

MEMORANDUM

**TO:** Paul Valenti, Human Rights/EEO Officer  
**FROM:** Michelle Wallace, Senior Assistant County Attorney *MW*  
**RE:** Morgan, Clive & Debra v. Belleair Forest Garden Condominium Association, Inc.  
**HUD No. 04-14-0739-8**  
**DATE:** January 13, 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 race. 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(b).

SUMMARY OF FACTS

On May 28, 2014, Complainants filed a Complaint with the United States Department of Housing and Urban Development (HUD) alleging they were subjected to unlawful housing discrimination on the basis of race by the Respondent.

Complainants Debra and Clive Morgan identified themselves as individuals discriminated against based on race. Debra is white and Clive is black.

In their complaint, Complainants allege that they attempted to purchase a unit located at 1723 Belleair Forest Drive, Unit C in Belleair, FL (Pinellas County). The subject property is owned by Elaine M. Skinner. The property is subject to the rules and regulations of Belleair Forest Garden Condominium Association, Inc. (Respondent) by and through, Penelope Nowling (Nowling) and Respondent Holiday Isles Property Management, Inc.

Complainants Debra and Clive Morgan stated that their family was denied the opportunity to purchase a condo by Respondent based on credit history. The Complainants stated that they were approved to purchase the subject property by the owner, but were denied by the association.

According to the Complainants, in October of 2013, they went to the community to view two available units for purchase. The Complainants stated that they submitted their association applications with photo ID's, but instructed the management representative not to process them until they decided on the unit they wanted to purchase. After receiving confirmation from their

realtor on March 5, 2014 that they had been approved to purchase the subject property as a cash sale by the owner, the Complainants notified the management company and instructed them to process their association applications.

On March 12, 2014, Complainant Debra Morgan stated that she was informed through her realtor that the association denied her family based on her credit history. Complainant Debra Morgan stated that she believes her credit history was a pretext and the real issue was race.

According to the Complainants, the community is a predominantly white community. Additionally, Complainant Debra Morgan stated that Nowling contacted her realtor after the association denied her family asking questions concerning the number of children she had and if she and her husband were the people that originally applied then put their applications on hold in October 2013. Complainant Debra Morgan confirmed that she did not have any personal interaction with Nowling, but believes Nowling viewed their applications which contained their identification confirming they were an interracial couple.

Complainant Debra Morgan believes there was no reason to make such inquiries if they had already been denied because of their credit.

Lastly, the Complainants stated that they were approved to purchase a unit by a condominium association next to the community where they were denied with no issues concerning credit.

Respondent's Answer to the complaint is as follows:

1. Admitted as to Complainants' names. Unknown as to Complainants' current residence; therefore, denied.
2. Unknown; therefore, denied.
3. Denied as to any allegations of discrimination. Contrary to Complainants' assertions, their purchase application was denied due to the poor credit of each Complainant. Specifically, one Complainant's credit score was below 530 while the other Complainant's credit score was below 500.

It is well established in the credit industry that such low credit scores constitute "very poor" to "poor" credit. See, for example, <https://www.creditkarma.com/faq/what-is-a-good-credit-score> and <http://www.credit.com/credit-scores/what-is-a-good-credit-score/>.

Please see credit reports attached as Exhibits "A" and "B", "which were used by the Association in its determination that Complainants were not financially secure to keep up with maintenance assessments and other financial obligations associated with condominium ownership.

4. Denied as to any allegations of discrimination. Please see paragraph three (3) above for further details.
5. Admitted as to the location of the property in question.

6. Admitted that the Association is the proper respondent. Denied as to Management and as to Ms. Penelope Nowling.
7. Denied as to any allegations of discrimination. Admitted as to Complainants attempt to purchase condominium Unit C (a/k/a Unit 1723C), which is located at 1723 Belleair Forest Drive (not 1724 Belleair Forest Drive, as alleged in paragraph seven (7) of the Complaint) and was owned by Ms. Elaine M. Skinner. Admitted that the referenced Unit is subject to the Association's rules and regulations, as are all units on the premises along with the owners and/or residents of each unit.

Unknown as to approval by Ms. Skinner of Complainants' intention to purchase the subject Unit; therefore, denied. Admitted that Complainants' application to the Association was denied due to their bad credit scores. As noted in paragraph three (3) above and in Exhibits "A" and "B" to this Response, one Complainant's credit score was below 530 while the other was below 500. (Please see Exhibits "A" and "B" for specific details and specific scores). Also as noted in paragraph three (3) above, it is well established in the credit industry that such low credit scores constitute "very poor" to "poor" credit. See, for example, <https://www.creditkarna.com/faq1what-is-a-good-credit-score> and <http://www.credit.com/credit-scores/what-is-a-good-credit-score/>.

As noted in the Association's corporate counsel's March 24, 2014 letter to Ms. Skinner and Complainants (see Exhibit "C"), Respondent has an obligation to the Association's members at large "pursuant to the governing documents of the Association as well as the applicable Florida law." Such "fiduciary duty includes making sure that the interested purchaser [e.g., Complainants] is capable of paying the financial obligations associated with the ownership of the condominium."

