”

This is not only contrary to the recommendation of Mrs. Suttle’s personal physician, but violates the minimal procedural requirements of California Health & Safety Code which governs involuntary transfers within CCRCs. Mrs. Suttle and her family members challenged Fanning House’s attempt to transfer her, telling Fanning House staff that the involuntary transfer decision was substantively and procedurally defective, and pointing out that Fanning House is licensed to provide an assisted living level of care in all of its independent living apartments.

**What Would You Do?**

As a Community manager, answer the following questions

- Has a Fair Housing violation been made at this point in your opinion?
What Else Happened?

On July 7, 2006, Fanning House sent a new letter to Mrs. Suttle, seeking to transfer her involuntarily based on an allegation that she is “non ambulatory” and that California law prohibits “non-ambulatory” persons from living in independent living units at Fanning House.  

**California Health and Safety Code, Section 13131, provides**

“Non-ambulatory Persons” means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs.

What Would You Do?

As a Community manager, answer the following questions

- How would you respond to the situation, given the fact that if she is non-ambulatory
  - Does Fanning House have a legitimate complaint?
  - Do you have enough information to make a decision? If not, what other information would be helpful?
  - Is there a Fair Housing issue?
  - Other?

More Information

There is a substantial waiting list for admission to the larger “independent living” apartments at Fanning House, such as the one in which Mrs. Suttle currently lives. During the past two fiscal years, Fanning House has experienced substantial declines in cash flows and cash assets, and has a strong financial incentive to move Mrs. Suttle from her apartment. If Mrs. Suttle were forced to move from Apartment #912, Fanning House would secure a new entrance fee from a new resident of at least $440,000.

Mrs. Suttles physician has counseled against a transfer to assisted living, stating that such a move would have a negative effect on her physical and emotional health.

Were she to be moved to an assisted living unit, she would have to give up the substantial level of independence and privacy she had in her own 900 square foot apartment, and be subjected to the following:

- Mrs. Suttle would be required to reside in a 14 foot by 15 foot room shared with another resident, and she would have no choice in the selection of that person.
• A thin curtain would separate the two beds, so the light from reading or watching television could easily bother a roommate.
• Mrs. Suttle would be required to be in bed with her lights out no later than 8:30 p.m.
• Insufficient space to have guests visit or stay the night, or to accommodate private duty aides who are more familiar with, and more attentive to, her needs than Fanning House staff.
• No tub or shower facilities requiring that Mrs. Suttle be taken through the halls in towels to be bathed at common bathing facilities.
• Fanning House provides assisted bathing only every second day and requires residents to pay extra for daily baths.
• Confinement in a hospital-like room, where the door would normally be open and staff would come and go whenever they want.
• Access only to first floor eating facilities, allowed only with permission from the Director of Health Services. Refusal of permission would further diminish her ability to interact with friends and maintain her independence.

Your Opinion Counts.

• Is this Fair Housing violation?
• If so, what is the violation?
• Could it have been considered a violation, if this would cause her to go into depression, which is considered a disability? What about the fact that they refused to grant a reasonable accommodation, of private duty aids?
Court Ruling
A federal court ruled that a continuing care retirement community (CCRC) can force one of its residents to move from her private apartment to an assisted living unit.

The U.S. District Court for the Northern District of California now ruled that Fanning House has a duty to provide Ms. Suttle with medical care based on her level of need, and that it cannot delegate that duty to private help hired by Ms. Suttle. The court finds that Fanning House would be violating its legal obligations by accepting Ms. Suttle’s plan to allow her to remain in her apartment.
Case Study #7: Unwanted Affection

Description of Issues Related to Case Study

Devin Kelly is a 30-year old male.

Biff D. Pee is a male. At the time the events underlying this complaint arose, Mr. Pee was Mr. Kelly's roommate.

Lester "Larry" W. Kay, a male, is a resident of the State of Arizona. At the time the events underlying this complaint arose, Mr. Kay was a resident of the State of Mississippi and owned and managed a building comprised of four (4) two-bedroom rental apartments located at 201 Drive Avenue, Harrison County, Mississippi 39560 ("the subject property").

Dennis Ralph O'Bannon, a male, is a resident of the State of Mississippi. At the times the events underlying this complaint arose, Mr. O'Bannon was the agent and/or employee of Mr. Kay inasmuch as he handled maintenance and other repairs at the subject property.

On or about January 3, 2005, Mr. Kelly and Mr. Pee began a one-year lease with Mr. Kay of a two-bedroom apartment at the subject property. The lease, signed by Mr. Kelly and Mr. Pee, was scheduled to end on December 31, 2005.

During the lease period Mr. Kay lived in Unit 201B, next door to Mr. Kelly's and Mr. Pee's apartment.

What Would You Do?

As a Community manager, answer the following questions

- Name a way resident could be discriminated against in terms of sex in the areas of:
  - Review of Apartment Applications
  - Evictions
  - Late Fees
  - Maintenance
  - Community Amenities
  - Community Rules
What Really Happened?

During the term of the lease, Mr. Kay and Mr. O’Bannon subjected Mr. Kelly to severe, pervasive, continuous and unwelcome verbal and physical sexual advances, including, but not limited to, Mr. Kay requesting that Mr. Kelly allow him to take nude photos of him in exchange for money and Mr. O’Bannon on a separate occasion offering to pay Mr. Kelly if he would let him perform oral sex on him. Both Mr. Kay and Mr. O’Bannon often made sexual advances toward Mr. Kelly, touching and/or attempting to touch his genitals and/or buttocks. Mr. Kay also sexually harassed Mr. Kelly when he came to pay his rent. In July 2005, Mr. Kay offered Mr. Kelly free rent if Mr. Kelly would be his "boyfriend."

Between March and August 2005, Mr. Kelly repeatedly called the police department to report that he was being sexually harassed by Mr. Kay and Mr. O’Bannon. One such complaint was made after Mr. O’Bannon made sexual advances toward a minor, male friend of Mr. Kelly's. In July 2005, a complaint was made to the police, and Mr. O’Bannon was charged with contributing to the delinquency of a minor for allegedly selling alcohol to that minor. A restraining order was also placed against Mr. O’Bannon, prohibiting him from going near the minor. The restraining order also prohibited Mr. O’Bannon from going near Mr. Kelly's apartment. Mr. Kelly also reported the incident involving his minor friend to Mr. Kay, who told Mr. Kelly that he should not get the police involved because "[what happens in the apartments, stays in the apartments."

In August 2005, Mr. Kay told Mr. Kelly that he would evict him and Mr. Pee if the restraining order against Mr. O’Bannon was not dropped. In August or September 2005, Mr. Kelly entered his apartment to find Mr. Kay in his (Mr. Kelly's) bedroom on his knees going through Mr. Kelly's personal belonging and drawers. Mr. Kay had a pair of Mr. Kelly's underwear and pants in his hands and was putting them up to his face. Mr. Kay threatened that he would evict Mr. Kelly and Mr. Pee if he reported him to the authorities. On or about August 25, 2005, Mr. Kay issued an eviction notice to Mr. Kelly and Mr. Pee with thirty (30) days to vacate the premises. Mr. Kay failed to provide a written explanation for the eviction in the section of the notice entitled "Cause of Breach."

What Would You Do?

As a Community manager, answer the following questions

- In your opinion, has a Fair Housing violation been made at this point in your opinion?
What Else Happened?

On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast. Because of the hurricane, there was an interruption in mail service to Long Beach, and Mr. Kelly did not receive his Social Security disability check in time to pay September’s rent by the third of the month. Mr. Pee also was temporarily unemployed due to the hurricane.

On September 8, 2005, the Harrison County Incident Command Plans Section (HCICPS) issued a memorandum to all owners and rental agents notifying them that unless a unit was determined to be unsafe for occupancy, it was ordered "unlawful to dispossess a tenant in rightful possession of his/her rental home . . ." and any such action without cause or due process of law during the emergency period would be scrutinized for legal sanctions. Mr. Kelly gave Mr. Kay a copy of the HCICPS memorandum. Mr. Kay continued eviction proceedings against Mr. Kelly and Mr. Pee after receiving the memorandum.

On September 16, 2005, Mr. Kay signed and issued another eviction notice ordering Mr. Kelly and Mr. Pee to vacate within three (3) days, or pay rent due in arrears in the amount of $500.

On or about September 16, 2005, Mr. Kelly went to Mr. Kay's apartment and offered to pay the rent, so long as he and Mr. Pee could remain in the unit. Mr. Kay told Mr. Kelly, however, that he would not stop the eviction proceedings.

On September 26, 2005, the first day that courts were open after Hurricane Katrina, Mr. Kelly and Mr. Pee were ordered to appear in Harrison County Justice Court on October 10, 2005 to respond to Mr. Kay’s eviction notice. On October 10, 2005, at the eviction hearing, Mr. Kelly and Mr. Pee testified that they wanted to remain in their apartment at the subject property and wanted to pay the rent. The court dismissed the eviction case due to Mr. Kay’s failure to include a reason for the alleged breach on the original eviction notice.

On the same day, Mr. Kay issued a third eviction notice to Mr. Kelly and Mr. Pee. In this notice, Mr. Kay alleged the cause of breach was Mr. Kelly's and Mr. Pee's alleged failure to keep their apartment in a clean, orderly, safe or sanitary condition, keeping an unregistered and improperly licensed vehicle in the lot and failing to pay rent.

On information and belief, any disarray Mr. Kay allegedly found in Mr. Kelly's and Mr. Pee's apartment was due to the effects of the hurricane. Moreover, on information and belief, Mr. Kay never had sought to evict a tenant for uncleanliness prior to this, despite the fact that there has previously been at least one such tenant who did not keep a clean or tidy apartment. In addition, there was nothing in Mr. Kelly's and Mr. Pee's lease that allowed for eviction for failure to maintain a clean unit.

On or about October 11, 2005, as a result of the continued harassment and attempts to evict them, and after Mr. Kay had refused to accept rent so that they could stay in the apartment, Mr.
Pee and Mr. Kelly moved out of the apartment. Mr. Kelly moved into a Federal Emergency Management Agency (FEMA) cruise ship and subsequently into two separate trailer parks. Mr. Pee moved into his parents'7 house.

**Your Opinion Counts.**

- Is this a Fair Housing violation?
- If so, what is/are the violation(s)?
- Could it still be considered a violation if he made the same advances toward his female tenants?

**Court Ruling**

On July 9, 2008, HUD authorized the Attorney General to commence a civil action on behalf of the pursuant to 42 U.S.C. § 3612(0). It stated that:

*Mr. Kay and Mr. O'Bannon, through the actions described above have:*

A. *Made statements with respect to the rental of a dwelling indicating a preference, limitation or discrimination based on sex, or an intention to make such a preference, limitation or discrimination based on sex, in violation of 42 U.S.C. § 3604(c).*

B. *Coerced, intimidated, threatened or interfered with a 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 rights granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.*
Contact information for the author of the case studies:

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Appendix B

Court Cases

Case #1
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

GARY WYNN,

Charging Party,

v.

405 EAST 82nd STREET COOPERATIVE, INC.

Respondent.

FHEO No. 02-08-0760-8

CHARGE OF DISCRIMINATION

JURISDICTION

1. On July 1, 2008, Gary Wynn ("Complainant") filed a verified complaint with the U.S. Department of Housing and Urban Development ("HUD"), alleging that Respondent refused to grant him a reasonable accommodation in violation of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq. ("Act"). In particular, Complainant alleges that Respondent unlawfully denied his request to have a medically prescribed emotional support animal as a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2)(A), (f)(3)(B).

2. The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (1)-(2). The Secretary has delegated to the General Counsel (24 C.F.R. § 103.400 (a)(2)(i), 103.405), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441, 68442 (Nov. 18, 2008), the authority to issue such a Charge, following a determination of reasonable cause.

3. The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint were unsuccessful. See 42 U.S.C. § 3610(b).
LEGAL AUTHORITY IN SUPPORT OF CHARGE

4. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person or a person residing in that dwelling after it is sold, rented or made available. 42 U.S.C. § 3604(f)(2)(A). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).

PARTIES:

5. Complainant is a tenant-shareholder of Apartment 4D at 405 E. 82nd Street, New York, New York. He has been diagnosed with Dysthymic Disorder and Generalized Anxiety Disorder. Those disorders significantly impair Complainant’s day-to-day functioning, causing him, among other things, to isolate himself, suffer sleep disturbance, gain weight, fatigue easily, become irritable and lack concentration.

6. Respondent is 405 East 82nd Street Cooperative, Inc. Corp., a private cooperative development with 55 cooperative apartments, located in Manhattan.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Respondent maintains a policy prohibiting dogs in its development.

