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600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

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VIA CERTIFIED MAIL

AMY SCHAUER NELSON
FAIR HOUSING OF THE DAKOTAS
909 BASIN AVE SUITE 2
BISMARCK ND 58504

RE: ND08-08-407
HUD NO: 08-08-0107-8
FAIR HOUSING OF THE DAKOTAS V. SCHMIDT

DETERMINATION OF REASONABLE CAUSE

The North Dakota Department of Labor (Department) administers the North Dakota Housing Discrimination Act (the Act). The Department has completed its investigation of the subject complaint which was filed under the Act. Informal efforts to resolve the case during the investigation were unsuccessful.

Based on the evidence obtained during the investigation, the Department has determined that reasonable cause does exist to believe that a discriminatory housing practice has occurred. Accordingly, the enclosed Charge of Discrimination is being issued. A summary of the evidence on which this charge is based is also enclosed.

Pursuant to N.D.C.C. ch. 14-02.5, the Department will hold an administrative hearing on this charge unless either party elects for a judicial determination within twenty (20) days. If such an election is made, the Attorney General will file a claim seeking relief on behalf of the Complainant in district court.

The information obtained during an investigation and the final investigative report are considered public records once the complaint has been administratively closed by the Department. A copy of the final investigative report is available upon request.

On behalf of the North Dakota Department of Labor:



Jane Marum, Compliance Investigator
North Dakota Department of Labor



Date



Kathy Kulesa, Human Rights Director
North Dakota Department of Labor



Date

Case Number: ND08-08-407
HUD NO: 08-08-0107-8
FAIR HOUSING OF THE DAKOTAS V. SCHMIDT

DETERMINATION

CASE NAME: Fair Housing of the Dakotas v. Schmidt

CASE NUMBER: ND08-08-407

HUD NUMBER: 08-08-0107-8

I. JURISDICTION

A complaint was filed with the NDDOL on February 12, 2008 and amended on April 15, 2008, alleging that the complainant (CP) was injured by a discriminatory act. It is alleged that the respondent (RP) was responsible for failure to make a reasonable accommodation. It is alleged that the respondent's acts were based on disability. The most recent act is alleged to have occurred on December 4, 2007, and is continuing. The property is located at: 408 16th Ave. S., Bismarck, ND, 58504. The property in question is not exempt under the applicable statutes. If proven, the allegations would constitute a violation of North Dakota Century Code (N.D.C.C.) § 14-02.5-06(3)(b) and Section 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988. The respondent receives no federal funding.

II. COMPLAINANT ALLEGATIONS

On October 25, 2007, the Fair Housing of the Dakotas (FHD) received an allegation of housing discrimination from [REDACTED]. Ms. [REDACTED] stated she had a son who qualified as a person with a disability and required the need of a service animal to assist him in coping and dealing with his disabilities. On or about October 22, 2007, Ms. [REDACTED] called 701-255-3755 about an apartment being advertised for rent and reached a male. She explained she was looking for housing and asked where the property was located. She was told it was at 408 S. 16th Street in Bismarck, ND. She then stated that she had a handicapped child with a service animal and wondered what kind of documentation he required. The male told her he would not accept the animal because he did not want to replace the carpet. He ended the call. Being aware that this type of discrimination is illegal, she then called the FHD to complain about the discrimination.

The FHD conducted an investigation. On December 4, 2007, a fair housing tester contacted 701-255-3755 and reached a male. The tester was told the unit being advertised was available and given information on the rent, square footage and utilities. The tester stated she was looking for her, her husband and their two children and that her oldest had autism and had a service dog with doctor's orders. The male stated that he would not allow animals because he had prior tenants who snuck dogs and cats in and had to evict them. The male ended the call.

The FHD alleges that the Respondent is discriminating in denying reasonable accommodations for those with physical or mental disabilities who need service animals.

The goals of the FHD are to prevent and eliminate housing discrimination. The FHD represents the constituents of North Dakota and is aggrieved by the actions of the Respondent. The Respondent's actions frustrate our efforts to achieve equal housing through education, counseling, referral services, and/or enforcement (testing) activities. The FHD is a regional organization whose constituents are residents of the Bismarck housing market area where the discrimination occurred. The FHD, its members, and constituents, is thereby deprived of, or threatened by living in a nonsegregated community.

III. RESPONDENT DEFENSES

The RP met with the investigator to submit a verbal response. A friend of the RP was also present for the interview. The RP stated that the caller presented herself as a recipient of housing assistance first and that the disability issue was presented secondarily. The RP stated that the housing authority won't accept him as a provider because he had a "run in" with it a few years back.

The RP stated that in addition to the above, the caller presented herself as having one child and the housing authority won't approve renting a three-bedroom unit to a tenant with only one child. The RP stated that furthermore, the caller couldn't afford a three-bedroom unit.