Based on their poor credit scores, it was determined by the Association that Complainants were not financially secure enough to keep up with maintenance assessments and other fiscal obligations associated with condominium ownership. Complainants' purchase application was, therefore, denied.

Admitted that Respondent, Ms. Nowling, had no personal interactions with Complainants. Unknown as to all other allegations contained in paragraph seven (7) of Complainant's Complaint; therefore, denied.

8. Denied as to any allegations of discrimination. Please see paragraph three (3) above for further details.
9. No response necessary.
10. Denied as to any allegations of discrimination. Please see paragraph three (3) above for further details. Respondent further answers by stating that Complainants' purchase application was denied solely due to their "very poor" to "poor" credit scores, as reflected in Exhibits "A" and "B". Respondent, namely the Association, cannot take the risk of financial burden that comes with a unit owner's failure to keep up with maintenance assessments and other fiscal obligations associated with condominium ownership.

Respondent, therefore, were well within its rights to look into Complainants' credit background and to deny their application based on bad credit scores. Management processed Complainants' purchase application and followed the Association's Board's direction, as its decision was made. It should also be noted that Complainants' own Complaint stated in the second to last sentence of paragraph seven (7) of their Complaint that: (1) they never interacted with Nowling; and (2) their Complaint is based purely on a "belief" that their bad credit scores were used as a pretext to deny their application.

Additionally, there was no communication between Management and Complainants aside from clerical communication regarding submission and receipt of their application.

### APPLICABLE LAW

The alleged activities of the Respondent may be in violation of the *FFHA*, 42 U.S.C. § 3604(b), 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 –*

*(b) to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."*

### ANALYSIS

The Complainants, Debra and Clive Morgan, assert that they were denied the opportunity to purchase a unit by Belleair Forest Garden Condominium Association, Inc., by and through Board President Penelope Nowling and Holiday Isles Property Management, Inc., based on the race of Clive Morgan.

In a case of a discriminatory refusal to sell, the following elements must be established: (1) Complainant is a member of a protected class of persons covered by the Fair Housing Act; (2) Complainant met Respondent's qualifications to purchase; (3) Complainants were rejected; and (4) The housing opportunity remained available thereafter.

Complainant Debra Morgan is white, and Complainant Clive Morgan is black.

With respect to Respondent's knowledge of Complainants' interracial status, Respondent initially took the position that Nowling, the admitted decision maker, did not know of their racial status at the time of denial. Although Nowling denied knowing of the Complainants' interracial status at the time their purchase application was denied, a copy of the submitted application package shows that the photo identification of both applicants were contained in the package. Therefore, we can conclude that Respondent had knowledge of the Complainants' races. Because race is protected under the Fair Housing Act, the first element of the case has been met.

Turning to the second element, the evidence must demonstrate that Complainants were qualified to purchase a unit in Respondent's association. Respondent contends that Complainants are not qualified, but Complainants believe that the reasons given for their rejection were merely pretextual and that race was the determining factor.

In a letter dated March 24, 2014, Attorney Karen E. Mailer explained the reason for the denial of the sale to the Complainants. The letter reads, "In this instance, the Board determined that based upon its fiduciary obligation to protect the interests of the current owners, it is not in the best interest of the Association to approve the purchase of Unit 1723C submitted by the Morgan's because of the credit history."

In Respondent's Answer to the complaint, it reiterated that "their purchase application was denied due to bad credit of each Complainant." Specifically, Respondent states that "one Complainant's score was below 530 while the other Complainant's credit score was below 500." According to Respondent, it is "well established in the credit industry that such low credit scores constitute 'very poor' to 'poor' credit."

Respondent attached the credit reports for each Complainant. Debra Morgan's credit report showed a Credit Score of 472, while Clive Morgan's credit score was 527. Respondent explained that the Morgan's' credit reports were used by the Association in its determination that they were not financially secure enough to keep up with maintenance assessments and other fiscal obligations associated with condominium ownership.

A denial of an approval of sale could be a legitimate, non-discriminatory business practice if such standards are applied equally. That does not seem to be the case here. A review of the evidence yielded the following information:

- Stephanie de Stories (de Stories) (white) completed an Application for Approval of Sale or Lease on June 20, 2012. She was seeking to lease Unit D in Building 1727. A credit check was completed by United Screening Services Corp., which indicated de Stories' credit score was 511. de Stories' application was approved by the Board of Directors on July 15, 2012.
- Shelli Palmer (Palmer) (white) completed an Application for Approval of Sale or Lease on September 19, 2013. She was attempting to rent Unit D in Building 1709. Although the application does not indicate whether she would be buying or leasing, Respondent's checklist does not show that she received a deed. Therefore, it is presumed that Palmer was seeking to rent. A credit check was completed by United Screening Services Corp., which indicated Palmer's credit score was 519. Palmer's application was approved by the Board of Directors on October 1, 2013.

