

MEMORANDUM

**TO:** Paul Valenti, Human Rights/EEO Officer  
**FROM:** Michelle Wallace, Senior Assistant County Attorney *MW*  
**RE:** Russo, Brian & Berthold, Rachael v. Guy, Thomas, et al  
HUD No. 04-14-0917-8  
**DATE:** January 6, 2016

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I have been asked to review the Final Investigative Report and supporting documentation contained in the above-mentioned fair housing complaint file, and provide an opinion as to whether there is a legally sufficient basis for a finding of reasonable cause to believe that the Respondent engaged in housing discrimination on the basis of handicap/disability. Briefly, it is my legal opinion that there is a legally sufficient basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3604(f)(1).

SUMMARY OF FACTS

On July 24, 2014, Complainants, Brian Russo and Rachael Berthold, filed a charge of unlawful housing discrimination with the U.S. Department of Housing and Urban Development (HUD). In their complaint, they alleged that they were not permitted to rent a townhome owned by the Respondent, Thomas Guy, et al., in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3604(f)(1) (*Act*). In accordance with the work sharing agreement between HUD and the Pinellas County Office of Human Rights (PCOHR), Complainants' complaint was referred to the PCOHR for further handling and investigation.

Complainant, Berthold identified herself as a person with a non-visible disability.

In their complaint, Complainants Brian Russo and Rachael Berthold state that they attempted to rent a townhome located at 3239 Meta Court, in Largo, FL. The subject property is owned by Respondent Thomas Guy (Respondent Guy) and managed by Respondent Empire Realty of Pinellas, Inc. (Respondent Empire Realty), by and through Respondent Judy Fisch, Realtor (Respondent Fisch).

Complainants stated that on June 8, 2014 they viewed the subject property with Respondent Fisch and agreed to submit an application to rent within the next few days. On June 9, 2014 Complainants informed Respondent Fisch they were interested in renting the subject property and would be submitting their applications later that day. Complainants stated that they submitted their applications to Respondent Fisch via e-mail. On June 11, 2014 Complainants attempted to contact Respondent Fisch to confirm receipt of their application. Complainant Berthold stated that

she was informed that her application was received and would be reviewed within twenty four hours. On June 12, 2014, Complainants again contacted Respondent Fisch to check the status of their application. Upon contacting Respondent Fisch via telephone, Complainant Berthold was informed that both she and Complainant Russo were denied because Respondent Fisch did not think it would work out. Complainants stated that they requested a reason for their denial, but one was not provided. Complainant Berthold stated she believes the denial was based on her disability because she listed under the employment section on her application that she was permanently disabled and received income assistance. Complainants stated that they did not experience any problems with Respondent Fisch until she reviewed their rental applications. Additionally, Complainants stated they were more than qualified to rent the subject property. Complainants believe Respondent Fisch denied them a housing opportunity because of Complainant Berthold's disability in violation of the *Act*.

Respondent Guy stated the following:

That neither he nor his property manager, Respondent Fisch ever had any intention of discriminating against Complainants. He maintained that no such discrimination occurred.

He owns several properties in Pinellas County and previously handled them himself.

He retired about two years ago and engaged Respondent Fisch as his property manager. He has known her personally for several years and has worked with her several times on his properties and on her own properties. In his opinion, she is an honorable person who would not engage in discrimination of any kind. He has observed that her behavior has always been quite professional, and that she is well aware of the laws and rules of her profession.

With regard to the specific complaint, they did have several qualified applicants, and Respondent Fisch worked with them to find the best candidate. It is very important to note that when a property is vacant, timing is important; typically, the first qualified applicant to get all the paperwork in place and pay the required fees will be selected. In this particular case, the tenant selected had spoken to Respondent Fisch previously and had expressed an interest in renting and possibly buying the property. The speed of response plays a big part in this process. Complainant Berthold was not rejected because of her disability, someone else was selected first. It really is that simple. A very important part of the selection process hinged on the prospective tenant's interest in purchasing the property later. This was important to him as he is retired and wishes to begin to dispose of his properties soon.

