

OCT 01 2001

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States  
Department of Housing and Urban  
Development, on behalf of

North Dakota Fair Housing  
Council, Jeff Klinkhammer  
(individually and on behalf  
of his minor children,  
Kristina K. Klinkhammer,  
Kayla J. Klinkhammer and  
Jordan Scott Klinkhammer),  
Ray Motschenbacher  
(individually and on behalf  
of his minor children, Scott  
Edwin Motschenbacher and Ann  
Joy Motschenbacher), and  
Jerrie Weatherly  
(individually and on behalf  
of her minor children, April  
Leigh Miller and Brooke Ellen  
Miller),

HUDALJ 08-00-0053-8  
08-00-0054-8  
08-00-0055-8  
08-00-0056-8

Charging Parties,

v.

Ervin L. Morris,

Respondent

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant North Dakota Fair Housing Council ("Complainant NDFHC") filed a verified complaint with the U.S. Department of Housing and Urban Development ("HUD") on or about November 18, 1999, alleging that Ervin L. Morris ("Respondent") had violated the Fair Housing Act, as amended, 42 U.S.C. § 3601 et. seq. (the "Act"), by discriminating based on familial status.

Complainant Jeff Klinkhammer ("Complainant Klinkhammer") filed a verified complaint with HUD on or about November 18, 1999, alleging that Respondent had violated the Act by discriminating based on familial status. Complainant Klinkhammer's complaint names his minor children - Kristina K. Klinkhammer, Kayla J. Klinkhammer and Jordan Scott Klinkhammer - as aggrieved persons.

Complainant Ray Motschenbacher ("Complainant Motschenbacher") filed a verified complaint with HUD on or about November 18, 1999, alleging that Respondent had violated the Act by discriminating based on familial status. Complainant Motschenbacher's complaint names his minor children - Scott Edwin Motschenbacher and Ann Joy Motschenbacher - as aggrieved persons.

Complainant Jerrie Weatherly ("Complainant Weatherly") filed a verified complaint with HUD on or about November 18, 1999, alleging that Respondent had violated the Act by discriminating based on familial status. Complainant Weatherly's complaint names her minor children - April Leigh Miller and Brooke Ellen Miller - as aggrieved persons.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel the authority to issue such a charge following a determination of reasonable cause by HUD.

By her determinations of September 27, 2001, the Acting Director of the Office of Fair Housing and Equal Opportunity in Denver, Colorado, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, determined that reasonable cause exists to believe that discriminatory housing practices have occurred in the subject cases based on familial status and has authorized and directed the issuance of this Charge of Discrimination.

#### SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaints and the aforementioned determinations of reasonable cause, Respondent is charged with discriminating against Complainants North Dakota Fair Housing Council, Klinkhammer, Motschenbacher and Weatherly, who are aggrieved persons, based on familial status in violation 42 U.S.C. §§ 3604(a) and (c).

#### Statutory and Regulatory Provisions

1. It is unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of familial status, or an intention to make any such preference. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75.
2. 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 familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60.

#### Properties

3. At all relevant times, Respondent owned residential rental properties at 1115 2<sup>nd</sup> Avenue South, 1117 2<sup>nd</sup> Avenue South, 1121 2<sup>nd</sup> Avenue South, 1345 2<sup>nd</sup> Avenue South, 115-115½ 12<sup>th</sup> Street South, 1202-04 1<sup>st</sup> Avenue South, 103-105 12<sup>th</sup> Street South, 201 15<sup>th</sup> Street South, all in Fargo, North Dakota.
4. At all relevant times, the property located at 1115 2<sup>nd</sup> Avenue South was an older house that had been converted into a duplex containing first and second floor living units.

5. At all relevant times, Respondent lived in the first floor unit at 1115 2<sup>nd</sup> Avenue South.
6. At all relevant times, the property at 1117 2<sup>nd</sup> Avenue South was a three-unit addition attached to the property located at 1115 2<sup>nd</sup> Avenue South.
7. At all relevant times, the property at 1117 2<sup>nd</sup> Avenue South contained three one-bedroom living units.
8. At all relevant times, the property at 115-115½ 12<sup>th</sup> Street South was an older house that had been converted into a duplex containing first and second floor living units.
9. The address of the first floor unit was 115 12<sup>th</sup> Street South, and the address of the second floor unit was 115½ 12<sup>th</sup> Street South.
10. At all relevant times, all of Respondent's properties were located within a few blocks of each other.

#### Klinkhammer Complaint

11. At all relevant times, Complainant Klinkhammer was a divorced male with three minor children - Kristina K. Klinkhammer, Kayla J. Klinkhammer and Jordan Scott Klinkhammer - and a foster son.
12. From on or about May 22 through June 2, 1999, Respondent ran an advertisement in the *Fargo Forum* offering to rent a furnished one-bedroom apartment.
13. The advertised apartment was located at 1117 2<sup>nd</sup> Avenue South.
14. On or about May 25, 1999, Complainant Klinkhammer telephoned Respondent in response to the advertisement.
15. On or about May 25, 1999, Respondent showed Complainant Klinkhammer the advertised apartment.
16. Complainant Klinkhammer offered to rent the apartment, and Respondent agreed to rent it to him. They discussed and agreed upon the rent and deposit.
17. After Complainant Klinkhammer and Respondent had agreed upon the rental terms, Complainant Klinkhammer told Respondent that he was a part-time father and two of his children would be staying with him on the weekends.
18. Respondent responded, "I don't allow children to live here," and "I don't want kids here."
19. Respondent refused to rent the apartment at 1117 2<sup>nd</sup> Avenue South to Complainant Klinkhammer because he had children.