The RP stated that if he were to rent to a tenant with a service/assistive animal then someone has to bear the cost of sanitizing the unit for the next tenant who may have allergies to animals. The RP stated that sanitizing a unit can cost over \$2000.00. The RP gave the example of the tenants who previously lived in the unit in question who snuck in a dog and a cat. The RP stated that eventually he evicted these tenants and everything had to be replaced and sanitized. The RP stated that additional costs to him were the down time and the labor for all of this.

The RP stated that he is a fair individual and that if approached respectfully about this issue, he would accommodate people.

With regard to the timeline in the complaint, the RP stated that on September 27, 2007, an individual put down \$525.00 for him to hold the unit and then paid the remainder of the deposit on September 30, 2007. The RP stated that on October 5, 2007, a "HUD inspection" was done at the unit and on October 14, 2007, he was notified that the unit met the inspection requirements. The RP stated later that month he was notified that he was rejected as a provider.

The RP stated that on October 22, 2007, another individual came to look at the unit and on October 23, 2007, paid the deposit for it. The RP stated that later in the month the individual told him he didn't want the unit.

The RP stated that on October 30, 2007, yet another individual paid a deposit for the unit and later called to say he didn't want the unit.

The RP stated he is involved in helping the homeless and that he was notified that there was a homeless individual that needed housing. The RP stated that the rent was guaranteed so he held the unit for this individual at the beginning of December 2007 and finally on December 13, 2007, the deposit was paid for the individual and he moved in.

IV. FINDINGS

In order to show a violation of state and federal fair housing laws in the denial of a reasonable accommodation the CP must establish the following elements: 1) the tester is disabled; 2) the tester made a request for a reasonable accommodation in the RP's rules policies, practices, procedures, or services and the accommodation of the disability may be necessary to afford the tester an equal opportunity to use and enjoy the dwelling; 3) the RP knew or should reasonably be expected to have known of the tester's disability; and 4) the RP refused to make such an accommodation.

With regard to the first element, the testing evidence demonstrates that the PT posed as a person who had a child with a disability. As such, we find that the first element can be established.

With regard to the second and third elements, in an interview the PT stated that she told the male individual whom she reached at phone number 701-255-3755 that she was looking for a unit for her husband and two children. The PT stated that she told the individual that her oldest child had a disability and had a service dog with doctor's orders. This conversation was documented by the PT on the Telephone Contact Report Form as part of the test call. Because this is a case based on testing evidence, the accommodation requested by the PT is assumed to be necessary. As such, we find that the second and third elements can be established.

With regard to the fourth element, in an interview, the PT stated that when she told the individual that her child had a disability and had a service dog with doctor's orders, the individual identified above responded by stating he will not allow animals. This part of the conversation was also documented by the PT on the Telephone Contact Report Form as part of the test call. As such, we find that the fourth element can be established.

Based on the above, we find that the elements of a prima facie case of discrimination as it pertains to the denial of a reasonable accommodation have been met.

The next step in the investigation was to analyze the response of the RP to determine whether the explanation for his actions was legitimate and non-discriminatory.

In his response the RP states that if he were to rent to a tenant with a service/assistive animal then he would have to bear the cost of sanitizing the unit for the next tenant who may have allergies to animals. The RP stated that sanitizing a unit can cost over \$2000.00. The RP gave the example of the tenants who previously lived in the unit in question who snuck in a dog and a cat. The RP stated that when these tenants vacated the unit everything had to be replaced and sanitized. The RP stated that the down time during which the unit was not rented and the labor were additional costs to him.

We do not find this explanation to be credible. The RP's assertion that he would have to sanitize a unit in which he allowed a service animal due to the possibility that the subsequent tenant(s) may have allergies, is, at best, speculative. Further, the example cited by the RP is not an issue of sanitization of the unit for allergies but an issue of damage to the unit caused by unauthorized animals, the cost of which can be recovered by the RP through the security deposit or through suing the tenant whose animal caused the damage.

Based on the above information we find that the PT was denied a service animal as a reasonable accommodation by the RP.

With regard to the harm it incurred as organization, the CP submitted evidence of monetary damages for diversion of its resources.

Considering the evidence as a whole, find that the PT was denied a reasonable accommodation by the RP in violation of state and federal fair housing laws.

V. CONCLUSION

The investigation sought to determine whether or not the CP was denied a reasonable accommodation by the RP.

State and federal fair housing laws require a housing provider to make reasonable accommodations to its rules, policies, practices or services when the accommodation may be necessary to afford the disabled individual equal opportunity to use and enjoy a dwelling unless it imposes an undue financial or administrative hardship on the housing provider.