8. On or about April 18, 2008, Complainant wrote to Respondent, advising that he would be moving back into his co-op apartment in June when his tenants would be moving out.

9. With his letter, Complainant enclosed a letter, dated April 14, 2008, from his psychologist, Dr. Stephen Zurrow. In his letter, Dr. Zurrow stated that he has treated Complainant for over a year for depression and anxiety and during that time Complainant has shown great improvement largely because of the companionship of Complainant’s dog, Rosie. Dr. Zurrow stated that Rosie qualifies as a “service animal for Mr. Wynn” because she was integral in maintaining Complainant’s mental health. Dr. Zurrow concluded his letter by stating “I believe it is crucial that Mr. Wynn be allowed to keep Rosie with him when he returns to his unit this summer.”

10. On or about June 2, 2008, Respondent wrote Complainant stating that it did not have sufficient information and documentation regarding Complainant’s mental impairments of chronic depression and anxiety to render a determination as to his request to retain his dog as an accommodation.

11. On or about June 6, 2008, Dr. Zurrow wrote to Respondent, elaborating that Complainant suffers from Dysthymic Disorder and Generalized Anxiety Disorder and
that those conditions had disrupted his sleep, causing him to be late for work and possibly jeopardizing his employment. Complainant’s anxiety and depression also lead to weight gain, fatigue, irritability, loss of concentration and isolation. Indeed, Dr. Zurrow reported that this condition often caused Complainant to stay in bed all weekend.

12. In his June 6 letter, Dr. Zurrow also told Respondent that once Complainant obtained Rosie his “mood dramatically improved” and she distracted Complainant from the stress and anxiety of his demanding job. Dr. Zurrow wrote that Rosie was responsible for reducing Complainant’s depression and that his apartment once again felt like a home and not like a “prison cell.”

13. Dr. Zurrow further informed Respondent that Complainant’s anxiety levels had increased, his mood seriously darkened, and his sleep and work had been adversely effected since Complainant had been “threatened with the possibility that you may not allow him to have Rosie” when he moves back to his apartment.

14. Dr. Zurrow concluded by stating that it was his professional opinion that if Complainant was forced to give up Rosie when he moved back to his co-op apartment he would experience “serious negative consequences to his mental and physical health” and that Complainant “needs Rosie to use and enjoy his home.”

15. On or about June 25, 2008, Respondent told Complainant that he had not “submitted sufficient documentary evidence to establish a disability triggering entitlement to a reasonable accommodation for a pet.”

16. By letter dated June 27, 2008, the City of New York’s Department of Health and Mental Hygiene informed Complainant that Rosie had been registered and listed as “a Service Dog in New York City Department of Health & Mental Hygiene (NYC DOHMH) database.” The City of New York enclosed a gold colored Service Dog tag with its letter, informing Complainant that it had provided the Service Dog tag and a regular New York dog license tag without charge because Rosie assisted a person “with a documented disability.”

17. On or about July 17, 2008, Respondent served Complainant with a “NOTICE OF INTENT TO TERMINATE LEASE” because in the early part of July 2008, Complainant violated “the February 10, 2004 House Rules, Rule #1, which prohibits a pet in the building without the prior written permission of the Board of Directors....”

18. Thereafter, Respondent commenced a summary proceeding in state court to evict Complainant from his apartment because Rosie was living with him. In or about November, 2008, the court dismissed the proceeding because Respondent continued to collect maintenance fees from Complainant after he was served with an eviction notice. Respondent has filed a Notice with the court indicating it intended to appeal the dismissal.
FAIR HOUSING ACT VIOLATIONS:

19. Respondent has violated the Act because the unreasonable delay in providing a timely response to his request to have Rosie live with him, as well as Respondent's attempt to evict Complainant from his home because he moved into his apartment with Rosie, constitutes a discriminatory refusal to make a reasonable accommodation in Respondent's rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant an equal opportunity to use and enjoy his dwelling. 42 U.S.C. § 3604(f)(2)(A); see also id. at § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

CONCLUSION:

WHEREFORE, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 (f) (2)(A) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;

2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of disability against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g)(3);

3. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from taking steps to evict Complainant from his apartment because he keeps Rosie, or another service animal, in his apartment.

4. Awards such damages pursuant to 42 U.S.C. §3612(g)(3) as will fully compensate Complainant for emotional distress, including embarrassment and humiliation, inconvenience, and economic loss caused by Respondent's discriminatory conduct;

5. Awards a civil penalty against Respondent for violation of the Act, pursuant to 42 U.S.C. §3612(g)(3); and

6. Awards such additional relief as may be appropriate under 42 U.S.C. §3612(g)(3).
Respectfully submitted,

[Signature]

John J. Cahill
Regional Counsel for
New York/New Jersey

[Signature]

Henry Schoenfeld
Associate Regional Counsel
for Program Enforcement and Litigation

[Signature]

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Office of Regional Counsel
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Date: January 22, 2009
Cases #2
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 redelegated 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.


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,

[Signature]

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Date: 1/7/08
Case #3
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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

BOWEN PROPERTY MANAGEMENT,  
SPOKANE HOUSING AUTHORITY,
WESTFALL VILLAGE APARTMENTS,  
L.P., JOHN BALLAS,  
AND KERREY LEMONS,  
Defendants.

__________________________________________

Civil No.:  
COMPLAINT

The United States of America alleges:

1. Jurisdiction. The United States brings this action to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 - 3619 ("Fair Housing Act"). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345; 42 U.S.C. § 3612(o); and 42 U.S.C. § 3614(a).

2. Venue is proper in the Eastern District of Washington because the claims alleged herein arose in this District.

DEFENDANTS

3. Defendant Bowen Property Management is an Oregon corporation that does business in the state of Washington. At all times relevant to this action, Bowen Property Management managed Westfall Village Apartments located at 3724 N. Cook Street in Spokane, Washington.

4. Defendant Spokane Housing Authority is a public housing authority established in 1971 and provides housing for low-income, disabled, and elderly individuals in Spokane, Pend Oreille, Stevens, and Whitman counties.

5. Defendant Westfall Village Apartments, L.P. is a for-profit limited partnership registered with the State of Washington. Westfall Village Apartments, L.P. is the owner of Westfall Village Apartments. Defendant Spokane Housing Authority is the general partner of Westfall Village Apartments, L.P.

6. Defendant John Ballas was, at all times relevant to this action, the vice president and general manager of operations for Bowen Property Management. Mr. Ballas is a defendant only for the claim brought on behalf of Natalya Prach.
7. Defendant Kerrey Lemons was, at all times relevant to this action, an area manager for Bowen Property Management. Ms. Lemons was responsible for the management of Westfall Village Apartments, including the selection of new tenants and the approval of transfers by existing tenants to new apartments.

**DISCRIMINATORY CONDUCT**

8. The units at Westfall Village Apartments are dwellings within the meaning of 42 U.S.C. § 3602(b).

9. Westfall Village Apartments opened for occupancy in the summer of 1997. There was an initial period when new applicants could receive an apartment immediately, but eventually the number of applicants was greater than the number of available units. Bowen Property Management maintained a waiting list of individuals interested in renting an apartment at Westfall Village Apartments.

10. In December 1999, Natalya Prach, a tenant at Westfall Village Apartments, began working for Bowen Property Management as an assistant resident manager. Ms. Prach was supervised by Kerrey Lemons. Ms. Prach speaks Russian and is of Russian national origin. One of her responsibilities was to serve as translator for conversations between Russian tenants and applicants, who could not speak English, and Ms. Lemons, who could not speak Russian.

11. Defendant Kerrey Lemons charged applicants for initial tenancy or transfer who were of Russian national origin an additional fee that was not charged to applicants who were not of Russian national origin. The applicants who paid the fee were given apartments at Westfall Village Apartments even though non-Russian applicants, who had inquired about an apartment earlier, were on the waiting list.

12. Mikhail and Nadry Azarov emigrated to the United States from Russia in December 1999. They are of Russian national origin. In early 2000, they contacted Westfall Village Apartments, and asked if there was a unit available for immediate occupancy. They were required to make a $200 payment to Kerrey Lemons, which was in addition to the regular fees required of new tenants, and moved into Westfall Village Apartments approximately two weeks later, in February 2000. Ms. Lemons never told the Azaros that they would have to be placed on a waiting list before they could receive an apartment.

13. In or about April 2000, Mikhail and Nadry Azarov wanted to move to a second-floor apartment. Ms. Azarov contacted Kerrey Lemons and asked if they could
transfer to a different unit at Westfall Village Apartments. Ms. Lemons told Ms. Azarov that Ms. Azarov would need to pay $200 for the new apartment. Ms. Azarov paid the fee and they moved into a second-floor apartment on May 5, 2000. Ms. Azarov was never told that she would have to be placed on a waiting list before she could transfer to a new apartment at Westfall Village Apartments.

14. In July 1997, Irina and Vladimir Greben moved into a two-bedroom unit at Westfall Village Apartments. They had one child that lived with them at the time. The complex had just opened and there was no waiting list. Irina and Vladimir Greben are of Russian national origin.

15. In or about March 2000, Ms. Greben contacted the Westfall Village Management office and requested a transfer to a larger apartment. Ms. Greben was pregnant and was concerned that her two-bedroom apartment would be cramped with two adults and two children, and she preferred a larger apartment. Ms. Greben was informed that she could have a three-bedroom apartment if she paid $300 to Ms. Lemons. Ms. Greben went to the management office, and, in the presence of Ms. Prach, paid Ms. Lemons $300. The Grebens, however, never received a three-bedroom apartment.

16. Vera Filipenko is a tenant at Westfall Village Apartments. In or about February 2000, Ms. Filipenko was required to pay $150 to Kerrey Lemons, which was in addition to the regular fees required of new tenants, for Nadezhda and Aleksey Pronkin, Ms. Filipenko's sister and brother-in-law, to move into an apartment at Westfall Village Apartments. Mr. and Ms. Pronkin moved into Westfall Village Apartments in or about March 2000; they did not have to place their names on a waiting list before receiving an apartment. Mr. Pronkin, Ms. Pronkin, and Ms. Filipenko are all of Russian national origin.

17. Kerrey Lemons accepted fees, which were in addition to the regular fees required of new tenants, from other Russian applicants, as well as the Azaros, the Grebens, and Vera Filipenko.

18. The Defendants did not solicit such payments from non-Russian applicants.

19. On or about May 30, 2000, Natalya Prach informed John Ballas of Bowen Property Management that Kerrey Lemons was accepting and soliciting additional fees from Russian tenants and applicants in return for renting them apartments.

20. After Ms. Lemons learned that Ms. Prach had complained, Ms. Lemons told Ms. Prach that Ms. Prach would be fired and evicted from her apartment if Ms.
Lemons got in trouble for accepting and soliciting extra payments from Russian applicants.

21. On or about June 1, 2000, John Ballas fired Natalya Prach from her position as an assistant resident manager at Westfall Village Apartments. When Mr. Ballas fired Ms. Prach, he had information from another Bowen employee verifying Ms. Prach’s statements that Kerrey Lemons accepted extra payments from Russian applicants.

22. On or about June 9, 2000, Bowen Property Management served a three-day notice to quit and vacate the premises demanding that Natalya Prach leave her apartment or face eviction proceedings.

23. After Ms. Prach was fired, Kerrey Lemons continued to be employed by Bowen Property Management as an area manager with responsibility for managing Westfall Village Apartments. Upon information and belief, Kerrey Lemons were not disciplined by Bowen Property Management for accepting extra payments from Russian applicants.

24. The decision by Bowen Property Management to fire Natalya Prach and serve a three-day notice to vacate the premises on Natalya Prach was made in retaliation for her complaining that Kerrey Lemons was soliciting and accepting additional payments from Russian applicants.

25. Non-Russian applicants were denied the opportunity to rent available apartments on the same basis as Russian applicants because Russian applicants who made extra payments were given preference over non-Russian applicants.

COUNT I - SECTION 3612(o)(1) CLAIM ON BEHALF OF RUSSIAN TENANT COMPLAINANTS

26. On or about July 11, 2000, Mikhail Azarov, Nadry Azarov, Irina Greben, Vladimir Greben, and Vera Filipenko filed timely complaints of housing discrimination with the Department of Housing and Urban Development against Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., John Ballas, and Kerrey Lemons pursuant to 42 U.S.C. § 3610(a). Each of these three complaints alleged that Defendants discriminated against the complainants in the terms, conditions, privileges or services of rental on the basis of national origin.

27. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of
HUD conducted an investigation of the complaint and attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that a discriminatory housing practice had occurred based on national origin. Accordingly, on or about September 30, 2002, HUD issued a Determination of Reasonable Cause and Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons with discriminating against the Azarovs, the Grebens, and Ms. Filipenko on the basis of national origin in violation of 42 U.S.C. § 3604(b).

