

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, on behalf of NAME REDACTED , and his minor children)	
)	
)	HUDOHA No. _____
)	
Charging Party)	
)	FHEO No. 02-20-4830-8
v.)	
)	
Burlington Preservation Associates, LLC)	
Arbor Management, Inc, LLC,)	
Leon N. Weiner & Associates, Inc.,)	
Respondents)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant **NAME REDACTED**, a Black, Hispanic father of three children, alleges that Respondents Burlington Preservation Associates, LLC (“Burlington”), Arbor Management, Inc. LLC (“Arbor”), and Leon N. Weiner & Associates, Inc. (“LNWA”), discriminated against him because of his race, color, national origin, and familial status in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601–3619. Specifically, Mr. **NAME REDACTED** alleges Respondents discriminated against him by aggressively seeking to evict him days after he was incarcerated in violation of subsections 804(a) and 804(b) of the Act. Mr. **NAME REDACTED** also alleges that Respondents violated section 818 of the Act by failing to recertify him for rental assistance and moving to evict him in retaliation for pursuing a fair housing complaint against them.

On January 21, 2020, Mr. **NAME REDACTED** timely filed a Complaint with the U.S. Department of Housing and Urban Development (“HUD” or the “Department”) alleging that Burlington and Arbor discriminated against him based on national origin in violation of the Act. On March 23, 2022, Mr. **NAME REDACTED** amended the Complaint to include race, color, sex, and familial status as bases for the discrimination. On May 8, 2024, Mr. **NAME REDACTED** amended the Complaint a second time to allege additional acts of discrimination, to add LNWA as a respondent, and to remove sex as a basis of discrimination.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination 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 that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405,

who has delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

By a Determination of Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Director of the Office of Fair Housing and Equal Opportunity for Region II has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and Determination of Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to make a dwelling unavailable because of race, color, familial status, or national origin, including by "[e]victing tenants because of their race, color ... familial status, or national origin." 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(b)(5).
2. It is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling ... because of race, color ... familial status, or national origin." 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2), 100.65(a).
3. It is unlawful "to coerce, intimidate, threaten, or interfere with any person ... on account of his having exercised any right granted or protected" by the substantive provisions of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b). Such prohibited conduct includes "[r]etaliating against any person because that person has made a complaint ... under the Fair Housing Act." 24 C.F.R. § 100.400(c)(5).

B. Parties and Subject Property

4. **NAME REDACTED** is a Black, Hispanic father of three minor children. He and his children are aggrieved persons, as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
5. Mr. **NAME REDACTED** rents a three-bedroom apartment located at **ADDRESS REDACTED**, Wrightstown, NJ **ADDRESS REDACTED** (the "Subject Property"). The Subject Property is in a development called **NAME REDACTED** that is subsidized by the United States Department of Agriculture ("USDA"). The Subject Property is a dwelling within the meaning of the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
6. Burlington owns the Subject Property. Arbor is the management company for all of LNWA's properties, including the Subject Property.

7. LNWA is the parent company of Burlington and Arbor. LNWA and its subsidiaries ... own approximately seventy-one properties across several eastern states, all of which are subsidized by HUD, the USDA, or Low-Income Housing Tax Credits.

C. Factual Allegations

8. Arbor uses the same standard lease for all of its properties, with minor variations. As of 2019, the standard lease incorporated the two provisions related to incarceration. The first provision stated “[u]pon notification of ... incarceration of a sole household member or in the case of abandonment, all locks providing entry to the individual apartment will be changed. The owner/agent reserves the right to initiate eviction, as required, in order to take possession of the unit.” The second provision stated “[a]n extended absence for longer than 60 continuous days, or for longer than 180 continuous days for medical reasons, will be considered abandonment and grounds for the termination of the lease. Extenuating circumstances beyond this period shall be subject to the written approval of management.”

9. On August 19, 2019, Mr. **NAME REDACTED** was incarcerated for allegedly violating a civil protection order. Mr. **NAME REDACTED**'s incarceration lasted a total of sixty-four days, and his rent was paid on time for both months of his incarceration.

10. Within a few days of Mr. **NAME REDACTED**'s incarceration, Arbor changed the locks to his unit and refused access to his mother and niece, even though his mother had a key and written authorization to enter.

