

**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)
XXXX and four minor children,)

) Charging Party,)

v.)

Marcus Manly Magee III, Ina Magee, and)
M.M. and S., Inc.,)

) Respondents.)

HUD ALJ No.
FHEO No. 04-10-0110-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On March 15, 2011, Complainant XXXX filed a complaint with the United States Department of Housing and Urban Development (“HUD” or “Charging Party”) alleging that Respondents Marcus Manly Magee, III and Hot Properties, Inc. refused to rent a dwelling, offered different terms and conditions, engaged in steering, made a discriminatory statement, and misrepresented the availability of a dwelling on the basis of race, color and/or familial status in violation of subsections 804(a), (b), (c) and (d) of the Fair Housing Act, as amended (“Act”), 42 U.S.C. § 3604(a), (b), (c) and (d). The Complaint was amended on March 29, 2011 to remove the aggrieved parties’ names, Hot Properties as a Respondent, an 804(c) violation, an 804(d) violation, a steering allegation, and color as a basis for the alleged discrimination.¹ On July 26, 2011, the complaint was further amended to add Ina Magee and M.M. and S., Inc. as Respondents.

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 or is about to occur. 42 U.S.C. § 3610(g)(1)-(2). The Secretary of HUD has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination and to the General Counsel the authority to issue a Charge of Discrimination. 74 Fed. Reg. 62801, 62802 (Dec. 1, 2009). The General

¹ On September 29, 2011, the Office of Fair Housing and Equal Opportunity issued a No Reasonable Cause Determination with regard to the alleged violations of the Act that were based on race.

Counsel has redelegated the authority to process cases arising under the Fair Housing Act to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice occurred in this case and has authorized the issuance of this Charge of Discrimination. *See* 42 U.S.C. § 3610(g)(2). HUD's efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C. § 3610(b).

II. THE LEGAL AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned Complaint and the Determination of Reasonable Cause, Respondents Ina Magee, Marcus Manly Magee III and M.M. and S., Inc. are charged with violating 42 U.S.C. § 3604(a), (b), and (c) as follows:

A. LEGAL AUTHORITY

1. It is unlawful to refuse to rent a dwelling, or otherwise make the dwelling unavailable, because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.60(a).
2. It is unlawful to impose different terms, conditions, or privileges related to the rental of a dwelling because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a).
3. It is unlawful to make, or cause to be made, any statement, with respect to the rental of a dwelling, that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(c).
4. Familial status is defined as one or more individuals under the age of 18 domiciled with a parent or other adult with legal custody. 42 U.S.C. § 3602(k); 24 CFR § 100.20.
5. Steering is a method employed to deny or otherwise make dwellings unavailable to prospective tenants because of familial status. Steering includes discouraging a prospective tenant from renting a dwelling because of the prospective tenant's familial status or the familial status of persons in a community or neighborhood. *See* 24 C.F.R. 100.70(c)(1).

B. PARTIES AND SUBJECT PROPERTY

6. Complainant XXX is a mother of four (4) children, ages 11, 8, 6 and 4.
7. Respondent Marcus Magee is the owner of the following four (4) properties located in Magee, Mississippi:

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Three bedroom two bathroom home located at 108 Pecan Drive; (the “Subject Property”);

Three bedroom two bathroom home located at 105 Pecan Grove Drive;

Three bedroom two bathroom home located at 4912 Simpson Hwy 28W; and

Two bedroom two bathroom home located at 102 4th Avenue SW.

8. Respondent Marcus Magee is the President of Respondent M.M. and S., Inc. Respondent Marcus Magee is responsible for fielding calls, showing properties, interviewing potential tenants, accepting and processing applications, and executing leases for his personal properties and commercial properties owned and/or managed by Respondent M.M. and S., Inc. Respondent Marcus Magee also occasionally assists in selecting tenants for residential properties that are owned and/or managed by Respondent M.M. and S., Inc.
9. Respondent Ina Magee is married to Respondent Marcus Magee and the Vice President of Respondent M.M. and S., Inc. Respondent Ina Magee is responsible for fielding calls, showing properties, interviewing potential tenants, accepting and processing applications, and executing leases for residential properties that are owned and/or managed by Respondents M.M. and S., Inc. or owned by Respondent Marcus Magee.
10. Respondent M.M. and S., Inc. is a Mississippi corporation and a development and leasing company that owns the following eighteen (18) residential properties located in Magee, Mississippi:

Three bedroom two bathroom home located at 108 Pecan Grove Drive;

Three bedroom two bathroom home located at 114 Pecan Grove Drive;

Three bedroom two bathroom home located at 118 Pecan Grove Drive;

Three bedroom two bathroom home located at 119 Pecan Grove Drive;