28. On or about October 16, 2002, Bowen Property Management made a timely election to have the Charge resolved in a civil action filed in federal court, pursuant to 42 U.S.C. § 3612(a), and the Secretary of HUD authorized the United States Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

29. The parties subsequently agreed that the statutory deadline to file this action under 42 U.S.C. 3612(o) be extended. Accordingly, this action is timely.

30. Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons discriminated against the Azarovs, the Grebens, and Ms. Filipenko in the terms, conditions and/or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of national origin in violation of 42 U.S.C. § 3604(b).

31. The discriminatory actions of Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons, and their failures to act were intentional, willful and/or taken in disregard for, and/or with deliberate indifference to, the rights of the Azarovs, the Grebens, and Ms. Filipenko.

32. The Azarovs, the Grebens, and Ms. Filipenko are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the Defendants’ conduct.

**COUNT II - SECTION 3612(o)(1)CLAIM ON BEHALF OF NATALYA PRACH**

33. On or about July 11, 2000, Natalya Prach filed a timely complaint of housing
34. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint and attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that a discriminatory housing practice had occurred based on national origin. Accordingly, on or about September 30, 2002, HUD issued a Determination of Reasonable Cause and Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., John Ballas, and Kerrey Lemons with discriminating against Ms. Prach on the basis of national origin in violation of 42 U.S.C. § 3617.

35. On or about October 21, 2002, Bowen Property Management made a timely election to have the Charge resolved in a civil action filed in federal court, pursuant to 42 U.S.C. § 3612(a), and the Secretary of HUD authorized the United States Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

36. The parties subsequently agreed that the statutory deadline to file this action under 42 U.S.C. 3612(o) be extended. Accordingly, this action is timely.

37. Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., John Ballas, and Kerrey Lemons discriminated against Ms. Prach by interfering with her in the exercise or enjoyment of, and/or on account of having exercised or enjoyed, and/or on account of having aided and/or encouraged any other person in the exercise and/or enjoyment of, any right granted or protected by 42 U.S.C. § 3604, in violation of 42 U.S.C. § 3617.

38. The discriminatory actions of Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., John Ballas, and Kerrey Lemons,
and their failures to act, were intentional, willful and/or taken in disregard for, and/or with deliberate indifference to, the rights of Ms. Prach.

39. Ms. Prach is an aggrieved person as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the Defendants' conduct.

COUNT III - SECTION 3612(o)(1) CLAIM
ON BEHALF OF NORTHWEST FAIR HOUSING ALLIANCE

40. Northwest Fair Housing Alliance (NWFHA) is a private non-profit corporation whose mission is to ensure equal housing opportunity for the people of eastern Washington through education, counseling, and advocacy.

41. In June 2000, NWFHA received complaints alleging that the Defendants violated the Fair Housing Act by discriminating on the basis of national origin. The NWFHA expended significant resources as a result of the Defendants' discriminatory conduct, including but not limited to counseling complainants about their rights under the Fair Housing Act and investigating the complaints. The NWFHA was forced to divert resources from other activities to investigate and respond to the complaints.

42. On or about July 11, 2000, Northwest Fair Housing Alliance (NWFHA) filed a timely complaint of housing discrimination with the Department of Housing and Urban Development against Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., John Ballas, and Kerrey Lemons pursuant to 42 U.S.C. § 3610(a). The complaint alleged that NWFHA was injured by Defendants' discriminatory housing practices based on national origin.

43. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint and attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that a discriminatory housing practice had occurred based on national origin. Accordingly, on or about September 30, 2002, HUD issued a Determination of Reasonable Cause and Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons with discriminating on the basis of national origin in violation of 42 U.S.C. §§ 3604(b)
and 3617.

44. On or about October 16, 2002, Bowen Property Management made a timely election to have the Charge resolved in a civil action filed in federal court, pursuant to 42 U.S.C. § 3612(a), and the Secretary of HUD authorized the United States Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

45. The parties subsequently agreed that the statutory deadline to file this action under 42 U.S.C. 3612(o) be extended. Accordingly, this action is timely.

46. Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons, by their actions and failure to act:

   a. discriminated on the basis of national origin in the terms, conditions and/or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, in violation of 42 U.S.C. § 3604(b); and

   b. interfered with the exercise or enjoyment of, and/or on account of having exercised or enjoyed, and/or on account of having aided and/or encouraged any other person in the exercise and/or enjoyment of, rights granted or protected by 42 U.S.C. § 3604, in violation of 42 U.S.C. § 3617.

47. The discriminatory actions of Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons, and their failures to act, were intentional, willful and/or taken in disregard for, and/or with deliberate indifference to, the rights of NWFHA.

48. NWFHA is an aggrieved person as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the Defendants' conduct.

**COUNT IV - PATTERN OR PRACTICE CLAIM UNDER SECTION 3614(a)**

49. The conduct of Defendants Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons described above in paragraphs 9 - 27 constitutes:

   a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, pursuant to 42 U.S.C. § 3614(a); and
b. A denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance, pursuant to 42 U.S.C. § 3614(a).

50. The conduct described above made unavailable and/or denied dwellings to persons who are not of Russian national origin because of their national origin, in violation of 42 U.S.C. § 3604(a), and discriminated against persons who are not of Russian national origin in the terms, conditions and/or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of national origin, in violation of 42 U.S.C. § 3604(b).

51. The discriminatory actions of Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons, and their failures to act, were intentional, willful and/or taken in disregard for, and/or with deliberate indifference to, the rights of persons who were subjected to their discriminatory housing practices.

52. The persons of non-Russian national origin who were subjected to Bowen Property Management, Spokane Housing Authority, Westfall Village Apartments, L.P., and Kerrey Lemons' discriminatory housing practices are aggrieved persons, as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i) and suffered actual injury and damages as a result of their conduct.

WHEREFORE, the United States prays for an Order from this Court that:

(1) Declares that the discriminatory housing practices of the Defendants, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 - 3619;

(2) Enjoins the Defendants, their agents, employees and successors, and all other persons in active concert or participation with the Defendants, from:

   a. refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of national origin;

   b. discriminating against any person in the terms, conditions or privileges of rental of a dwelling because of national origin; and

   c. coercing, intimidating, threatening, or interfering with persons, including the complainants, in the exercise or enjoyment of any right granted or protected by 42 U.S.C. §§ 3603, 3604, 3605, or 3606.

(3) Requires such injunctive relief against the Defendants as is necessary to effectuate the
purposes of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq.;

(4) Awards monetary damages to the complainants and other persons pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B), except that Defendant John Ballas shall only be liable for monetary damages related to the claim brought on behalf of Natalya Prach in Count II; and

(5) Awards civil penalties to the United States against Defendants, with the exception of John Ballas, in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

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UNITED STATES DISTRICT COURT
THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

TED BALLIS, MARY BALLIS and LOUIS BALLIS,

Defendants.

CV '06 17-2
Civil No. 

COMPLAINT
The United States of America alleges:

**JURISDICTION AND VENUE**

1. This is a civil action brought by the United States of America to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (The “Fair Housing Act”). This action is brought by the United States on behalf of Deneen Hayward, Randolph Irwin Kelly and the Fair Housing Council of Oregon pursuant to Section 812(o) of the Fair Housing Act, as amended, 42 U.S.C. § 3612(o).

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to the United States’ allegations occurred in the District of Oregon and the subject property is located in the District of Oregon.

**PARTIES AND PROPERTY**

4. Complainant Randolph Irwin Kelly is a black male.

5. Complainant Deneen C. Hayward is a white female.

6. Complainant Fair Housing Council of Oregon (FHCO) is a non-profit Oregon corporation. FHCO’s purpose is to advance equal access to housing of choice for all persons in Oregon and Southwest Washington, without regard to race, color, sex, religion, national origin, familial status or disability.

7. The subject property is located at 2648 S.E. 141st Avenue, Portland, Oregon. It is a two-bedroom, one-bathroom apartment in a duplex. The subject property is part of a nine-unit
complex consisting of two duplexes, a triplex and two townhouse units. The subject property is a dwelling as defined in Section 802(b) of the Fair Housing Act, 42 U.S.C. § 3602(b).

8. At all times relevant to this action, Defendant Louis Ballis was the owner of the subject property located in Portland, Oregon.

9. At all times relevant to this action, Defendants Ted Ballis and Mary Ballis managed the subject property for their son, Defendant Louis Ballis.

FACTUAL ALLEGATIONS

10. On or about Monday, May 31, 2004, Defendant Ted Ballis told Complainant Hayward’s mother, Colleen Hayward, that there was a vacancy at the subject property. Mr. Ballis asked Colleen Hayward if she knew of any potential tenants. Ms. Hayward mentioned her daughter, Complainant Deneen Hayward. Mr. Ballis encouraged Ms. Hayward to have her daughter come see the apartment. Colleen Hayward knew the managers at the subject property, Defendants Mary Ballis and Ted Ballis, since Ms. Hayward’s younger daughter already was renting property managed by Defendants Mary Ballis and Ted Ballis and owned by Defendant Louis Ballis.

11. On the same day, Complainants Hayward and Kelly, accompanied by Ms. Hayward’s mother, went to see the subject property. Defendant Ted Ballis showed them the unit and told Complainants Hayward and Kelly that the apartment was theirs if they wanted it. Defendant Ted Ballis informed them he did not need references because he knew Complainant Hayward’s parents. Complainant Hayward said she needed to check into
storing some of her belongings. Defendant Ted Ballis gave Complainant Hayward a rental application and told her to call him if she wanted the apartment.

12. On or about June 1, 2004, Colleen Hayward called the Defendant managers and spoke to Defendant Mary Ballis, who said she had shown the unit the night before to another woman, who had given her money to hold the apartment. Defendant Mary Ballis asked if Complainant Hayward would be interested in an identical unit in a different duplex, which would be available at the end of the month. Later that day, Complainant Hayward went to the subject property with her mother. Complainant Hayward told Defendant Mary Ballis that she wanted to rent the subject property, but she was not interested in the other unit.

13. On the morning of June 2, 2004, Defendant Ted Ballis called Complainant Hayward’s mother and told her that they had decided not to rent to the other applicant. Defendant Ted Ballis said that if Complainants Hayward and Kelly were still interested in the original unit, Complainant Hayward should meet him at the property with her checkbook. Complainant Hayward’s mother relayed the conversation to Complainant Hayward.

14. Complainant Hayward called Defendant Mary Ballis later on the morning of June 2, 2004, and told her she wanted the unit and would give her a rent check. Defendant Mary Ballis stated that Complainant Hayward could meet Defendant Ted Ballis at the unit at 1:00 p.m. that day.

15. On June 2, 2004, Complainant Hayward and her mother met Defendant Ted Ballis at the subject property. When they arrived at approximately 1:00 p.m., Defendant Ted Ballis immediately told them there was a problem. He explained that several long-term tenants
had threatened to move if he rented to her, because her boyfriend, Complainant Kelly, was black. He explained that a previous black male tenant had caused problems.

16. Complainant Hayward stated to Defendant Ted Ballis that it was against the law to discriminate. Defendant Ted Ballis replied that he knew it was, but these people were long-term tenants and he had to go with them.

17. Defendant Ted Ballis then called Defendant Mary Ballis. The two Defendants had a brief conversation. Defendant Ted Ballis then gave the phone to Complainant Hayward. Defendant Mary Ballis stated to Complainant Hayward that she was sorry, but they could not rent the apartment to her.

18. Complainant Hayward again stated to Defendant Ted Ballis that what he was doing was against the law. Defendant Ted Ballis replied that he knew that. Complainant Hayward and her mother left.

19. Defendants subsequently rented the subject property to a non-black household.

20. On June 3, 2004, Complainant Hayward contacted Complainant Fair Housing Council of Oregon ("FHCO") to report her experience attempting to rent a unit from the Defendants. FHCO interviewed Complainant Hayward.

21. In response to the information provided by Complainant Hayward, FHCO staff designed and conducted two paired on-site tests for housing discrimination. The first pair consisted of a black woman and a white woman. The second test consisted of a black man and a white man. During the second test, Defendants treated the white male tester in a more favorable way than the black male tester.
22. In April and June 2005, the Complainants filed timely complaints of discrimination with the Secretary of the Department of Housing and Urban Development ("the Secretary") alleging that Defendants engaged in housing discrimination on the basis of race in violation of the Fair Housing Act.

23. Pursuant to the requirements of Sections 810(a) and (b) of the Fair Housing Act, 42 U.S.C. §§ 3610(a) and (b), the Secretary conducted an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report.

24. Based on the information gathered in that investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that a discriminatory housing practice occurred. On December 15, 2005, the Secretary issued a Charge of Discrimination pursuant to Section 810(g)(2)(A) of the Fair Housing Act, 42 U.S.C. § 3610(g)(2)(A), charging the Defendants with engaging in discriminatory housing practices, based on race and sex, in violation of the Fair Housing Act.

