

DETERMINATION

CASE NAME: Fair Housing of the Dakotas v. Remington/Riemers

CASE NUMBER: ND06-12-261

I. JURISDICTION

A complaint was filed with the North Dakota Department of Labor (NDDOL) on June 19, 2006, and amended on August 4, 2006, alleging that the Complainant (CP) was injured by a discriminatory act. It is alleged that the Respondents (RPs) were responsible for: discriminatory advertising, statements, and notices and discriminatory refusal to rent. It is alleged that the Respondents' acts were based on status with regard to receipt of public assistance (state-only protection). The most recent act is alleged to have occurred on February 4, 2006, and is continuing. The property is located at: 217 Chestnut St., Grand Forks, North Dakota. The property in question is not exempt under the applicable statutes. If true, the allegations would constitute a violation of North Dakota Century Code (N.D.C.C.) Section 14-02.5-02 and 14-02.5-03.

II. PARTIES AND AGGRIEVED PERSONS

A. Complainant

Fair Housing of the Dakotas
533 Airport Road Suite C
Bismarck, ND 58554

Complainant Allegations

On February 2, 2006, a classified listing from the Grand Forks Herald was published online stating, "3 BEDROOM Townhouse near downtown GF. Pets? No HAP. \$600; 701-885-1555."

Because of the use of "No HAP," this ad appeared to discriminate against recipients of public assistance. The Fair Housing of the Dakotas (FHD) conducted an investigation. On February 4, 2006, a fair housing tester called 701-885-1555 and reached "Roland." The tester asked if the 3 bedroom was still available and was told it was. The tester received information on rent, deposit and lease requirements. The tester stated that she had a Section 8 voucher and asked if that was a problem. Roland asked if it was through HUD or if she was disabled. The tester stated she was not disabled and the voucher was through the Grand Forks Housing Authority. Roland went on to state that he couldn't accept HUD due to a legal dispute. He stated that they didn't get along and it was "their choice not mine."

The tester asked for the property's address and was told it was 219 Chestnut. The tester ended the call.

The FHD alleges that the Respondent is advertising in a discriminatory way against recipients of public assistance through the use of "No HAP" and denying rental to Section 8 voucher holders.

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 Grand Forks 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 following is the response provided by Roland Riemers:

"We do not discriminate, but G. F. (Grand Forks) HUD does."

IV. FINDINGS

Discriminatory Advertising, Statements and Notices

In order to show a violation of state fair housing laws in advertising, statements and notices, the CP must first establish the following elements: 1) the statements were made with respect to a sale or rental; 2) the statements indicated a preference, limitation or discrimination on the basis of a protected class; 3) the statements were attributable to the RP; 4) the statements would be interpreted by an ordinary listener or reader as expressing a preference or limitation as in identified in #2 above and 5) the statements injured the CP.

With regard to the first element, the printed statements were made with respect to rental of the property located at 217 Chestnut St., Grand Forks, North Dakota, which is owned and managed by the RPs. The Grand Forks County Assessor's Office verified that the address of the subject property is listed as 217 Chestnut St., not 219 Chestnut St., as alleged in the complaint.

With regard to the second, third, and fourth elements, the evidence shows that a classified listing from the Grand Forks Herald was published online

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stating, "3 BEDROOM Townhouse near downtown GF. Pets? No HAP. \$600; 701-885-1555."

The advertisement is attributable to Roland Riemers because the tester states she called 701-885-1555 and reached an individual by the name of "Roland." The investigation shows that the phone number listed in the advertisement is that of Mr. Riemers' cellular phone. Further, Mr. Riemers does not dispute placing the advertisement.

The printed advertisement was analyzed applying an "ordinary reader" standard. When this standard is applied it means that regardless of the intent of the communication, a violation of the law has occurred if the statement, with respect to the sale or rental of a dwelling, indicates a preference that would exclude someone because of membership in a protected class to an ordinary reader.

In this case, there is no question that the advertisement which includes the phrase "No HAP" indicates a preference to exclude rental to individuals who are recipients of housing assistance. "HAP" is a commonly-used acronym for Housing Assistance Program. Further, Mr. Riemers admits he excludes rental to individuals receiving housing assistance by stating that in the past, people would apply for housing assistance, that HUD would always deny them and so it is a hassle to go through all that only for the tenant to be denied. Mr. Riemers stated that now he doesn't bother with it (HAP) because tenants won't be approved. He stated that it is a waste of the tenant's time and his time.

Based on the above analysis, we conclude that the Respondents' advertisement indicated a preference to exclude potential tenants within the protected category of status as a recipient of public assistance.

With regard to the fifth element, the CP, as an organization, asserts it was harmed when the actions taken by the RPs frustrated its efforts to achieve equal housing through education, counseling, referral services, and/or enforcement (testing) activities. The CP provided evidence of such harm in terms of monetary damages for diversion of resources.

Considering the evidence as a whole, we find that the RPs unlawfully discriminated in advertising, statements and notices as they relate to a rental dwelling based on status as a recipient of public assistance.

Refusal to Rent

In order to show a violation of state fair housing laws in the refusal to rent a dwelling, the CP must first establish the following elements: 1) the tester is a member of a protected category; 2) the tester applied and met the

minimum standards to live in the RP's housing; 3) the RP, knowing that the tester was a member of a protected category, refused to rent to the tester; and 4) the unit remained available thereafter to similarly-situated individuals who were not recipients of public assistance.