Respondent Empire Realty stated the following:

In regard to the complaint filed against Respondent Fisch on this matter, it had been in contact with Respondent Fisch as the application for the rental was progressing. It reviewed her reply and found it to be accurate in the information provided.

It believes that Respondent Fisch acted strictly in a professional manner, adhering to all guidelines applicable to screening a potential tenant. It feels her decision was based on the information that was or was not provided to her and was in the best interest of her client.

Respondent Fisch has been in its employment for several years. It finds her professionalism and attention to detail to be of the highest level.

Empire Realty of Pinellas has been in business for 30 years and have never been involved any such issue. It feels the complaint is unfounded and will be determined to be so.

Respondent Realtor Fisch stated the following:

She showed the rental property located at 3239 Meta CT Largo FL to Complainants on June 8, 2014.

While showing them the townhome, she was surprised that Complainant Berthold mentioned that she had a disability.

Prior to leaving the townhome, she gave Complainant Berthold a copy of the application form that she uses prior to renting a property. She told her where she could obtain a free copy of their credit reports as well as the scores. She told them the application fee is \$35 per person as long as they provide her a copy of their credit report and \$50 if they do not provide her a copy. She stated they told her they would be providing all the information by the end of the day as they were interested in renting the townhome.

Complainant Berthold asked if maintenance was covered 24/7. She was surprised by the question and did say, if there is any emergency yes, but not under normal circumstances.

Complainant Berthold called on Monday, June 9, 2014 and requested a lease. She told her she would send her a sample copy as she does not prepare a lease until applications are approved. She sent her the copy the same day.

She and Complainant Berthold spoke a few times, but she did not receive an application until Wednesday, June 11, 2014 in the evening via email. It was one application and it was just for Complainant Berthold. It was not complete and there was no copy of a credit report. Complainant Berthold mentioned that she had a problem with identity theft and the bureau would have to email it to her. There was neither an application from Complainant Russo nor a copy of his credit report.

At this point she did not receive the application fees, but attempted, in good faith, to review the application and expedite the process. She emailed Complainant Berthold back that evening and said they should talk the following morning and asked her to call at her convenience.

She spoke with Complainant Berthold on Thursday, June 12, 2014 and told her that the application was very difficult to read and was not complete. Her application is a 3 page document and Complainant Berthold had sent it back as a photograph; which was very dark, came sideways and unable to be printed.

She only received the first two pages. Page three was missing and that is the page where the potential tenant signs the application and states that everything they wrote is not false or misleading information, otherwise the application can be rejected. Without this signature it can be difficult to

verify their information because technically she does not have permission to call and verify their information. She had a difficult time attempting to read the information and saw that there was information missing. The credit report was going to take some time to get as she was told it had to be mailed.

She did not receive an application from Complainant Russo nor a copy of his credit report. At that point Complainant Berthold mentioned that she had attempted to send her a copy of the application prior to June 11, 2014 but it was sent back to her as undeliverable.

She told her that she would not rent to her as she did not receive the completed applications and did not receive any credit report, nor the application fee and she didn't think it would work.

Complainant Berthold requested that she send her something in writing explaining why she would not rent not to her. She sent her an email as requested. She did not say that Complainants were qualified as it was stated. She did not have any application completed to make such a statement.

At no point in time did she think of the word disability. She was totally surprised by this complaint as she tried to work with this couple. In the past she had converted a couple of her properties to Section 8 to help tenants to have a nice place to live. This was a business decision of what she thought would be best for the owner of the property at Meta Court, Largo. She certainly would not discriminate and refuse to rent to Complainants for the reason stated in the complaint.