As stated previously, Respondent asserted that Complainants were denied due to their credit history. Respondent provided links to the web pages of [www.creditkarma.com](http://www.creditkarma.com) and [www.credit.com](http://www.credit.com) explaining what is a good or poor credit score. According to the Credit Karma site, a score below 580 is very poor. According to the Credit.com site, a score below 599 is bad.

The Respondent submitted these links to support their position that the Complainants had "very poor" or "poor" credit. A score of 580 or-below qualifies as "bad" or "very poor" credit on both sites. While it is true that Complainants' scores fall well below 580, it is also true that two white applicants had credit scores below 580.

Respondent was asked to explain why the Complainants' application was denied and the applications of Palmer and de Stories were approved despite their poor credit scores. Respondent asserts that Palmer and de Stories submitted applications for leases rather than purchases.

Respondent further asserts that they have never approved or denied a rental applicant based on credit scores. This is due to the fact that the landlord is ultimately responsible for payment of the Association's maintenance fees, not the renter. Respondent explains that with a sale, the applicant's credit score reflects his or her financial ability to keep up with maintenance fees, including, but not limited to, any special assessments that may be levied on unit owners due to extenuating circumstances.

Therefore, Respondent asserts that the above renters who had credit scores in the 500-530 range are not true and proper comparators. It relies on the argument that renters' obligations are different than owners' obligations. Specifically, an owner is obligated to pay maintenance fees and any special assessments that should arise. A renter, on the other hand, is not responsible for such fees and assessments.

However, the evidence suggests that Respondent's argument is without merit. Investigator Mark Esparza conducted an interview with Nowling, President of the Association, on October 29, 2014 as part of an investigation into a companion case filed by Elaine Skinner (Skinner). Skinner owns the unit that Complainants attempted to purchase. During this interview, Nowling asserted that the criminal and credit criteria was the same for both renters and buyers. This contradicted Respondent's assertion that Complainants were treated differently with regard to credit scores because they were buyers, not renters.

Respondent was asked about this contradiction by Investigator Esparza in relation to the companion case. Respondent now asserts that "the association uses the same threshold regardless of whether the applicant is a potential renter or a potential purchaser. Credit score is \*NOT\* the determinative factor, but rather each applicant's background check."

In comparing the Complainants' background check to the white applicants with similarly low credit scores, the following information is gleaned:

An exception was made for Palmer, because she stated that she was moving in temporarily with her fiancé for a period of two to three months.

Although Nowling was not the person who approved de Stories' rental application, she would have made an exception for de Stories and approved her. This was based on her review of the background check, which revealed student loans and medical debt.

Although Nowling was not the person who approved another renter, Kevin Ichter's (Ichter) application, she said that she would most likely have approved him. This is based on the fact that he had a single bankruptcy filing in 2008, four months before his rental application.

It is noted that the Complainants' credit scores were the lowest of all applicants. Apart from their credit scores, it is unclear if the Complainants' credit profile was justifiably worse than the white comparatives as outlined in their written criteria. A review of the white comparators revealed the following:

Palmer had thirty-four (34) credit lines. Twenty-one (21) were open, seven (7) were in collections and five (5) showed late payments.

de Stories had thirteen (13) credit lines. Eight (8) were open, three (3) were in collections, and two (2) were late. Of the three in collections, they were medical and education related. de Stories also appeared to have an eviction.

Ichter had thirty (30) credit lines. Thirteen (13) were open and seventeen (17) were in collections. He was also sued for a tax lien in 2010.

If Respondent applied its stated policy, comparators' criteria would have disqualified them as well. The policy states that an applicant will receive an automatic denial if (1) bad-standing accounts outweigh good-standing accounts; (2) multiple accounts in collection within ten (10) years of the application; and (3) multiple bad debt accounts within ten (10) years of the application.

All three of the above comparators had multiple accounts in collection and multiple bad accounts within ten years. Additionally, Ichter appeared to have more negative accounts than good accounts.

Now a question arises as to whether Complainants and the above comparators similarly situated. We can answer this question in the affirmative, because they had similarly low credit scores, multiple bad debt accounts, multiple accounts in collection, and negative accounts that outweighed good-standing accounts. Furthermore, the fact that the comparators were renters as opposed to purchasers is not relevant to our determination, because Nowling asserted that renters and buyers are treated the same with respect to criminal and credit criteria.

The prima facie elements have been met. Complainants are members of a protected class. They were qualified to purchase a unit because it was a cash purchase and similarly situated applicants were deemed to be qualified by the association. Complainants were denied, which satisfies the third prima facie element, and the unit remained available as Ms. Skinner was compelled to search for another buyer, as a result of the association's denial.

Complainants, an interracial couple, were denied while white rental applicants were approved. Based on the evidence collected, we can conclude that race was a factor in the denial.

It is also noted that Ms. Skinner stated that she had never seen a person of color in the eleven (11) years she lived there. While this information is not dispositive, the lack of racial diversity does not bolster Respondent's argument. Had Respondent's community been more racially diverse, then it would have been more difficult for the Complainants to demonstrate that Respondent acted with racial bias.

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(b).