#### Motschenbacher Complaint

20. At all relevant times, Complainant Motschenbacher was a divorced male with two minor children - Scott Edwin Motschenbacher and Ann Joy Motschenbacher.

21. From on or about October 1, 1996, through on or about June 1, 1999, Complainant leased the apartment at 115 12<sup>th</sup> Street South from Respondent.
22. From the beginning of Complainant's tenancy until on or about March 1, 1998, Complainant's children visited him periodically but did not live with him.
23. Beginning on or about March 1, 1998, and continuing throughout the remainder of Complainant's tenancy, his son Scott lived with him in the apartment at 115 12<sup>th</sup> Street South.
24. Repeatedly and persistently throughout Complainant's tenancy, Respondent told Complainant, Complainant's children and Complainant's ex-wife that he did not rent his properties to families with children.
25. In or about August 1999, at a Small Claims Court hearing, Respondent told the referee in Complainant's presence that he did not rent to families with children.

Weatherly Complainant

26. At all relevant times, Complainant Weatherly had two minor children - April Leigh Miller and Brooke Ellen Miller.
27. At all relevant times, Complainant Weatherly had custody of April, who lived with her.
28. In or about late August and early September 1999, Respondent ran an advertisement in the *Fargo Forum* offering to rent a two-bedroom duplex.
29. On or about September 2, 1999, Complainant Weatherly telephoned Respondent to inquire about the advertised property.
30. Respondent told Complainant Weatherly that the property was located at 115½ 12<sup>th</sup> Street South.
31. Respondent asked Complainant Weatherly who would be living in the unit.
32. Complainant Weatherly said that she and her daughter would be living there.
33. Respondent then said that he did not rent to families with children and hung up on Complainant Weatherly.
34. Respondent refused to rent the duplex at 115½ 12<sup>th</sup> Street South to Complainant Weatherly because she had a child.
35. Shortly thereafter, Respondent rented the unit to a couple with no children.
36. Respondent told two testers for Complainant NDFHC who telephoned him in response to the advertisement that he did not rent to families with children or that the apartment in question would not work well with children.

37. Respondent refused to show the duplex to the testers, one of whom identified herself as a single female with two children and the other of whom told him she had a child.

#### General Information

38. Respondent indicated to two of his former tenants that he did not like to rent his properties to families with children.
39. During the investigation of the subject complaints, Respondent made written statements to HUD with respect to the rental of his properties that indicated his preferences, limitations and discrimination based on familial status.

#### North Dakota Fair Housing Council Complaint

40. Complainant NDFHC is a statewide organization whose purposes include promoting equal opportunity and eliminating illegal discrimination in rental housing. Complainant NDFHC's constituents include residents of the Fargo, North Dakota, housing market area.
41. Complainants Klinkhammer, Motschenbacher and Weatherly each contacted Complainant NDFHC regarding the events described above.
42. Complainant NDFHC investigated the allegations of Complainants Klinkhammer, Motschenbacher and Weatherly, conducted tests of Respondent's operations, and assisted Complainants Klinkhammer, Motschenbacher and Weatherly in preparing and filing their complaints of housing discrimination with HUD.

#### Fair Housing Act Violations

43. By telling Complainants Klinkhammer, Motschenbacher and Weatherly and persons associated with Complainant Motschenbacher that he did not rent to families with children or did want children living in his rental units, Respondent discriminated against Complainants Klinkhammer, Motschenbacher, Weatherly and North Dakota Fair Housing Council in violation of 42 U.S.C. § 3604(c) and 24 C.F.R. § 100.75.
44. By refusing to negotiate with Complainant Weatherly regarding the rental of the unit at 115½ 12<sup>th</sup> Street South, and by refusing to rent the units at 1117 2<sup>nd</sup> Avenue South and 115½ 12<sup>th</sup> Street South to Complainants Klinkhammer and Weatherly, respectively, because of their familial status, Respondent discriminated against Complainants Klinkhammer, Weatherly and North Dakota Fair Housing Council in violation of 42 U.S.C. § 3604(a) and 24 C.F.R. § 100.60.
45. Because of Respondent's discriminatory conduct, Complainants Klinkhammer, Motschenbacher and Weatherly, and their minor children, have suffered damages, including emotional distress.
46. Because of Respondent's discriminatory conduct, Complainant North Dakota Fair Housing Council has suffered damages, including diversion of its resources and frustration of its

mission.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g) (2) (A) charges Respondent Ervin L. Morris with engaging in discriminatory practices in violation of 42 U.S.C. §§ 3604(a) and (c), and prays that an order be issued that:

- A. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et. seq.;
- B. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with him from discriminating because of familial status against any person in any aspect of the purchase or rental of a dwelling;
- C. Awards such damages as will fully compensate Complainants North Dakota Fair Housing Council, Klinkhammer, Motschenbacher, and Weatherly, who are aggrieved persons, and other aggrieved persons, for their actual damages caused by Respondent's discriminatory conduct in violation of 42 U.S.C. §§ 3604(a) and (c);
- D. Awards a civil penalty pursuant to 42 U.S.C. § 3612(g) (3) against Respondent for each separate and distinct violation of the Act committed.

The Secretary of HUD further prays for such additional relief as may be appropriate under 42 U.S.C. § 3612(g) (3).

Respectfully submitted,

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September 28, 2001