

**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 _____,
her minor son, and _____,

Charging Party,

v.

Southgate Apartment Company, LLP,
A & G Management Company, Inc.,
Kenya McKenzie-Hutchinson, and
Linda Burlew,

Respondents

HUDOHA No. _____

FHEO No. 03-13-0007-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 5, 2012, Complainant _____ filed a complaint with the U.S. Department of Housing and Urban Development (“HUD”) alleging that Southgate Apartment Company, LLP and A & G Management Company, Inc. discriminated based on sex in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601–19. Specifically, Complainant _____ alleged, *inter alia*, that Respondents violated subsections 804(a) and 804(b) of the Act by issuing her a thirty-day notice to vacate, refusing to renew her lease, and initiating an eviction action against her after she and her _____ son were physically attacked and injured during an incident of domestic violence.

Complainant _____ amended her complaint on June 5, 2013 to, *inter alia*, add A & G Management Company employees Kenya McKenzie-Hutchinson and Linda Burlew as respondents. Complainant _____ signed the complaint on May 1, 2014.

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. See 42 U.S.C. §§ 3610(g)(1)–(2). The Secretary has delegated that authority to the General Counsel, see 24 C.F.R. §§ 103.400 and 103.405, who has redelegated 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).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region III 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 of Discrimination. See 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 the Determination of Reasonable Cause, Respondents Southgate Apartment Company, LLP, A & G Management Company, Inc., Kenya McKenzie-Hutchinson, and Linda Burlew are hereby charged with violating the Act as follows:

A. Legal Authority

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 sex. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(3), 100.60(a) & (b)(5), 100.70(b).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2), 100.65(a), 100.70(b).

B. Parties and Subject Property

3. Complainant [REDACTED] is the mother of two sons. At all times relevant to this charge, she resided at Southgate Apartments and Townhomes in Glenn Burnie, Maryland ("Southgate Apartments" or "the subject property"). Complainant [REDACTED] and her sons occupied [REDACTED] the subject property pursuant to a written lease agreement. Throughout her tenancy, Complainant [REDACTED] participated in the Section 8 Housing Choice Voucher program, through which she received rental assistance payments from the Housing Commission of Anne Arundel County ("HCAAC"). She is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
4. Complainant [REDACTED] is the adult son of Complainant [REDACTED] and is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20. Complainant [REDACTED] was eighteen years old at the time of the events giving rise to this action.
5. Complainant [REDACTED] younger son is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20. He was four years old at the time of the events giving rise to this action.

6. Southgate Apartments is a 515-unit residential complex located in Glenn Burnie, Maryland. The residential units in Southgate Apartments are dwellings, as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.
7. Respondent Southgate Apartment Company, LLP is the owner of the subject property. Its principal place of business is located at 20 South Charles Street, Suite 300, Baltimore, Maryland 21201.
8. Respondent A & G Management Company, Inc. manages the subject property on behalf of Respondent Southgate Apartment Company. Respondent A & G Management Company's principal place of business is also located at 20 South Charles Street, Suite 300, Baltimore, Maryland 21201.
9. Since March 2011, Respondent Kenya McKenzie-Hutchinson has been employed by Respondent A & G Management Company as the resident property manager for the subject property. She has held that position since March 2011. Her duties include management of the day-to-day operations of Southgate Apartments, including entering into leases and issuing notices to vacate.
10. Since 2006, Respondent Linda Burlew has been employed by Respondent A & G Management Company as regional property manager. Her duties include management oversight of seven properties managed by Respondent A & G Management Company, including Southgate Apartments.

C. Factual Allegations

11. Complainant [REDACTED] moved to Southgate Apartments with her two sons in 2007.
12. On the evening of [REDACTED], 2012, Complainants [REDACTED] and [REDACTED] were physically attacked inside their apartment by Complainant [REDACTED] then boyfriend [REDACTED]. During this incident of domestic violence, Mr. [REDACTED] stabbed both Complainant [REDACTED] and Complainant [REDACTED].
13. Complainant [REDACTED] briefly fled the apartment and Mr. [REDACTED] chased him. Complainant [REDACTED] then returned to the apartment after escaping from Mr. [REDACTED].
14. Sometime shortly after Mr. [REDACTED] stabbed Complainants and prior to police arriving, a gun was fired on the subject property in the vicinity of Complainants' apartment building.
15. [REDACTED], officers from the Anne Arundel County Police Department reported to the subject property in response to a report of a stabbing and shots being fired.
16. Upon their arrival at the subject property, the officers arrested Mr. [REDACTED] for assaulting Complainants. Mr. [REDACTED] was later convicted of reckless endangerment by the Maryland

Circuit Court for Anne Arundel County. The court specifically found that [REDACTED] offense was a domestic-related crime.