25. On or about January 4, 2006, the Defendants timely elected to have the charge resolved in a federal civil action pursuant to Section 812(a) of the Fair Housing Act, 42 U.S.C. § 3612(a).

26. On or about January 11, 2006, the Secretary authorized the Attorney General to commence a civil action on behalf of the Complainants pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

**FAIR HOUSING ACT CLAIMS**

27. By the facts and conduct alleged above in Paragraphs 4 - 20, Defendants have:
A. Refused to rent after the making of a bona fide offer, or refused to negotiate for the rental of, or otherwise made unavailable or denied, a dwelling to persons because of race and sex, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a);

B. Discriminated against persons in the terms, conditions or privileges of rental of a dwelling because of race and sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b); and

C. Made statements with respect to the rental of a dwelling indicating a preference, limitation, or discrimination based on race and sex, or an intention to make any such preference, limitation, or discrimination, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c).

28. As a result of Defendants’ conduct, Complainants are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and have suffered injury.

29. Defendants’ conduct described herein was intentional, willful, and taken in disregard for the rights of Complainants.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

(i) Declares that Defendants’ conduct as alleged herein violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq.;

(ii) Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating on the basis of
race or sex against any person in any aspect of the rental of a dwelling, pursuant to
42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);

(iii) Awards monetary damages to Complainants pursuant to 42 U.S.C. §§ 3612(o)(3)
and 3613(c)(1); and

(iv) Awards such additional relief as the interests of justice may require.

Dated this 1st day of February, 2006.

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Assistant Attorney General

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Chief
Housing and Civil Enforcement Section
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Case #5
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

BORDER FAIR HOUSING AND
ECONOMIC JUSTICE CENTER

Plaintiff,

v.

Case No. ______________________

JL GRAY COMPANY, INC., and
KEVIN SMITH

Defendants.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES

NATURE OF THE ACTION

1. This action for declaratory judgment, injunctive relief, and damages challenges Defendants' discrimination on the basis of religion in the provision of housing. This action arises under the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq.; and the Municipal Code of the City of Las Cruces, § 13-61, et seq.

2. Plaintiff Border Fair Housing and Economic Justice Center ("Border Fair Housing") combats discrimination that limits housing opportunities in the border regions of the Southwestern United States. It maintains a multi-faceted program that includes education and outreach, counseling and advocacy, best practice initiatives, community development, research and planning, and enforcement of civil rights and consumer protection laws.

3. Border Fair Housing was contacted in July 2006 by a tenant at Desert Palms Apartments ("Desert Palms"), one of the few affordable housing communities in
the area of Las Cruces, New Mexico. The tenant complained of religious discrimination at Desert Palms by Defendant Kevin Smith. Mr. Smith supervised the onsite managers of Desert Palms and other housing communities as a Regional Manager for Defendant JL Gray Company, which owns, develops, and/or manages many affordable housing complexes in the Southwestern United States. Mr. Smith is also the pastor of a small branch of a church called "Life's Purpose Church." He founded the Life's Purpose Church branch with his wife, who was JL Gray's onsite manager for another Las Cruces affordable housing community until recently.

4. In response to the religious discrimination complaint, Border Fair Housing conducted an extensive investigation of JL Gray's management and operation of Desert Palms.

5. Border Fair Housing learned that Mr. Smith used his position as Regional Manager for JL Gray to benefit supporters of his Life's Purpose Church and to punish non-supporters. He provided housing preferences and services to tenants and prospective tenants of Desert Palms who attended his church, while withholding preferences and services from those who refused to attend. Specifically, Mr. Smith discriminated by: (a) conditioning approval of at least one tenant's apartment application on her agreement to attend his church; (b) providing maintenance and rodent control to tenants who attended his church while withholding these services from other tenants who did not attend his church; (c) allowing tenants who attended his church to pay their rent late without penalty while charging late fees to other tenants who did not attend his church; (d) allowing tenants who attended his church to skip rent payments while threatening to evict other tenants who did not attend his church for non-payment of rent, including tenants who
had, in fact, paid their rent; (e) using the Desert Palms community room to conduct services for his church while denying or restricting access to the room by tenants who wished to use it for other purposes but who did not attend his church; (f) allowing tenants who attended his church to violate the Desert Palms pet policy while telling other tenants who did not attend his church that they could not keep documented service animals; and (g) charging tenants who did not attend his church with rules violations they did not commit. Mr. Smith retaliated against tenants who did not attend his church and who complained to or spoke with Border Fair Housing about these discriminatory actions.

6. Mr. Smith also retaliated against the Desert Palms onsite manager who cooperated with Border Fair Housing’s investigation. He fired her one or two days after she met with Border Fair Housing and its attorneys. In addition to losing her job, she no longer lives in the Desert Palms apartment she received as part of her compensation. Mr. Smith also told tenants that she embezzled thousands of dollars from Desert Palms. Upon information and belief, this allegation was false.

7. Tenants and employees informed JL Gray of many of Mr. Smith’s unlawful actions both before and after Border Fair Housing first received a complaint.

8. The day after a meeting between Border Fair Housing’s executive director and JL Gray officials in early-December 2006, and as a direct result of that meeting, JL Gray terminated Mr. Smith’s employment.

9. By their actions, JL Gray and Kevin Smith have frustrated Border Fair Housing’s mission of promoting equal opportunity in housing, interfered with its efforts to promote equal opportunity in housing, and caused it to commit scarce resources to identify and counteract Defendants’ discriminatory conduct.
had, in fact, paid their rent; (e) using the Desert Palms community room to conduct services for his church while denying or restricting access to the room by tenants who wished to use it for other purposes but who did not attend his church; (f) allowing tenants who attended his church to violate the Desert Palms pet policy while telling other tenants who did not attend his church that they could not keep documented service animals; and (g) charging tenants who did not attend his church with rules violations they did not commit. Mr. Smith retaliated against tenants who did not attend his church and who complained to or spoke with Border Fair Housing about these discriminatory actions.

6. Mr. Smith also retaliated against the Desert Palms onsite manager who cooperated with Border Fair Housing’s investigation. He fired her one or two days after she met with Border Fair Housing and its attorneys. In addition to losing her job, she no longer lives in the Desert Palms apartment she received as part of her compensation. Mr. Smith also told tenants that she embezzled thousands of dollars from Desert Palms.

Upon information and belief, this allegation was false.

7. Tenants and employees informed JL Gray of many of Mr. Smith’s unlawful actions both before and after Border Fair Housing first received a complaint.

8. The day after a meeting between Border Fair Housing’s executive director and JL Gray officials in early-December 2006, and as a direct result of that meeting, JL Gray terminated Mr. Smith’s employment.

9. By their actions, JL Gray and Kevin Smith have frustrated Border Fair Housing’s mission of promoting equal opportunity in housing, interfered with its efforts to promote equal opportunity in housing, and caused it to commit scarce resources to identify and counteract Defendants’ discriminatory conduct.
PARTIES

10. Plaintiff Border Fair Housing and Economic Justice Center is a not-for-profit corporation organized under the laws of Texas. It maintains an office at 1050 Monte Vista Avenue, Las Cruces, New Mexico 88001.

11. Border Fair Housing was founded in 2004 by community leaders living in the Southwestern United States border region who recognized that rampant inequities and discrimination were severely limiting housing opportunities for minorities in the area. Border Fair Housing adopted a mission to promote fair housing, equal access to credit, economic justice, the development of decent and affordable housing, community development, and the expansion of small business opportunities in communities throughout the border region of the Southwestern United States. In pursuit of that mission, Border Fair Housing, in partnership with other public and private entities and organizations, maintains a multi-faceted program that includes education and outreach, counseling and advocacy, best practice initiatives, community development, research and planning, and enforcement of civil rights and consumer protection laws.

12. Border Fair Housing's public-information projects have increased awareness of fair housing issues and generated numerous telephone calls from individuals who have a variety of needs regarding fair housing opportunities. Many of these individuals complain of housing discrimination. In response, Border Fair Housing investigates the complaints by, for example, conducting interviews and tests. Border Fair Housing has received multiple complaints regarding discrimination based on religion at Desert Palms. Border Fair Housing has been, and continues to be, adversely affected by the acts, policies, and practices of the Defendants.
13. Defendant JL Gray Company, Inc. is a for-profit company organized under the laws of New Mexico. JL Gray is engaged in the business of acquiring, developing, and managing affordable multi-family residential communities in the Southwestern region of the United States. It developed and manages Desert Palms. Its principal place of business for development is located in Las Cruces, New Mexico and its principal place of business for management is located at 420 West Elm Street, Farmington, New Mexico 87401. JL Gray is vicariously liable for the acts and/or omissions of its agents and employees. At all times relevant to the allegations in this Complaint, JL Gray acted through its agents and employees.

14. Defendant Kevin Smith resides at 2995 Fountain Avenue, Las Cruces, NM 88007. Defendant was a regional manager for JL Gray until early-December 2006, with oversight responsibility for the management of numerous multi-family apartment buildings including Desert Palms.

JURISDICTION AND VENUE


16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to the claims occurred in New Mexico and the Defendants reside in New Mexico.

FACTUAL BACKGROUND

A. JL Gray’s Management of Desert Palms Apartments

17. Desert Palms is a 101-unit apartment complex in Las Cruces, New Mexico that was developed with federal Low Income Housing Tax Credit funds. Desert Palms
continues to be operated under the requirements of the Low Income Housing Tax Credit program, which requires that the rents at Desert Palms be kept affordable for low- and moderate-income families in the area.

18. Desert Palms is managed by JL Gray, which has developed, owns, or manages numerous apartment complexes throughout the Southwestern United States. Upon information and belief, JL Gray employs regional managers who oversee the operations of multiple apartment buildings owned and/or managed by JL Gray.

19. All or most of the apartment buildings managed by JL Gray have onsite managers who are supervised by the regional managers. Until early-December 2006, Kevin Smith was a Regional Manager responsible for approximately fifteen JL Gray-managed apartment buildings, including Desert Palms. Mr. Smith supervised the onsite managers at the apartment buildings in his region, including Mesquite Village Apartments where his wife was the onsite manager until recently.

B. Kevin Smith’s “Life’s Purpose Church”

20. Mr. Smith is the pastor of a small branch of a church called “Life’s Purpose Church.” He and his wife are the co-founders of the church.

21. Until approximately late-July 2006, the Life’s Purpose Church held services up to three times a week in the community room at Desert Palms. During that time period, Mr. Smith did not allow any non-church use of the community room or greatly restricted such use. The church subsequently held services at Mesquite Village Apartments.

22. Mr. Smith seeks to recruit new members for his church primarily from economically disadvantaged neighborhoods. Mr. Smith focuses his proselytizing on poor
young women with children and frequently suggests that their husbands or boyfriends are not welcome. In his efforts to recruit members, Mr. Smith makes promises of food and clothing for the women and their children.

23.  Mr. Smith regularly proselytizes at JL Gray apartment buildings, including at Desert Palms. Mr. Smith and other church members regularly distribute church flyers and information door-to-door at JL Gray apartment buildings and tell tenants to attend his church. Mr. Smith and other church members regularly leave church information on Desert Palms tenants’ doors.

24.  Mr. Smith conducted church business during substantial periods of time while he was supposed to be performing his duties as regional manager.

C. Border Fair Housing’s Investigation of Discrimination at Desert Palms

25.  Border Fair Housing received a complaint in July 2006 from a Desert Palms tenant who believes that Kevin Smith discriminated against her on the basis of her religion. The tenant did not have difficulties with Mr. Smith until she declined several invitations from him to attend his church. He then began to treat her poorly, restricted her use of the parking lot during church services, and gave her a baseless eviction notice.

26.  Border Fair Housing began an investigation of the allegations. It interviewed many current and former tenants of Desert Palms and other apartment communities within Mr. Smith’s region. It interviewed current and former employees and/or agents of JL Gray. Border Fair Housing conducted extensive research regarding Desert Palms and JL Gray. It also counseled tenants facing eviction and referred tenants to other direct service providers.
27. Border Fair Housing and their representatives contacted JL Gray and its counsel to discuss the discriminatory conduct, address JL Gray's fair housing obligations, and to ensure the conduct ceased and would not be repeated.

D. Mr. Smith's Discriminatory and Retaliatory Conduct

28. Mr. Smith's discrimination has taken many forms. The common thread is that Mr. Smith used his position as Regional Manager to provide housing-related benefits to religious supporters who attended his church, and to punish non-supporters by withholding these benefits and otherwise subjecting them to mistreatment.