11. Four days after Mr. **NAME REDACTED**'s incarceration, Respondents began a formal eviction process against him by issuing a Notice to Cease, followed two weeks later by a Notice to Quit and Demand for Possession. Mr. **NAME REDACTED** and his attorney informed Respondents that his incarceration would be brief. However, on October 17, 2019, Burlington filed an eviction action against Mr. **NAME REDACTED** in court.

12. After Mr. **NAME REDACTED** was released, Arbor employees discussed by email looking for other grounds to evict him. On October 29, 2019, however, Respondents dismissed the eviction action.

13. On November 27, 2019, a White, non-Hispanic man without children was incarcerated based on charges that he sexually assaulted a child. This man was a tenant at another LNWA property in New Jersey managed by Arbor. He subsequently was found guilty of those charges after a trial and remains incarcerated nearly five years later.

14. Arbor waited over five months to change the locks of this tenant's unit, and they did so only after reaching out to him to negotiate his voluntary relinquishment of the apartment. Arbor also waited over sixty days to issue any sort of notice regarding his absence, followed by several more weeks before taking further action. In the interim, Arbor allowed a relative of his to access his unit, despite having no written authorization to do so.

15. Respondents' lack a non-discriminatory justification for the more aggressive approach they took to enforcing their incarceration policies against Mr. **NAME REDACTED** as compared to the other tenant.

16. Until January 2024, Mr. **NAME REDACTED** had never encountered problems recertifying his eligibility to reside in USDA-assisted housing.

17. Respondents sued HUD in Federal court in 2022 seeking an end to the Department's investigation. Under pressure from the court, Respondents produced some materials they had previously withheld and on April 21, 2023, agreed to dismiss their case without prejudice. In late 2023, the Department conducted its last witness interview and notified Respondents that it was wrapping up its evidence gathering and moving towards a determination.

18. When Mr. **NAME REDACTED** attempted to recertify his income and household information in January 2024 – his first recertification following Respondents' failed lawsuit and the conclusion of the Department's investigation – he encountered several difficulties. Arbor demanded documents that had never before been required, inquired about sources of money not considered income under the USDA program rules, and repeatedly claimed documents were missing that Mr. **NAME REDACTED** had provided many times.

19. On February 20, 2024, Respondents began sending Mr. **NAME REDACTED** notices claiming that he had failed to complete his annual recertification and would be evicted on that basis and for owing rent. Mr. **NAME REDACTED**'s rent should have been \$0, as it had been the prior year, had Arbor processed his recertification. On June 17, 2024, Burlington filed a complaint for eviction against Mr. **NAME REDACTED** in court, which on August 12, 2024, was dismissed by consent with leave to refile after forty-five days.

20. Respondents lack a non-retaliatory justification for rejecting Mr. **NAME REDACTED**'s recertification and seeking to evict him.

21. As a result of Respondents' discriminatory conduct, Mr. **NAME REDACTED** and his children suffered actual damages, including emotional distress.

D. Legal Allegations

22. As described above, Respondents made a dwelling unavailable because of race, color, familial status, and national origin, in violation of subsection 804(a) of the Act. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(3), 100.60(b)(5).

23. As described above, Respondents discriminated in the terms, conditions, or privileges of the rental of a dwelling because of race, color, familial status, and national origin, in violation of subsection 804(b) of the Act. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2), 100.65(a).

24. As described above, Respondents retaliated against Complainant and his minor children, thereby interfering with Complainant's exercise of a right protected by the Act, in violation of section 818 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b), (c)(5).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), (b), and 3617, and requests that an order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate the Act, 42 U.S.C. §§ 3604(a), (b), and 3617;
2. Enjoins Respondents, their agents, employees, and successors, and all persons in active concert or participation with them from discriminating against any person because of race, color, familial status or national origin in any aspect of the sale or rental of a dwelling;
3. Enjoins Respondents, their agents, employees, and successors, and all persons in active concert or participation with them, from retaliating against any person because they reported a discriminatory housing practice to the Department or another authority;
4. Mandates Respondents, their agents, employees, successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
5. Awards such damages as will fully compensate Complainant and his minor children for any and all damages caused by Respondents' discriminatory conduct;
6. Assesses a civil penalty against each Respondent for each separate and distinct discriminatory housing practice that Respondents are found to have committed, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
7. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 27th day of August 2024.

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