17. The police officers also arrested an individual named [REDACTED] for discharging a firearm. Mr. [REDACTED] later pled guilty to possession of a regulated firearm being under the age of twenty-one (21). Mr. [REDACTED] was not a guest of either Complainant.
18. Complainants [REDACTED] and [REDACTED] were both taken to the hospital for treatment. Complainant [REDACTED] injuries were severe and required emergency surgery. She remained in the hospital for several days before she was able to return home.
19. On or about May 28, 2012, Respondent Burlew directed Respondent Hutchinson to issue Complainant [REDACTED] a Thirty-Day Notice to Quit and Vacate.
20. On May 31, 2012, Complainant [REDACTED] received a Thirty-Day (30) Notice to Quit and Vacate ("Notice to Vacate" or "Notice") her dwelling. The Notice, which was signed by Respondent Hutchinson, stated:

Please be advised that it was brought to our attention that on Saturday, [REDACTED] [REDACTED] the Eastern District [police] officers responded to your home in the manners of [sic] domestic issues and weapons being discharged. After careful consideration and review of your file, Management has decided to issue you a thirty-day notice to vacate the premises.

21. The Notice also cited Sections 1, 16, 16B and 16L of Complainant [REDACTED] lease.
22. Section 1 of Complainants' lease stated: "The resident, resident's family, agents, employees, guests or invitees shall not use or permit any illegal pursuits or purposes in or upon the premises, common areas, or any property a part of the apartment community."
23. Section 16 of Complainants' lease provided: "Agent shall have the right to make such reasonable rules and regulations as in its judgment may from time to time be necessary or desirable for the safety of its property and the care and cleanliness thereof, for the comfort of residents therein and for the preservation of good order; and resident agrees to comply and to procure the compliance of his family, guests, servants or employees with such rules and regulations."
24. Section 16B of Complainants' lease stated: "Residents shall be required to supervise their family members, guests, occupants, servants or employees at all times and in such a manner that their conduct will not disturb others."
25. Section 16L of Complainants' lease provided: "Noise or conduct in the premises, which disturbs or annoys other Residents, shall not be permitted at any time. Offensive behavior, foul language, threats or violence shall not be tolerated."
26. The Notice to Vacate directed Complainant [REDACTED] to vacate her unit by June 30, 2012.

27. Complainants did not vacate their unit by June 30, 2012.
28. On or before July 5, 2012, a maintenance man employed by Respondent A & G Management Company knocked on Complainants' door while Complainant [REDACTED] was at work. When Complainant [REDACTED] answered the door, the maintenance man told him that Complainants were supposed to have vacated the unit by the first of the month.
29. On or about July 5, 2012, Complainant [REDACTED] received a letter, signed by Respondent Hutchinson, which stated: "Our records indicate that you were given a notice to vacate our premises and return keys by 6/30/2012. To date the keys have not been received If we do not receive keys by 7/9/2012, your file will be turned over to our attorneys."
30. After receiving the July 5th letter, Complainant [REDACTED] contacted the Maryland Legal Aid Bureau for assistance. Legal Aid attorney Kathleen Hughes ("Complainant [REDACTED] attorney") agreed to provide legal representation for Complainant [REDACTED].
31. On July 10, 2012, Complainant [REDACTED] attorney sent a letter to Respondents' counsel in which she explained that "both Maryland and Federal Law provide housing protections for victims of domestic violence." The letter further explained that "Ms. [REDACTED] is a Housing Choice Voucher Holder" and that "her lease contains a HUD required tenancy addendum which incorporates the federal law." This addendum was part of Complainant [REDACTED] lease. The letter also stated that Complainant [REDACTED] "did not intend to move from her unit" at that time and requested that Respondents reconsider their decision to terminate Complainant [REDACTED] lease.
32. Along with the July 10th letter, Complainant [REDACTED] attorney sent Respondents' counsel a copy of the Tenancy Addendum that is required for tenants who receive rental assistance through the Section 8 Housing Choice Voucher Program.
33. Section 8.e. of the Tenancy Addendum is titled "Protections for Victims of Abuse."
34. Subsection 8.e.(1) of the Tenancy Addendum provides: "An incident or incidents of actual or threatened domestic violence ... will not be construed as serious or repeated violations of the lease or other 'good cause' for termination of the assistance, tenancy, or occupancy rights of such a victim." See also 24 C.F.R. § 5.2005(c)(1).
35. Subsection 8.e.(2) of the Tenancy Addendum states:

Criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of domestic violence.

See also 24 C.F.R. § 5.2005(c)(2).

36. Subsection 8.e.(5) of the Tenancy Addendum states:

Nothing in this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, [sic] to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

See also 24 C.F.R. § 5.2005(d)(2).