29. Mr. Smith likewise used his position to retaliate against tenants and employees who opposed his discrimination, and to retaliate against tenants and employees who aided and encouraged others in opposing his discrimination.

30. Prior to and after Border Fair Housing first received a complaint about Mr. Smith, tenants and employees informed Mr. Smith's supervisors at JL Gray of Mr. Smith's intermingling of his roles as Regional Manager and leader of the Life's Purpose Church. His supervisors were informed of Mr. Smith's differential treatment of tenants based on whether or not they attended his church. They took no actions to prevent Mr. Smith from continuing these activities until early-December 2006.

1. Discriminatory Review of Apartment Applications

31. On at least one occasion, Mr. Smith explicitly linked approval of a prospective tenant's application for an apartment at Desert Palms to her agreement to attend his church.
32. The prospective tenant was living in a rundown and poorly maintained long-term residence hotel in Las Cruces, New Mexico. Mr. Smith had frequently visited the hotel and offered free bags of groceries to women if they would attend his church.

33. The prospective tenant satisfied the eligibility requirements for renting an apartment at Desert Palms and applied for one. She went to the management office on or about May 26, 2006, to check on the status of her application. The onsite manager said that the application was still pending because her supervisor, Mr. Smith, had not reviewed it yet. Mr. Smith was in the office, however, and the onsite manager raised the matter with him.

34. Mr. Smith began to talk about his church. He then told the applicant that there are “ways to get around waiting lists” and that he would approve her application if she would agree to come to the church. She was not interested in the church but, to have an apartment to live in, said that she would attend. Mr. Smith approved her application immediately and she moved in within days.

35. Mr. Smith frequently discussed religion and his church with other actual and potential apartment applicants. Mr. Smith spoke to these individuals about the benefits of his religion and the failings of other religions including Catholicism. Mr. Smith has disparaged Catholics and recently asked supporters to offer daily prayers “to break down the walls of Catholicism in [Las Cruces].”

2. Discriminatory Eviction and Threats of Eviction

36. For several months, Mr. Smith did not serve nonpayment or eviction notices on, or begin eviction proceedings against, a Desert Palms tenant who attended his church and repeatedly failed to pay rent.
37. Tenants who do not attend the church and missed rent payments promptly received eviction notices.

38. Eviction notices for nonpayment of rent were also delivered to a number of tenants who timely paid their rent but do not attend the church.

39. Mr. Smith told a pregnant tenant who was complaining to him about an allegedly improper notice of eviction for nonpayment of rent that it would be good for her baby if she started attending his church, implicitly suggesting that he would rescind the notice in exchange for her attendance.

3. Discriminatory Application of Security Deposit Policy

40. Desert Palms tenants are required to pay a security deposit equal to one month’s rent before occupying their apartments.

41. Mr. Smith waived or reduced this requirement for a number of tenants who attend his church.

42. Mr. Smith has not waived or reduced this requirement for tenants who do not attend his church.

4. Discriminatory Assessment of Late Fees

43. Desert Palms tenants are required to make rent payments at the beginning of each month.

44. Mr. Smith often waived late fees for tenants who attend his church and did not make timely rent payments.

45. Mr. Smith did not similarly waive late fees for tenants who do not attend his church.
5. Discriminatory Provision of Maintenance and Rodent Control

46. Tenants at Desert Palms suffer many maintenance and rodent control problems that affect their health and safety. These problems include broken air conditioners, broken refrigerators, inadequate locks, water under carpets, other water damage, worn out air conditioner filters, cockroaches, mice, and rats.

47. The maintenance and rodent problems of tenants who attend the Life's Purpose Church are addressed promptly.

48. Tenants who do not attend the church experience serious difficulties in obtaining satisfactory responses to their complaints about the same issues.

49. A Desert Palms maintenance worker told tenants that if they attended Mr. Smith's church, their maintenance and rodent problems would be addressed sooner.

6. Discriminatory Access to Community Room

50. At Mr. Smith's direction, the Life's Purpose Church held services in the Desert Palms community room up to three times a week until approximately late-July 2006. A number of tenants attended the services.

51. Mr. Smith did not permit tenants to use the community room for other purposes, or greatly restricted their access to the room.

52. Upon information and belief, Mr. Smith followed these same practices at Mesquite Village Apartments when he moved church services to that property. Mr. Smith's wife was the onsite manager of Mesquite Village until recently.

7. Discriminatory Application of Rules

53. Desert Palms does not allow or significantly restricts pets in the building. Mr. Smith allowed at least one tenant who attends his church to violate this rule.
54. Tenants who do not attend the church were not permitted to violate this rule. This includes at least one tenant with a documented need for a service animal.

55. A number of tenants who do not attend Mr. Smith's church received notices of other rule violations that they did not commit. Rules violations can lead to eviction.

56. Upon information and belief, tenants who do attend the church did not receive baseless notices of rules violations.

8. Retaliation Against Tenants Who Opposed Discrimination

57. Mr. Smith learned about Border Fair Housing's investigation in approximately August 2006. He demonstrated his anger with the investigation and his willingness to retaliate by saying that anybody who sued him would be sorry because he would get even.

58. Mr. Smith subjected Desert Palms tenants who complained to Border Fair Housing about discrimination or cooperated with Border Fair Housing's investigation to the same types of mistreatment described above. For example, Mr. Smith reviewed the Desert Palms file of the tenant who first complained to Border Fair Housing about his discriminatory actions in search of an excuse to evict her.

59. Similarly, a number of tenants met with Border Fair Housing and its attorneys on September 6, 2006, regarding their rights under the fair housing laws. Upon information and belief, Mr. Smith promptly learned of this meeting. Within days, tenants who were seeking assistance from Border Fair Housing received letters threatening eviction for non-payment of rent. Some or all of the tenants had timely paid their rent. The letters referred to prior "3 Day Pay or Quit" notices that the tenants had not received.
9. **Retaliation Against the Onsite Manager for Aiding and Encouraging Tenants Who Opposed Discrimination**

60. The Desert Palms onsite manager cooperated with and assisted Border Fair Housing’s investigation of discrimination at Desert Palms. She also aided and encouraged tenants who sought assistance from Border Fair Housing in opposing Mr. Smith’s discrimination. In August 2006, Mr. Smith told her that he did not want her to cooperate with Border Fair Housing and began to impose harsher terms and conditions upon her.

61. The onsite manager participated in the September 6, 2006 meeting with Border Fair Housing and counsel. In retaliation, Mr. Smith fired the onsite manager one or two days later. As a result, she no longer lives in the Desert Palms apartment that was a benefit of her employment.

62. On or about the same day, Mr. Smith started telling Desert Palms tenants that the onsite manager had embezzled money from Desert Palms. On or about the same day, Mr. Smith tried to procure statements from Desert Palms tenants incriminating the onsite manager. He offered free rent and to forego eviction proceedings against tenants in exchange for a written statement that the tenant had paid his or her rent to the onsite manager in cash.

63. Mr. Smith also granted preferential treatment to other employees/agents of JL Gray who attend his church and penalized employees/agents who do not.

**INJURY TO PLAINTIFF**

64. Defendants’ unlawful actions have frustrated Border Fair Housing’s mission of promoting fair housing and non-discrimination in housing throughout the border region in the Southwestern United States. Border Fair Housing has made
substantial efforts and expended considerable resources to ensure equal housing opportunities without regard to religion. Defendants' discriminatory practices at Desert Palms have impeded Border Fair Housing's efforts to ensure equal housing opportunities without regard to religion.

65. Defendants' unlawful actions have forced Border Fair Housing to divert its resources from its typical activities, which include a range of educational, testing, investigative, counseling, and referral services throughout the greater Las Cruces metropolitan area.

66. Instead of engaging in these usual activities, Border Fair Housing has been forced to identify and counteract Defendants' discriminatory practices by, among other activities: investigating Defendants' discrimination; testing and monitoring Defendants' compliance with fair housing laws; gathering information; and communicating with Defendants regarding their fair housing obligations.

67. Border Fair Housing has devoted time, resources, and money toward efforts to educate the public and raise community awareness regarding discrimination in housing based on religion in an effort to offset the effect of Defendants' unlawful practices and actions and refusal to change those unlawful practices and actions.

68. Border Fair Housing had planned to implement various projects and initiatives in and around the summer and fall of 2006. The time and resources diverted to investigate and counteract Defendants' discrimination contributed to the delay in implementing those projects and initiatives.
69. Defendants' unlawful actions described above were, and are, intentional and willful, and/or have been and are implemented with callous and reckless disregard for the statutorily protected rights of Plaintiff.

70. Unless enjoined, Defendants will continue to engage in the illegal activities described above.

FIRST CAUSE OF ACTION
(Federal Fair Housing Act)

71. Plaintiff repeats and incorporates by reference all allegations contained in Paragraphs 1 through 70 as if fully set forth herein and further allege as follows.

72. Defendants' acts, including those through its agents and employees, as described herein, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(a), (b), (c), and (d), and § 3617.

(a) Defendants' acts, as described above, constitute a refusal to negotiate for the rental of housing and made housing unavailable on the basis of religion in violation of 42 U.S.C. § 3604(a);

(b) Defendants' acts, as described above, provided different terms, conditions, and privileges in the rental of housing, as well as different services and facilities in connection therewith, on the basis of religion in violation of 42 U.S.C. § 3604(b);

(c) Defendants' statements, as described above, indicate a preference, limitation, and/or discrimination on the basis of religion in violation of 42 U.S.C. § 3604(c);
(d) Defendants, as described above, made misrepresentations regarding the availability of housing on the basis of religion in violation of 42 U.S.C. § 3604(d).

(e) Defendants' acts, as described above, constitute coercion, intimidation, threat, and/or interference in the exercise and enjoyment of rights protected by 42 U.S.C. § 3604 of the Federal Fair Housing Act, and on account of having aided or encouraged another in the exercise of such rights, in violation of 42 U.S.C. § 3617.

SECOND CAUSE OF ACTION
(City of Las Cruces Fair Housing Municipal Code)

73. Plaintiff repeats and incorporates by reference all allegations contained in Paragraphs 1 through 72 as if fully set forth herein and further allege as follows:

74. Defendants' acts, including those through its agents and employees, as described herein, violate the City of Las Cruces Municipal Code §§ 13-65(1), (2), (3), (4), and (9).

   (a) Defendants' acts, as described above, constitute a refusal to negotiate for the rental of housing and made housing unavailable on the basis of religion in violation of City of Las Cruces Municipal Code § 13-65(1);

   (b) Defendants' acts, as described above, provided different terms, conditions, and privileges in the rental of housing, as well as different services and facilities in connection therewith, on the basis of religion in violation of City of Las Cruces Municipal Code § 13-65(2);
(c) Defendants' statements, as described above, indicate a preference, limitation, and/or discrimination on the basis of religion in violation of City of Las Cruces Municipal Code § 13-65(3);

(d) Defendants, as described above, made misrepresentations regarding the availability of housing on the basis of religion in violation of City of Las Cruces Municipal Code § 13-65(4);

(e) Defendants' acts, as described above, constitute coercion, intimidation, threat, and/or interference in the exercise and enjoyment of rights protected by Article III of Chapter 13 of the City of Las Cruces Municipal Code, and on account of having aided or encouraged another in the exercise of such rights, in violation of City of Las Cruces Municipal Code § 13-65(9).

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of all issues so triable as of right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:


(2) enter a permanent injunction directing the Defendants and their directors, officers, agents and employees to take all affirmative steps necessary to remedy the
effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

(3) award compensatory damages to Plaintiff in an amount to be determined by the jury that would fully compensate Plaintiff for its economic loss, diversion of resources, and frustration of mission that has been caused by the conduct of the Defendants alleged herein;

(4) award punitive damages to Plaintiff in an amount to be determined by the jury that would punish the Defendants for the willful, wanton and reckless conduct alleged herein and that would effectively deter similar conduct in the future;

(5) award Plaintiff its reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 3613(c)(2); and

(6) order such other relief as this Court deems just and equitable.

Dated: January 31, 2007

/s/ Reed N. Colfax
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Case #6
Sally Herriot

Plaintiff,

v.

Channing House

Defendant.

I. PRELIMINARY STATEMENT

1. Sally Herriot is 88 years of age, and a resident of Channing House, a retirement community in Palo Alto, California. She has lived well and happily in her own “independent living” apartment for 14 years, and continues to be involved in community and cultural affairs in the Bay Area. In early 2006, however, agents and employees of Channing...
House began a premeditated campaign to evict her from her apartment and force her into the institutional “assisted living” section of the community. Under the pretext of enforcing a “continuing care contract,” Defendant has discriminated against Mrs. Herriot because of her actual or perceived disabilities in order to free up her apartment for resale—at nearly $500,000—to an applicant on its waiting list for independent living apartments. Furthermore, Defendant has refused Mrs. Herriot’s reasonable accommodation request to remain in place and to have the assistance of private duty aides to assist her with activities of daily living.