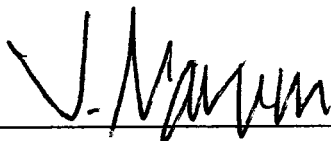
In case of the PT, the reasonable accommodation requested (a service dog) was denied by the RP because he asserted that the cost to sanitize the unit for subsequent tenants who may have allergies to animals created an undue hardship.

However, the RP was unable to demonstrate such undue hardship. Because evidence of an undue hardship could not be shown by the RP, the denial of the service dog as a reasonable accommodation is not justified.

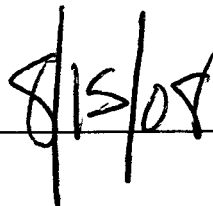
Based on the above, the North Dakota Department of Labor has concluded that reasonable cause does exist to substantiate that a discriminatory housing practice under N.D.C.C. § 14-02.5-06(3)(b) and Section 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988 has occurred.

Signature Page

Submitted by:

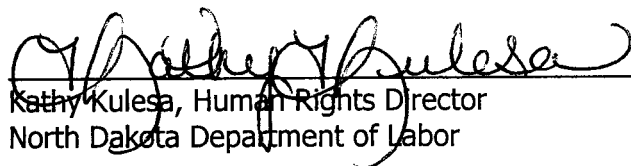


Jane Marum
Compliance Investigator

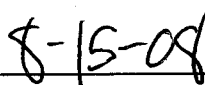


Date

Approved:



Kathy Kulesa, Human Rights Director
North Dakota Department of Labor



Date

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HUD NO. 08-08-0107-8
FAIR HOUSING OF THE DAKOTAS V. SCHMIDT

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600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

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Fair Housing of the Dakotas (Complainant)

COPY

v.

Jerome Schmidt (Respondent)

CHARGE OF DISCRIMINATION

I. Jurisdiction

On February 12th, 2008, the Complainant filed a complaint with the North Dakota Department of Labor (NDDOL). The Complainant alleged that the Respondent was responsible for failure to make a reasonable accommodation for disabled individuals. It is alleged that the Respondent's acts were based on disability. The alleged acts are in violation of North Dakota Century Code (N.D.C.C.) § 14-02.5-06(3)(b) and Sections 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

N.D.C.C. § 14-02.5-25(2) authorizes the NDDOL to issue a charge of discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred.

The NDDOL has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and, therefore, authorizes the issuance of this Charge.

II. Summary of the Allegations in Support of this Charge

A. Statutory and Regulatory Provisions

1. It is unlawful to discriminate against an individual in the terms and conditions or privileges of a rental dwelling because of a disability of that individual. Discrimination includes a refusal to make a reasonable accommodation in rules, policies, practices or services if the accommodation may be necessary to afford the individual equal opportunity to use and enjoy a dwelling. N.D.C.C. § 14-02.5-06(2).

B. Factual Allegations

1. The Complainant filed a complaint alleging housing discrimination by the Respondent against disabled individuals based on testing evidence.
2. The testing evidence demonstrates that when posing as an individual who had a child with a disability, the tester was denied by the Respondent a reasonable accommodation request for a service animal for her disabled child.
3. The Respondent failed to legitimately establish how the reasonable accommodation requested by the tester created an undue financial or administrative hardship for them.
4. As a result of their testing activity, which demonstrates that reasonable cause exists to substantiate that a discriminatory housing practice occurred, the CP, as an organization, incurred harm in the form of monetary damages for diversion of its resources.

III. Final Investigative Report

The information which supports the determination that reasonable cause exists to believe that discriminatory practices have occurred and which serves as the basis for this charge of discrimination is contained in the Final Investigative Report completed for this case.

IV. Conclusion

The NDDOL charges the Respondent with engaging in discriminatory housing practices in violation of N.D.C.C. ch. 14-02.5. The NDDOL requests that an order be issued that:

- A. Declares that the discriminatory housing practices of the Respondent as set forth above violates N.D.C.C. ch. 14-02.5,
- B. Awards such damages as will fully compensate the Complainant for losses pursuant to N.D.C.C. ch. 14-02.5,
- C. Assesses any applicable and appropriate penalties pursuant to N.D.C.C. ch. 14-02.5 against the Respondent for the discriminatory housing practice, and
- D. Awards any additional relief as may be appropriate under N.D.C.C. ch. 14-02.5.

V. Election of Judicial Determination

A Complainant, a Respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by N.D.C.C. § 14-02.5-36. The election must be made no later than the twentieth day after the date the person having the election receives notice of the charge. The person making the election shall give notice to the NDDOL and to all other Complainants and Respondents to whom the charge relates. If a timely election is not made, the NDDOL will provide for an administrative hearing on the charge.


Kathy Kulesa, Human Rights Director
North Dakota Department of Labor

8-15-08
Date