With regard to the first element, the tester posed as an individual with a Section 8 Housing Choice voucher through the local housing authority.

With regard to the second element, the evidence shows that the tester applied for the RPs' housing to the extent that she was able (contacted Mr. Riemers for information about the advertised rental and its availability) before she was told by Mr. Riemers that he couldn't accept housing assistance due to a legal dispute with HUD.

With regard to the third element, the tester's notes and testimony verify that she made it known to Mr. Riemers that she was a recipient of housing assistance with a Section 8 Housing Choice voucher through the local housing authority. The tester's notes and testimony also confirm that when the RP became aware of this, he refused to rent to her stating in part, "...we can't accept HUD due to a legal dispute, we don't get along, their choice, not mine."

With regard to the fourth element, Mr. Riemers admits that he doesn't rent to individuals who are recipients of housing assistance. From this admission, we can reasonably conclude that the unit remained available thereafter to similarly-situated individuals who were not recipients of housing assistance. As such, this element can be established.

Based on the above, the basic elements of discrimination pertaining to this allegation as it relates to the terms and conditions of a rental dwelling have been met.

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

In his response, Mr. Riemers states that it is "HUD-Grand Forks" (Grand Forks Housing Authority) that discriminates, not him. He also indicates that in the past, people would apply for housing assistance and that "HUD" would always deny them and so it is a hassle to go through all that effort only for the tenant to be denied. Mr. Riemers states that now he doesn't bother with it (HAP) because tenants won't be approved. He states that it is a waste of the tenant's time and his time.

In order to obtain more information about Mr. Riemers' response, Terry Hanson, Director of the Grand Forks Housing Authority, was contacted.

Mr. Hanson stated that Roland Riemers is not an approved landlord with the agency due to contract violations. Mr. Hanson stated that if Mr. Riemers is telling prospective tenants that he can't accept HAP because he is not approved as a provider for the Section 8 voucher program, then "that may be legitimate."

Based on the above information, we find the RP's explanation to be legitimate and credible. As such, the burden shifts to the CP to provide evidence that the legitimate reason asserted by the RP is pretext (an excuse).

In order to show pretext, the CP must show that the RP refuses to rent to individuals who are recipients of other types of public assistance, not just housing assistance in the form of a Section 8 Housing Choice voucher.

Under the North Dakota Human Rights Act, Section 14-02.4-02(17), "Status with regard to public assistance" as it relates to housing means the condition of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

Evidence was obtained from the Society of St. Vincent De Paul, a social service program for the homeless in Grand Forks, which shows that in the past year the agency has either considered issuing emergency rental assistance to a current tenant(s) or to a potential tenant(s) of Mr. Riemers, but for one reason or another the assistance was denied due to the tenant's failure to meet rental assistance program requirements. Most recently, in December 2006 emergency rental assistance was issued to an individual who subsequently rented from Mr. Riemers.

In addition, evidence was obtained from the Salvation Army in Grand Forks which shows that in the past year, the agency issued emergency rental assistance to a current tenant(s) or to a potential tenant(s) of Mr. Riemers.

Finally, Roland Riemers asserts he has a tenant who is a recipient of Social Security disability benefits. Several attempts were made to contact this individual without success.

Based on the above information, the CP cannot show that the legitimate reason asserted by the RPs for their actions is pretext.

Considering the evidence as a whole, the tester was not refused a rental because of her status as a recipient of public assistance.

IV. CONCLUSION

The investigation sought to determine whether the CP was harmed by the RPs' act of discriminatory advertising, statements and notices.

Under state housing discrimination laws, a violation occurs if a housing-related advertisement, notice or statement indicates discrimination to an "ordinary listener or reader" regardless of the reason for the communication. Intent on the part of the Respondent does not have to be shown.

In other words, the only evidence necessary to show liability on the part of a Respondent is that the advertisement, notice or statement be made with respect to a sale or rental of a dwelling and indicates discrimination based on a protected category.

By conducting an analysis using the "ordinary listener or reader" standard, we find that that the RPs printed an online advertisement which indicated a preference to exclude rental to potential tenants within the protected category of status as a recipient of public assistance. Further, the CP, as an organization, is able to demonstrate harm in terms of diversion of resources.

Based on the above, the North Department of Labor has concluded that reasonable cause does exist to substantiate that discriminatory housing practices under N.D.C.C. Section 14-02.5-03 have occurred.


The investigation also sought to determine whether or not the CP was harmed by the discriminatory practice of refusal to rent based on status as a recipient of public assistance.

The evidence shows that the tester was not refused a rental because of her status as a recipient of a Section 8 Housing Choice voucher, rather she was refused rental because the RP is not an eligible or approved housing provider for recipients of Section 8 Housing Choice vouchers through the Grand Forks Housing Authority. Further, the evidence shows that while the RPs are legitimately not eligible to provide housing for recipients of Section 8 Housing Choice vouchers, they do rent to individuals who are recipients of other types of public assistance.

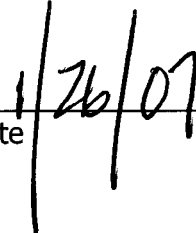
Based on the above, the North Department of Labor has concluded that reasonable cause does not exist to substantiate that discriminatory housing practices under N.D.C.C. Section 14-02.5-02 have occurred.

Signature Page

Submitted by:



Jane Marum
Compliance Investigator

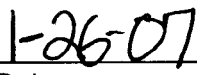


Date

Approved:



Kathy Kulesa, Human Rights Director
North Dakota Department of Labor



Date

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