#### APPLICABLE LAW

The alleged activities of the Respondent may be in violation of the *FFHA*, 42 U.S.C. § 3604(f)(1), which reads as follows:

*“U.S.C. § 3604 discrimination in sale or rental of house and other prohibited practices.*

*As made applicable §3603 of this title and except as exempted by § 3603(b) and § 3607 of this title, it shall be unlawful –*

*(f)(1) to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –*

*(A) that buyer or renter,*

*(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or*

*(C) any person associated with that buyer or renter.”*

#### ANALYSIS

In order to successfully prove a violation of the above, a complainant must prove:

1. Membership in protected category;
2. Respondent knew of the complainant's membership;

3. Complainant, disabled, was denied the rental;
4. Others, not disabled, were rented to, or the unit was left available on the same terms offered to the Complainant;

Regarding the prima facie elements of the case, Complainant Berthold states she is permanently disabled, but did not wish to specify her actual disability to the investigator.<sup>1</sup> On her application to the Respondents, it is undisputed that Complainant Berthold indicated she was permanently disabled. Additionally, Respondent Fisch, who met Complainants in person at the property, asserted that Complainant Berthold disclosed she was disabled in a generic fashion; although, Complainant Berthold disputes this. Accordingly, the first and second elements have been met.

Since Complainants submitted an application but were told it would not be processed, they were effectively denied the ability to rent the townhome. The townhome remained open for rental from June 12, 2014 (the date of Complainants' application) to July 2, 2014 (the date it was rented to a person without a disability). Accordingly, the third and fourth elements have been met.

Respondents stated that the reason Complainants were not allowed to rent the townhome was because they were untimely in returning a completed application, credit reports and the requisite fees. Also, Respondent Guy stated the current tenant was selected because he expressed interest in purchasing the unit. However, in my legal opinion there is compelling evidence that gives rise to an inference of discrimination based upon handicap/disability.

Complainants maintained that they were not given a reason for the denial.

Respondent Fisch characterizes the denial as having been done due to an incomplete application. Be that as it may, complainants at no point were asked, encouraged or instructed to complete their initial application. Instead, after receipt of the application, Respondent Fisch stated she would not be processing the application and wished them well in finding another rental. She did not ask them to pay the fee, or complete a separate or new application. Thus, Complainants were denied the ability to complete the application, even if initially illegible and incomplete.

Respondent Guy stated, "With regard to the specific complaint, we did have several qualified applicants, and Judy worked with them to find the best candidate. It is very important to note that when a property is vacant, timing is important; typically, the first qualified applicant to get all the paperwork in place and pay the required fees will be selected." It should be noted however, that Complainants were the only two seeking to rent the townhome at the time and the townhome remained open for almost three weeks before it was ultimately rented.

He went on to state, "In this particular case, the tenant selected had spoken to Judy previously and had expressed an interest in renting and possibly buying the property. The speed of response plays a big part in this process. Ms. Berthold was not rejected because of her disability; someone else was selected first. It really is that simple. A very important part of the selection process hinged on

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<sup>1</sup> Complainant Russo is a person associated with a person with a disability.

the prospective tenant's interest in purchasing the property later. This is important to me as I am retired and wish to begin to dispose of my properties soon."

Respondent Guy reiterated the same rationale when interviewed over the telephone during the investigation. During the interview, in asking whether Respondent Fisch had discussed the actual applicants with him, Guy stated, "she did mention that Philip had already seen it, and wanted to buy it." The current tenant's name is Philip Roscoe (Roscoe).

However, Roscoe, who had rented the townhome July 2, 2014, was interviewed and denied he had ever expressed interest to anyone about purchasing the unit, saying it never came up. He added he did not have the credit for it. He stated he had contacted Respondent Fisch "on the day she was placing it back on Craigslist," and estimated this had occurred around late June or first part of July. He stated that although the lease indicated a starting date of July 1, 2014, he did not actually move in until July 15, 2014. He confirmed he had seen the unit the year prior, and that the application process happened rather quickly.

Considering all of the above, it is my legal opinion that there is a legally sufficient basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination on the basis of handicap/disability, in violation of the *FHAA*, 42 U.S.C. § 3604(f)(1).