2. This case raises critical questions concerning the application of the Fair Housing Act and related statutes to retirement housing. If senior housing providers are permitted, through contract and in the interest of maximizing income, to abrogate residents’ civil rights and to make unilateral decisions to evict and involuntarily transfer them, our national policy of “aging in place” is put in great jeopardy. The court must intervene to vindicate these important rights.

II. JURISDICTION

3. Jurisdiction is conferred on this court pursuant to 42 U.S.C. §§3613, 12188(a) and 28 U.S.C. §§1331, 1343 in that the claims alleged herein arise under the laws of the United States. The court has pendent jurisdiction over state law claims that arise from the same facts.

5. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §1391(b)(2) in that the unlawful conduct that gives rise to these claims occurred within the Northern District of California.

III. INTRADISTRICT ASSIGNMENT

6. Intradistrict assignment in San Jose is proper because the unlawful conduct that gives rise to these claims occurred in the City of Palo Alto, in Santa Clara County.

IV. PARTIES

7. Plaintiff Sally Herriot is 88 years of age, and has lived at Channing House, in the City of Palo Alto, since April 1992.

8. Mrs. Herriot has mobility and vision impairments sufficient to qualify her as a person with a “handicap” or “disability” under the Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the California Fair Employment and Housing Act, and the Unruh Civil Rights Act. Despite these conditions, she is fully capable of independent living and can fulfill all the obligations thereof.

9. Defendant Channing House is a not-for-profit corporation, organized and operating under the laws of California and licensed by the California Department of Social Services to operate a continuing care retirement community. Defendant Channing House owns and operates the retirement housing known as Channing House, located at 850 Webster Street, Palo Alto, California.

10. Defendant rents dwellings within the meaning of the Fair Housing Act, 42 U.S.C. §3602 and the California Fair Employment and Housing Act, Government Code §12900 et seq. and the Unruh Civil Rights Act, California Civil Code §51 et seq.

11. Channing House is a “public accommodation” within the meaning of the
Americans with Disabilities Act, 42 U.S.C. §12181(7) in that it is a private entity that
operates a place of lodging, establishments serving food and drink, places of public
gathering, retail and service establishments, a social service establishment, and places of
exercise and recreation, and these operations affect "commerce" as defined at 42 U.S.C.
§12181(1)(A).

12. Defendant has received federal financial assistance in the past and continues
to receive federal funds through Medicare and MediCal and the U.S. Department of Housing
and Urban Development, and is therefore a recipient of federal financial assistance, making it
subject to the provisions of the Rehabilitation Act. 29 U.S.C. §794 et seq.; 45 C.F.R. § 84.4;
24 C.F.R. §8.4.

V. FACTS

A. The Herriot's Decision to Move to Channing House

13. In 1992, Sally and John Herriot decided to move from their family home into
a new community that would impose fewer housekeeping demands and provide more time
for recreation and socializing with friends.

14. At that time, Mr. and Mrs. Herriot were in their early 70s, and neither had an
immediate need for medical care and services. The Herriots were looking for housing in a
convenient location with dining facilities, laundry, housekeeping and social and recreational
opportunities.

15. After an extensive search, the Herriots decided to move to Channing House, a
"continuing care retirement community" ("CCRC").

16. Like other CCRCs, Channing House offers three kinds of housing:
independent living apartments, assisted living units, and skilled nursing facilities. Channing
House provides medical care and services to residents in all three kinds of housing, depending on the frequency and intensity of their needs.

17. Channing House appealed to the Herriots because it offered them the peace of mind that additional amenities and services would be available to them when and if they needed them.

18. In April 1992, the Herriots entered into a “continuing care contract” and moved into Apartment #912. The apartment is designated by Defendant as an “independent living” unit. It is 900 square feet in size, and consists of one bedroom, a living room, alcove office, efficiency kitchen and two bathrooms.

19. As a condition of admission to Channing House, the Herriots were required to meet various financial requirements, including payment of an “Entrance Fee” in the amount of $181,000, which became fully non-refundable approximately 72 months after admission. In addition, Channing House required payment of a monthly occupancy fee, which covers the cost of meals, housekeeping and other services. This fee has fluctuated from $2500 to $3500 per month.

B. The Herriots’ Tenure at Channing House

20. From 1992 through 2001, the Herriots were actively engaged in recreational, cultural and social activities within Channing House and in the greater Bay Area community.

21. From 1992 through 2001, the Herriots made only sparing and infrequent use of the medical care and services available from Channing House


23. Since her husband’s death, Mrs. Herriot has lived alone in Apartment #912 and paid a monthly occupancy fee, currently set at $3343.
24. Mrs. Herriot’s apartment is filled with her furniture and possessions and is
decorated to her taste. Unlike the assisted living room to which Defendant would transfer
her, she controls access to her living space, coming and going and receiving visitors as she
pleases. She can and does have visitors in her apartment overnight, and routinely takes her
meals in the first floor dining room, occasionally hosting visitors there.

25. She enjoys an active social life, including attending all San Francisco operas
and many Channing House activities, and has formed many valued friendships and other
relationships since moving to Channing House. Many of her long term friends also live in
Channing House.

26. Since 2004, Mrs. Herriot has employed private duty aides to assist her with
some basic activities of daily living, such as bathing, dressing and ambulation. The aides
know how to assist Mrs. Herriot without undermining her independence and self-reliance.

27. Notwithstanding her limitations, she has continued to meet all of the
conditions and requirements for residency in Apartment #912 at Channing House, with and
without the assistance of these aides.

28. Mrs. Herriot does not want to downgrade her current assistance from private
duty aides to the level of service Channing House provides, and does not want to transfer to
an assisted living unit.

C. Channing House Issues Eviction and Transfer Notices in Furtherance of its
Financial Motive

29. Without warning and in furtherance of its plan to displace Mrs. Herriot in
order to resell her unit, in April 2006 Channing House unilaterally decided that Mrs. Herriot
may not remain in her apartment and must move to a shared, assisted living unit.
30. There is a substantial waiting list for admission to the larger “independent living” apartments at Channing House, such as the one in which Mrs. Herriot currently lives.

31. During the past two fiscal years, Channing House has experienced substantial declines in cash flows and cash assets, and has a strong financial incentive to move Mrs. Herriot from her apartment.

32. If Mrs. Herriot were forced to move from Apartment #912, Channing House would secure a new entrance fee from a new resident of at least $440,000.

33. Under the pretext of enforcing state CCRC regulations, Channing House then went about devising grounds upon which her involuntary transfer could be accomplished.

34. In its first such attempt, by letter of April 25, 2006, Channing House advised Mrs. Herriot that “[y]our physical condition and needs require that you be transferred to our on-site Assisted Living area. The level of care that you require exceeds that which may be lawfully provided in your current Independent Living Apartment….This transfer will occur thirty (30) days from today.”

35. The unilateral decision to involuntarily transfer Mrs. Herriot to assisted living is not based on sound medical principles, and is contrary to the recommendation of Mrs. Herriot’s personal physician.

36. The unilateral decision to involuntarily transfer Mrs. Herriot to assisted living violates even the minimal procedural requirements of California Health & Safety Code §1788(a)(10)(B), which governs involuntary transfers within CCRCs.

37. Mrs. Herriot and her family members challenged Defendant’s attempt to transfer her, telling Channing House staff that the involuntary transfer decision was substantively and procedurally defective, and pointing out that Channing House is licensed to
provide an assisted living level of care in all of its independent living apartments.

38. On at least two occasions in May 2006 and June 2006, Mrs. Herriot and her family members have requested the contents of her file at Channing House and documentation of the reasons and specific events that led to the decision of Defendant to seek the transfer of Mrs. Herriot.

39. Defendant has failed or refused to supply this documentation.

40. Subsequently, Channing House abandoned the grounds for transfer alleged in its letter of April 25, 2006. On July 7, 2006, Channing House sent a new letter to Mrs. Herriot, seeking to transfer her involuntarily based on an allegation that she is “non-ambulatory” and that California law prohibits “non-ambulatory” persons from living in independent living units at Channing House.

41. These actions constituted an effort by Channing House to selectively enforce the “non-ambulatory” rule against Mrs. Herriot in furtherance of its desire to sell her unit and in retaliation for exercising her rights to non-discriminatory treatment under federal and state civil rights statutes.

42. In doing so, Defendant subordinated Mrs. Herriot’s best interest and respect for her rights to their desire to increase income for the property.

D. The Repercussions of the Notice

43. When she received the letters of April 25, 2006 and July 7, 2006, Mrs. Herriot was terrified that she would be forced out of her home and into an institutional setting. Because she had previously been the subject of demeaning and humiliating “care conferences” to assess her continued eligibility to live in her apartment, and seen others subjected to such processes, she feared that Channing House personnel would take steps to...
reduce her independence and impede her continued connection to the community.

44. At the time she received the notice, and continuing to the present, Mrs. Herriot, her family and her physician unanimously agree that remaining in Apartment #912 is in Mrs. Herriot’s best medical and other interests, and that she can fulfill all of her obligations as a resident, with and without the assistance of private duty aides.

45. Mrs. Herriot does not agree and has not agreed to transfer from Apartment #912 to assisted living, or to leave Channing House and surrender her home and access to other benefits offered by Channing House, for which she has made a substantial investment.

46. Mrs. Herriot’s physician has counseled against a transfer to assisted living, opining that such a move would have a negative effect on her physical and emotional health.

47. Were she to be moved to an assisted living unit, she would have to give up the substantial level of independence and privacy she has obtained from living in her own 900 square foot apartment, and be subjected to the following:

a. Mrs. Herriot would be required to reside in a 14 foot by 15 foot room shared with another resident, and she would have no choice in the selection of that person.

b. A thin curtain would separate the two beds, so the light from reading or watching television could easily bother a roommate.

c. Mrs. Herriot would be required to be in bed with her lights out no later than 8:30 p.m., thereby further diminishing her ability to interact with friends and to attend cultural and other events in the community.

d. Insufficient space to have guests visit or stay the night, or to accommodate private duty aides who are more familiar with, and more attentive to, her needs than Channing House staff.
1. No tub or shower facilities requiring that Mrs. Herriot be taken through the
halls in towels to be bathed at common bathing facilities.

2. Channing House provides assisted bathing only every second day and requires
residents to pay extra for daily baths.

3. Confinement in a hospital-like room, where the door would normally be open
and staff would come and go whenever they want.

4. Access only to 1st floor eating facilities, allowed only with permission from
the Director of Health Services. Refusal of permission would further diminish her
ability to interact with friends and maintain her independence.

48. The cumulative deprivation of her chosen living arrangements, her ability to
have guests, her access to caregivers of her choice, and her rights to personal privacy that
would accompany her forced transfer to assisted living would dramatically reduce the quality
of her life and impair her ability to live an independent life.

49. To the extent Defendant was required to comply with California CCRC
statutes in seeking to transfer Mrs. Herriot, it has failed to do so.

F. Mrs. Herriot’s Request for Reasonable Accommodation

50. By letters of May 23, 2006 and June 29, 2006, to Channing House, Mrs.
Herriot’s family members have conveyed her desire to remain in Apartment #912 and to
engage in “productive dialogue to assure Mrs. Herriot continues to enjoy a high quality of
life in her own Independent Living apartment at Channing House.”

51. Together with the many conversations between Mrs. Herriot’s family and
Channing House staff concerning her employment of private duty aides, these letters amount
to a request for a reasonable accommodation to permit Mrs. Herriot to remain in Apartment
52. Mrs. Herriot and her family have proposed to have her stay in place and have the assistance of private duty aides either for 16 or 24 hours per day.

53. Such accommodations would allow her to maintain a high level of independence in a comfortable and familiar setting, and would permit her to stay involved in the community.

54. Such accommodations are necessary to afford her an equal opportunity to use and enjoy her chosen living quarters.

55. Granting the requested accommodation would not impose an undue financial and administrative burden and would not constitute a fundamental alteration of the services provided by Channing House. In fact, the presence of private duty aides at least 16 hours per day means that she would have less reason than other residents to call upon Channing House resources to assist her, whether for routine matters or in the event of emergency or fire.

56. Defendant has failed to engage in any interactive process to determine the feasibility of Mrs. Herriot’s requested accommodation.

57. The July 7, 2006, letter from Patricia Shea to Mrs. Herriot effectively denies this request for accommodation by announcing a decision that Mrs. Herriot will be moved to assisted living on the second floor on or about August 7, 2006.

58. Defendant decided ahead of time not to consider any accommodation request proposed by Mrs. Herriot because it is intent on removing her from her apartment and securing additional entrance fees by placing a new applicant in her apartment.