37. HUD's Housing Choice Voucher program regulations define "actual and imminent threat" as "a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm." 24 C.F.R. § 5.2004(e).
38. HUD's Housing Choice Voucher program regulations further specify that even where an owner can demonstrate an "actual and imminent threat" to other tenants, "eviction or termination of assistance [of a victim of domestic violence] ... should be utilized ... only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to ... barring the perpetrator from the property." See 24 C.F.R. § 5.2005(d)(3).
39. On July 13, 2012, Complainant [REDACTED] received a letter signed by Respondent Hutchinson, which stated: "After careful consideration and review of your file, Management has decided not to offer a renewal of your lease which expires on 11/30/2012. Therefore, you must vacate the premises and turn in your keys at the expiration of your current lease term."
40. On [REDACTED] Complainant [REDACTED] obtained a protective order against Mr. [REDACTED] from the District Court of Maryland for Anne Arundel County. The District Court ordered that Mr. [REDACTED] shall not, *inter alia*, abuse, threaten, harass, or contact (by any means) Complainant [REDACTED].
41. On or about August 27, 2012, Complainant [REDACTED] submitted a "Tenant Notice of Intent to Move" form to HCAAC. The notice stated that Complainant [REDACTED] family intended to vacate their unit on November 30, 2012. The notice also stated that "a minimum of sixty (60) days written notice is required to be eligible to move." HCAAC requires submission of the form and payment of any outstanding fees in order for a Section 8 voucher holder to use that voucher at a new unit. Complainant [REDACTED] did not want to vacate her apartment, but submitted the notice to HCAAC in order to ensure that she would be able to transfer her Section 8 voucher to another landlord on December 1, 2012, following the non-renewal of her lease at Southgate Apartments.
42. On [REDACTED], Respondent A & G Management Company filed a breach of lease action against Complainant [REDACTED] in the District Court of Maryland for Anne Arundel County. In the complaint, Respondent A & G Management Company cited the [REDACTED]

Notice to Vacate and violations of section 1 and 16 of Complainant [REDACTED] lease as the basis for the breach of lease action.

43. On or about [REDACTED] Complainant [REDACTED] was served with the summons and complaint in Respondents' breach of lease action. The summons notified Complainant [REDACTED] that a hearing was scheduled for [REDACTED]. The hearing was later rescheduled for [REDACTED].
44. On [REDACTED] after Complainant [REDACTED] filed a fair housing complaint with HUD, Respondents' counsel withdrew the breach of lease action, and the District Court of Maryland for Anne Arundel County dismissed the action.
45. A record of Respondents' dismissed breach of lease action against Complainant [REDACTED] remains publicly available through the Maryland Judiciary Case Search, a website that provides public access to the case records of the Maryland Judiciary.
46. Complainant [REDACTED] and her two sons vacated their unit at Southgate Apartments on December 4, 2012.
47. In issuing Complainant [REDACTED] a notice to vacate, refusing to renew her lease, and initiating an eviction action against her, Respondents treated Complainant [REDACTED] less favorably than they treated a similarly situated male tenant.
48. Tenant A, a male tenant, resided at Southgate Apartments from approximately 1997 until October 25, 2010. On June 22, 2010, Tenant A's son was arrested for robbing a food delivery driver at gunpoint and stealing the driver's car as the driver was attempting to deliver an order at the subject property. Police records indicate that Tenant A's son lived with Tenant A at the subject property at the time of the son's June 22, 2010 arrest. The incident was documented by Respondent A & G Management Company in Tenant A's tenant file.
49. Respondents banned Tenant A's son from the subject property following the robbery. However, Respondents did not issue Tenant A a notice to vacate or otherwise move to evict him or his family based on his son's conduct. Tenant A agreed to cooperate with Respondents' ban of his son and Respondents allowed Tenant A to remain in his unit. Tenant A continued to reside at Southgate Apartments until October 25, 2010, at which time he was evicted for non-payment of rent.

D. Legal Allegations

50. As described above, by terminating Complainant [REDACTED] tenancy, Respondents made housing unavailable to Complainants and Complainant [REDACTED] minor son because of sex in violation of subsection 804(a) of the Act. 42 U.S.C. § 3604(a).
51. As described above, by terminating Complainant [REDACTED] tenancy, Respondents imposed different terms or conditions on Complainants and Complainant [REDACTED] minor son because

of sex, in violation of subsection 804(b) of the Act. 42 U.S.C. § 3604(b).

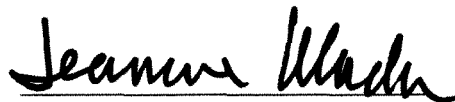
52. As a result of Respondents' discriminatory conduct, Complainant [REDACTED], Complainant [REDACTED], and Complainant [REDACTED] minor son suffered actual damages, including emotional distress.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and 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) and (b), and requests that an Order be issued that:

1. Declares that Respondents' discriminatory housing practices, as set forth above, violate subsections 804(a) and (b) of the Act, 42 U.S.C. § 3604(a) and (b) and its implementing regulations;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating against any person because of sex in any aspect of the rental of a dwelling;
3. Awards such damages as will fully compensate Complainants and Complainant Watkins' minor son for any and all damages caused by Respondents' discriminatory conduct;
4. Assesses a civil penalty of \$16,000 against each Respondent for violating the Act, pursuant to 42 U.S.C. § 3612 and 24 C.F.R. § 180.671.
5. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

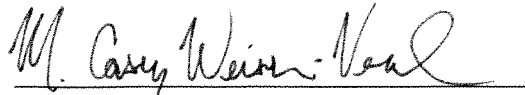
Respectfully submitted on this 30th day of October 2014.



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