F. Mrs. Herriot Seeks the Assistance of Counsel

59. When all other avenues had failed, Mrs. Herriot sought assistance of counsel,
who wrote to Carl Braginsky, Executive Director of Channing House, on August 8, 2006, requesting that Channing House cease and desist its discrimination against Mrs. Herriot, failure to accommodate and retaliation.

60. Through its own counsel, Defendant has responded that it would proceed with the proposed transfer of Mrs. Herriot, thereby subjecting her to a continuing risk that she will be moved involuntarily, in violation of her rights enumerated herein.

G. Retaliation

61. Defendant has retaliated against Mrs. Herriot by refusing to consider her accommodation requests, because she has exercised her rights under the Fair Housing Act, ADA and California state law to remain in her chosen dwelling, and because she and her family members have challenged decisions made by Channing House with respect to its operations and their effects on residents with and without disabilities.

II. Injuries Suffered by Mrs. Herriot

62. Defendant, directly and through its agents, has engaged in a pattern or practice of discrimination against Mrs. Herriot in the operation of its housing. Defendant continues to engage in such pattern or practice of discrimination so as to constitute a continuing violation.

63. In doing the acts or in omitting to act as alleged in this Complaint, each employee or officer of Defendant was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent were subsequently ratified and adopted by Defendant as principal.

64. Defendant’s conduct was willful, intentional and taken in reckless disregard of Mrs. Herriot’s rights.
65. Mrs. Herriot has suffered, and is continuing to suffer, damage as the result of Defendant’s actions as Defendant has intruded into her private affairs, has abrogated her right as a competent adult to make decisions as to the most basic aspects of life, has stigmatized her as unfit for independent living, asserts its continued right to do so, and threatens her continued enjoyment of her home and treasured personal relationships.

66. As a proximate result of the Defendant’s conduct, Mrs. Herriot has suffered, is continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional and physical distress, and a deprivation of her rights to equal housing opportunity. Therefore, she is entitled to the relief requested herein.

67. Specifically, as a consequence of Defendant’s actions and her apprehensions about its motives, she lost sleep, experienced sustained anxiety and the attendant physical manifestations thereof, as well as embarrassment and humiliation at the thought that she would be declared incapable of making her own decisions, in consultation with her doctor and family members, about where and how she was to live.

68. Mrs. Herriot has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury from Defendant’s acts and its pattern or practice of discrimination on the basis of disability unless relief is provided by this Court. Accordingly, she is entitled to injunctive relief.

FIRST CLAIM
(Federal Fair Housing Act, 42 U.S.C. §§3601 et seq.)

69. Plaintiff realleges and incorporates by reference paragraphs 1-68 above.

70. By its actions detailed above, Defendant has violated Mrs. Herriot’s rights.
under the Fair Housing Act, 42 U.S.C. § 3601 et seq., and its implementing regulations by:

a. Discriminating or otherwise making unavailable a dwelling to her because of her disability, in violation of 42 U.S.C. § 3604(f)(1), in the following respects, among others:

   i) Limiting Mrs. Herriot’s ability to have personal care attendants to enhance their safety and quality of life in “independent living” apartments;

   ii) Making illegal inquiries into the nature and severity of Mrs. Herriot’s disability in the absence of a resident’s request for a special accommodation or for disability-related or medical services to be provided by Channing House;

   iii) Discouraging Mrs. Herriot from residing in Channing House;

   iv) Steering Mrs. Herriot from the independent living apartment units to assisted living or skilled nursing units.

b. Discriminating in the terms, conditions or privileges of occupancy of a dwelling because of disability, in violation of 42 U.S.C. § 3604(f)(2) by imposing, as a term or condition of residency that Mrs. Herriot be in good health, ambulatory or able to move about independently, and able to take care of herself in normal living activities without relying on assistance from others.

c. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford Mrs. Herriot equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C § 3604(f)(3).

d. Making statements with respect to sale or rental of a dwelling that indicate a
preference, limitation or discrimination on the basis of disability in violation of 42
U.S.C. § 3604(c);

e. Interfering with, threatening, coercing or intimidating Mrs. Herriot and her
family members by threatening to move her involuntarily and without the benefit of
the process provided by state law because she has exercised or enjoyed her rights
under the Fair Housing Act and on account of her family members having aided or
encouraged her in the exercise and enjoyment of such rights.

SECOND CLAIM
(Americans With Disabilities Act, 42 U.S.C. §§12101 et seq.)

71. Plaintiff realleges and incorporates by reference paragraphs 1 through 70,
above.

72. By its conduct as set forth above, Defendant is violating Mrs. Herriot’s rights
under the Americans with Disabilities Act, 42 U.S.C §12182, and its implementing
regulations. Specifically, it has:

a. Denied her opportunities to participate in or benefit from certain of its goods,
services, facilities, privileges, advantages, and accommodations, because of her
disability.

b. Provided Mrs. Herriot goods, services, facilities, privileges, advantages, and
accommodations that are not equal to those provided to others, and that are separate
and different from those provided to others.

c. Refused to serve and accommodate Mrs. Herriot in the most integrated setting
appropriate to her needs, which is in her own “independent living” apartment.

d. Imposed application and eligibility criteria that screen out people like Mrs.
Herriot, who need or are likely to need long-term personal attendant services in
activities of daily living.

e. Failed to make reasonable modifications to its policies, practices, and
procedures, particularly as to Mrs. Herriot’s employing assistants in her apartment,
when such modifications are necessary to afford Mrs. Herriot the opportunity to
benefit the goods, services, privileges, advantages, and accommodations at Channing
House.

THIRD CLAIM
(Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a))

73. Plaintiff realleges and incorporates by reference paragraphs 1 through 72,
above.

seq., prohibits discrimination against qualified individuals with disabilities by recipients of
federal financial assistance.

75. As a recipient of federal financial assistance, Defendant and its agents are
required under Section 504 to make available housing and services at Channing House in a
nondiscriminatory manner.

76. Defendant has violated Section 504 in the following ways. It has:
a. Denied Mrs. Herriot the opportunity to participate and benefit from living at
Channing House.
b. Failed to afford Mrs. Herriot an opportunity to participate in and benefit from
housing at Channing House that is equal to that afforded to others.
c. Aided and perpetuated discrimination against Mrs. Herriot.
d. Denied Mrs. Herriot enjoyment of the dwelling in which she is eligible to reside.

e. On the basis of disability, otherwise limited Mrs. Herriot in the enjoyment of rights, privileges, advantages, and opportunities enjoyed by others; and

f. Applied discriminatory criteria to Mrs. Herriot, with the effect of defeating the principal goal assisting people with disabilities in living full and independent lives.

**FOURTH CLAIM**
(California Fair Employment and Housing Act, California Government Code §12900 et seq.)

77. Plaintiff realleges and incorporates by reference paragraphs 1 through 76, above.

78. By its conduct as set forth above, Defendant is violating Mrs. Herriot's rights under the California Fair Employment and Housing Act, Government Code §12900 et seq., in the following respects, among others:

a. Discriminating or otherwise making unavailable a dwelling to her because of her disability, in the following respects, among others:

i) Limiting Mrs. Herriot’s ability to have personal care attendants to enhance their safety and quality of life in “independent living” apartments;

ii) Making illegal inquiries into the nature and severity of Mrs. Herriot’s disability in the absence of a resident’s request for a special accommodation or for disability-related or medical services to be provided by Channing House;
iii) Discouraging Mrs. Herriot from residing in Channing House;

iv) Steering Mrs. Herriot from the independent living apartment units to assisted living or skilled nursing units.

b. Discriminating in the terms, conditions or privileges of occupancy of a dwelling because of disability, by imposing, as a term or condition of residency that Mrs. Herriot be in good health, ambulatory or able to move about independently, and able to take care of herself in normal living activities without relying on assistance from others.

c. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford Mrs. Herriot equal opportunity to use and enjoy a dwelling.

d. Making statements with respect to sale or rental of a dwelling that indicate a preference, limitation or discrimination on the basis of disability.

e. Interfering with, threatening, coercing or intimidating Mrs. Herriot and her family members by threatening to move her involuntarily and without the benefit of the process provided by state law because she has exercised or enjoyed her rights under the Fair Housing Act and on account of her family members having aided or encouraged her in the exercise and enjoyment of such rights.

FIFTH CLAIM
(California Unruh Civil Rights Act, California Civil Code § 51 et seq.)

79. Plaintiff realleges and incorporates by reference paragraphs 1 through 78, above.

80. By its conduct as set forth above, defendant injured Mrs. Herriot by violating
her right to fair housing under the Unruh Civil Rights Act, California Civil Code section 51 et seq., in that Defendant discriminated against her in the operation of Channing House, a business establishment, on the basis of her disability.

**SIXTH CLAIM**
*(Violation of § 54.1 of the California Civil Code)*

81. Plaintiff realleges and incorporates by reference paragraphs 1 through 80, above.

82. Defendant injured Plaintiff by committing the following unlawful practices:
   a. Denying full and equal access to housing accommodations, in violation of California Civil Code § 54.1(b)(1); and
   b. Refusing to make reasonable accommodations in rules, policies, practices, or services when those accommodations may be necessary to afford individuals with disabilities equal opportunity to use and enjoy housing accommodations, in violation of California Civil Code § 54.1(b)(3)(B).

83. Pursuant to California Civil Code § 54.1, plaintiff is entitled to statutory damages, among other remedies, of up to three times her actual damages as determined by a trier of fact.

**SEVENTH CLAIM**
*(Violation of California Unfair Business Practices Act)*

84. Plaintiff realleges and incorporates by reference paragraphs 1 through 83, above.

85. In acting as herein alleged, Defendant has engaged in a pattern or practice of unlawful discrimination against people with disabilities in the operation of their housing, a
business establishment, and therefore have engaged in acts of unfair competition as the same is defined in § 17200 of the California Business and Professions Code.

86. Defendant's actions were in violation of a statute, namely California Health and Safety Code § 1788, and thus constitute a per se unlawful business practice.

87. Plaintiff has been directly damaged by this unlawful business practice and thus is entitled to injunctive relief and restitution.

EIGHTH CLAIM
(Negligence)

88. Plaintiff realleges and incorporates by reference paragraphs 1 through 87, above.

89. Defendant had statutory, common law, and contractual duties to operate Channing House in such a manner so as to not interfere with the civil rights of the Mrs. Herriot and to ensure its agents and employees acted lawfully.

90. Channing House owed Mrs. Herriot a duty to operate its property in a manner that was free from discrimination, and to hire, train, supervise and discipline their employees, agents and themselves to fulfill that duty.

91. Defendant negligently violated that duty by discriminating against Mrs. Herriot on account of her disability.

92. Defendant's violation of that duty was the result of negligence, including but not limited to:

   a. Its negligent failure to train employees regarding the requirements of state and federal anti-discrimination laws;

   b. Its negligent failure to hire persons who were familiar with the requirements
of state and federal anti-discrimination laws;

c. Its negligent failure to supervise employees regarding compliance with the
requirements of state and federal anti-discrimination laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this court enter an order:

1. Accepting jurisdiction of the federal and supplemental state claims pled
herein.

2. Declaring that Defendant’s discriminatory practices violate the Fair Housing
12101 et seq., the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.; the California Fair
Employment and Housing Act, California Government Code §12900 et seq and the
California Unruh Civil Rights Act, California Civil Code § 51 et seq. and the other
provisions cited above.

3. Entering preliminary and permanent injunction directing the Defendant and its
officers, directors, agents, employees and successors, and all other persons in active concert
or participation with them, to take all affirmative steps necessary to remedy the effects of the
illegal, discriminatory conduct alleged herein and to prevent similar occurrences in the
future;

4. Awarding monetary damages to Plaintiff in an amount to be determined by the
jury that would fully compensate plaintiff for her injuries sustained by Defendant’s
discriminatory housing practices pursuant to 42 U.S.C. § 3613(c)(1) and pursuant to state
law;

5. Awarding statutory and punitive damages to Plaintiff in an amount to be
determined by the jury pursuant to 42 U.S.C. § 3613(c)(1) and state law;

6. Awarding restitution to Plaintiff for her monetary loss caused by defendant’s unlawful business practices;

7. Awarding reasonable costs and attorneys fees pursuant to 42 U.S.C. § 3613(c)(2) and 12205 and state law;

8. Awarding any further relief the court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P 38(b), the plaintiff demands a trial by jury of all issues so triable as of right.

Respectfully Submitted,

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Herriot v. Channing House
COMPLAINT
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ATTORNEYS FOR THE PLAINTIFF

Date: 10/10/06

Herriot v. Channing House
COMPLAINT
Retirement Home Can Force Resident to Move to Higher Level of Care

Last Updated: 2/18/2009

A federal court has ruled that a continuing care retirement community (CCRC) can force one of its residents to move from her private apartment to an assisted living unit.

Sally Herriot, 90, is a resident of Channing House, a CCRC in Palo Alto, California, that provides three levels of care -- independent living, assisted living and skilled nursing. Since moving to the facility with her now-deceased husband in 1991, Ms. Herriot has lived in a spacious independent living apartment. After Ms. Herriot returned from a hospital stay in 2006, Channing House determined that it was necessary to transfer her from her apartment to a much smaller, hospital-like assisted-living unit where she could be served by a trained nursing staff. Ms. Herriot, her family and her physician objected to the transfer, arguing that she is able to remain in her apartment with the help of round-the-clock private aides she had hired. Channing House rejected this arrangement.

Ms. Herriot subsequently filed suit in federal court, alleging that Channing House had discriminated against her based on her disabilities by refusing to accept her accommodation of hiring private aides. (See "Retirement Home Resident Fights Move to Increased Level of Care," ElderLawAnswers, 3/3/2007.)

The U.S. District Court for the Northern District of California now rules that Channing House has a duty to provide Ms. Herriot with medical care based on her level of need, and that it cannot delegate that duty to private help hired by Ms. Herriot. The court finds that Channing House would be violating its legal obligations by accepting Ms. Herriot's plan to allow her to remain in her apartment. Herriot v. House (U.S. Distr. Ct., N.D. Cal., No. C 06-6323 JF (RS), Jan. 29, 2009).
Case #7
The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States on behalf of Kevin C. Ely and Clifford David Pugh, to enforce provisions of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, et seq. (the "Fair Housing Act" or "the Act").

JURISDICTION & VENUE

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1345, and 42 U.S.C. § 3612(0).

3. Venue is proper under 28 U.S.C. § 1391 (b), because the events giving rise to the United States' claims occurred in the Southern District of Mississippi, the subject property is located in the Southern District of Mississippi, and at all relevant times, the Defendants resided in and/or did business in the Southern District of Mississippi.

PARTIES

4. Complainant Kevin Ely is a 30-year old male.

5. Complainant Clifford David Pugh is a male. At the time the events underlying this Complaint arose, Mr. Pugh was Mr. Ely's roommate.

6. Defendant Lemuel "Lemmy" W. Kleinpeter, a male, is a resident of the State of Arizona. At the time the events underlying this Complaint arose, Mr. Kleinpeter was a resident of the
State of Mississippi and owned and managed a building comprised of four (4) two-bedroom rental apartments located at 102 Park Row Avenue, Long Beach, Harrison County, Mississippi 39560 ("the subject property").

7. Defendant Dennis Randall O'Brien, a male, is a resident of the State of Mississippi. At the times the events underlying this Complaint arose, Mr. O'Brien was the agent and/or employee of Mr. Kleinpeter inasmuch as he handled maintenance and other repairs at the subject property.

FACTUAL ALLEGATIONS

8. On or about January 3, 2005, Mr. Ely and Mr. Pugh began a one-year lease with Mr. Kleinpeter of a two-bedroom apartment at the subject property. The lease, signed by Mr. Ely and Mr. Pugh, was scheduled to end on December 31, 2005.

9. During the lease period Mr. Kleinpeter lived in Unit 102B, next door to Mr. Ely's and Mr. Pugh's apartment.

10. During the term of the lease, Mr. Kleinpeter and Mr. O'Brien subjected Mr. Ely to severe, pervasive, continuous and unwelcome verbal and physical sexual advances, including, but not limited to, Mr. Kleinpeter requesting that Mr. Ely allow him to take nude photos of him in exchange for money and Mr. O'Brien on a separate occasion offering to pay Mr. Ely if he would let him perform oral sex on him. Both Mr. Kleinpeter and Mr. O'Brien often made sexual advances toward Mr. Ely, touching and/or attempting to touch his genitals and/or buttocks. Mr. Kleinpeter also sexually harassed Mr. Ely when he came to pay his rent. In July 2005, Mr. Kleinpeter offered Mr. Ely free rent if Mr. Ely would be his "boyfriend."

11. Between March and August 2005, Mr. Ely repeatedly called the police department to report that he was being sexually harassed by Mr. Kleinpeter and Mr. O'Brien. One such complaint was made after Mr. O'Brien made sexual advances toward a minor, male friend of Mr. Ely's. In July 2005, a complaint was made to the police, and Mr. O'Brien was charged with contributing to the delinquency of a minor for allegedly selling alcohol to that minor. A restraining order was also placed against Mr. O'Brien, prohibiting him from going near the minor. On information and belief, the restraining order also prohibited Mr. O'Brien from going near Mr. Ely's apartment. Mr. Ely also reported the incident involving his minor friend to Mr. Kleinpeter, who told Mr. Ely that he should not get the police involved because "[w]hat happens in the apartments, stays in the apartments."

12. In August 2005, Mr. Kleinpeter told Mr. Ely that he would evict him and Mr. Pugh if the restraining order against Mr. O'Brien was not dropped.

13. In August or September 2005, Mr. Ely entered his apartment to find Mr. Kleinpeter in his (Mr. Ely's) bedroom on his knees going through Mr. Ely's personal belonging and drawers. Mr. Kleinpeter had a pair of Mr. Ely's underwear and pants in his hands and was putting them up to his face. Mr. Kleinpeter threatened that he would evict Mr. Ely and Mr. Pugh if he reported him to the authorities.
14. On or about August 25, 2005, Mr. Kleinpeter issued an eviction notice to Mr. Ely and Mr. Pugh with thirty (30) days to vacate the premises. Mr. Kleinpeter failed to provide a written explanation for the eviction in the section of the notice entitled "Cause of Breach."

15. On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast. Because of the hurricane, there was an interruption in mail service to Long Beach, and Mr. Ely did not receive his Social Security disability check in time to pay September's rent by the third of the month. Mr. Pugh also was temporarily unemployed due to the hurricane.

16. On September 8, 2005, the Harrison County Incident Command Plans Section (HCICPS) issued a memorandum to all owners and rental agents notifying them that unless a unit was determined to be unsafe for occupancy, it was ordered "unlawful to dispossess a tenant in rightful possession of his/her rental home . . ." and any such action without cause or due process of law during the emergency period would be scrutinized for legal sanctions.

17. Mr. Ely gave Mr. Kleinpeter a copy of the HCICPS memorandum. Mr. Kleinpeter continued eviction proceedings against Mr. Ely and Mr. Pugh after receiving the memorandum.

18. On September 16, 2005, Mr. Kleinpeter signed and issued another eviction notice ordering Mr. Ely and Mr. Pugh to vacate within three (3) days, or pay rent due in arrears in the amount of $500.

19. On or about September 16, 2005, Mr. Ely went to Mr. Kleinpeter's apartment and offered to pay the rent, so long as he and Mr. Pugh could remain in the unit. Mr. Kleinpeter told Mr. Ely, however, that he would not stop the eviction proceedings.

20. On September 26, 2005, the first day that courts were open after Hurricane Katrina, Mr. Ely and Mr. Pugh were ordered to appear in Harrison County Justice Court on October 10, 2005 to respond to Mr. Kleinpeter's eviction notice. On October 10, 2005, at the eviction hearing, Mr. Ely and Mr. Pugh testified that they wanted to remain in their apartment at the subject property and wanted to pay the rent. The court dismissed the eviction case due to Mr. Kleinpeter's failure to include a reason for the alleged breach on the original eviction notice.

21. On the same day, Mr. Kleinpeter issued a third eviction notice to Mr. Ely and Mr. Pugh. In this notice, Mr. Kleinpeter alleged the cause of breach was Mr. Ely's and Mr. Pugh's alleged failure to keep their apartment in a clean, orderly, safe or sanitary condition, keeping an unregistered and improperly licensed vehicle in the lot and failing to pay rent.
22. On information and belief, any disarray Mr. Kleinpeter allegedly found in Mr. Ely's and Mr. Pugh's apartment was due to the effects of the hurricane. Moreover, on information and belief, Mr. Kleinpeter never had sought to evict a tenant for uncleanliness prior to this, despite the fact that there has previously been at least one such tenant who did not keep a clean or tidy apartment. In addition, there was nothing in Mr. Ely's and Mr. Pugh's lease that allowed for eviction for failure to maintain a clean unit.

23. On or about October 1, 2005, as a result of the continued harassment and attempts to evict them, and after Mr. Kleinpeter had refused to accept rent so that they could stay in the apartment, Mr. Pugh and Mr. Ely moved out of the apartment.

24. Mr. Ely moved into a Federal Emergency Management Agency (FEMA) cruise ship and subsequently into two separate trailer parks. Mr. Pugh moved into his parents' house.

25. On or about March 8, 2006, Mr. Ely filed a verified complaint against the defendants with the United States Department of Housing and Urban Development ("HUD"). On or about September 10, 2007, the complaint was amended to add Mr. Pugh as an aggrieved person. The complaint alleged that Mr. Kleinpeter and Mr. O'Brien violated the Fair Housing Act by, among other things, making discriminatory statements with respect to the rental of a dwelling because of sex in violation of 42 U.S.C. § 3604(c) and by coercing, intimidating, threatening and interfering with the complainants' enjoyment of the dwelling, in violation of 42 U.S.C. § 3617.

26. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary conducted an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in that investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that a discriminatory housing practice had occurred. Therefore, on June 2, 2008, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act.

27. On or about June 18, 2008, Mr. Kleinpeter elected to have the charge decided in a civil action pursuant to 42 U.S.C. § 3612(a).

28. On July 7, 2008, HUD's Office of the Administrative Law Judges issued a Notice of Election and Judicial Determination finding that Mr. Kleinpeter had made a timely election to have the claims asserted in the charge decided in a civil action.

29. On or about July 9, 2008, HUD authorized the Attorney General to commence a civil action on behalf of the complainants pursuant to 42 U.S.C. § 3612(b).
30. The Defendants, Mr. Kleinpeter and Mr. O'Brien, through the actions described in Paragraphs 8 -29 above, have:

a. Made statements with respect to the rental of a dwelling indicating a preference, limitation or discrimination based on sex, or an intention to make such a preference, limitation or discrimination based on sex, in violation of 42 U.S.C. § 3604(c).

b. Coerced, intimidated, threatened or interfered with a 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 rights granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

31. Mr. Ely and Mr. Pugh are aggrieved persons as defined in 42 U.S.C. tj 3602(i), and they suffered injury as a result of Defendants' conduct described herein.

32. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of Mr. Ely's and Mr. Pugh's federally protected rights.

PRAYER FOR RELIEF WHEREFORE, the United States prays for relief as follows:

1. A declaration that the conduct of the Defendants, as alleged herein, violates the Fair Housing Act, as amended, 42 U.S.C. §5 3601-3619;

2. An injunction against the Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of sex in violation of the Fair Housing Act, as amended, 42 U.S.C. §5 3601-3619; and

3. An award of monetary damages to Mr. Ely and Mr. Pugh, pursuant to 42 U.S.C. §5 3612(0)(3) and 3613(c)(1).

The United States further prays for such additional relief as the interests of justice may require.

Respectfully Submitted,
DUNN LAMPTON United States Attorney
By:  
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DC Bar No. 479587

Dated July 18, 2008.
CIVIL COVER SHEET

The IS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. That form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on the reverse of this form.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

HINDS

(Except in U.S. Plaintiff Cases)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Angela D. Givens, USA, 188 E. Capitol St., 5th Fl., Jackson, MS 39201

II. BASIS OF JURISDICTION

(Place as "X" in Box Only)

1 U.S. Government Plaintiff

3 Federal Question

(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity

(indicate citizenship of parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

State of Arizona

FTF DEF

Citizens of This State 1 1 Incorporated or Principal Place of Business in This State 4 4

Citizens of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5

Citizens of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT

(Place as "X" in Box Only)

110 Insurance

100 Health, Fire, or Life

120 Marine

130对手 Act

140 Nonsogiitable Instrument

150 Recovery of Overpayment & Enforcement of Judgment

151 Medicare Act

152 Recovery of Overpayment & Enforcement of Judgment of Veterans' Benefits

160 Stockholders' Suits

190 Other Contract

180 Personal Injury

185 Personal Injury

195 Contract Product Liability

196 Franchise

V. ORIGIN

(Place as "X" in Box Only)

1 Original Proceeding

2 Remanded from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from

MAGistrate Judge

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION

DEMAND

CHECK YES only if demanded in complaint.

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION

DEMAND

CHECK YES only if demanded in complaint.

VIII. RELATED CASE(S)

IF ANY

SIGNATURE OF ATTORNEY OF RECORD

DATE

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