Three bedroom two bathroom home located at 130 Pecan Grove Drive;

Three bedroom two bathroom home located at 131 Pecan Grove Drive;

Three bedroom two bathroom home located at 134 Pecan Grove Drive;

Three bedroom two bathroom home located at 135 Pecan Grove Drive;

Three bedroom two bathroom home located at 138 Pecan Grove Drive;

Three bedroom two bathroom home located at 142 Pecan Grove Drive;

Three bedroom two bathroom home located at 1508 North Avenue NE;

Two bedroom two bathroom home located at 122 Pecan Grove Drive;

Two bedroom two bathroom home located at 123 Pecan Grove Drive;

Two bedroom two bathroom home located at 126 Pecan Grove Drive;

Two bedroom two bathroom home located at 127 Pecan Grove Drive;

Two bedroom two bathroom home located at 1510 North Avenue NE;

Two bedroom two bathroom home located at 1512 North Avenue NE; and

Two bedroom two bathroom home located at 1514 North Avenue NE.

Respondent M.M. and S., Inc. manages its eighteen (18) residential properties and the four (4) residential properties, referenced in paragraph #7 above, that are owned by Respondent Marcus Magee.

11. The Subject Property is an 1152 square foot home containing three bedrooms and two bathrooms. Bedroom # 1 is approximately 156.4 square feet, Bedroom # 2 is approximately 155.25 square feet and Bedroom # 3 is approximately 115 square feet.
12. The Subject Property is located in the Pecan Grove subdivision. The subdivision is comprised of sixteen (16) homes. Respondent Marcus Magee owns two (2) homes in the Pecan Grove subdivision and Respondent M.M. and S., Inc. owns fourteen (14) homes in the Pecan Grove subdivision. All of the homes in the Pecan Grove subdivision are managed by Respondent M.M. and S., Inc.

C. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE

13. At the time of the alleged discriminatory acts, eleven (11) of the sixteen (16) homes located in the Pecan Grove subdivision were occupied. Four (4) of the homes were occupied by families with children under the age of 18. None of the four (4) homes were occupied by families with more than two (2) children under the age of 18.
14. Prior to the alleged discriminatory acts, the Subject Property was occupied by two (2) adults and two (2) children who vacated home in 2009.
15. At the time of the alleged discriminatory acts, Respondent M.M. and S., Inc. owned five (5) homes and Respondent Marcus Magee owned two (2) homes that were located outside of the Pecan Grove subdivision. Six (6) homes were occupied and one (1) home was vacant and unoccupied. All of the homes owned by Respondents M.M. and S., Inc. and Marcus Magee that were located outside of the Pecan Grove subdivision were managed by Respondent M.M. and S., Inc.
16. At the time of the alleged discriminatory acts, four (4) of the six (6) occupied homes located outside of the Pecan Grove subdivision that were managed by Respondent M.M. and S., Inc. were occupied by families with children under the age of 18. Two (2) homes were occupied by families without children and none of the homes were occupied by families with more than three (3) children under the age of 18.
17. On or about October 6, 2010, Complainant and her mother drove through the Pecan Grove subdivision in search of a home to rent. Complainant spotted the Subject Property and noticed that it was vacant. A woman was standing outside of the Subject Property. Complainant asked the woman about the ownership of the Subject Property. The woman told Complainant that Respondent Marcus Magee owned the Subject Property.

18. At the entrance of the subdivision, there was a sign that states, "for leasing information call M. M. & S at 601-849-3409."
19. Complainant called Respondent M.M. and S., Inc. to inquire about the Subject Property. The call was answered by Respondent Ina Magee. Respondent Ina Magee discussed Complainant's needs and told Complainant that Respondents had several three bedroom two bathroom homes available for rent.
20. Complainant drove to Respondent M.M. and S., Inc.'s office to discuss the Subject Property. Complainant met with Respondent Marcus Magee and Complainant's mother waited outside in the car. Respondent Marcus Magee asked Complainant about the number of people that would occupy the Subject Property. Complainant advised that five (5) people – one (1) adult and four (4) children- would occupy the Subject Property. Respondent Marcus Magee advised that he could not rent the Subject Property to Complainant because she had "too many children."
21. On or about January 25, 2011, Complainant again visited Respondent M.M. and S., Inc.'s office to inquire about renting the Subject Property. Respondent Marcus Magee took Complainant to the Subject Property. During the visit, Respondent Marcus Magee asked Complainant about the number of people that would occupy the home. Complainant advised that she would occupy the home, along with her four (4) children. Respondent Marcus Magee advised that a four bedroom home would be more suitable for her family.
22. Respondents do not have written occupancy guidelines, however, they follow an unwritten policy that determines the maximum number of persons that can occupy a home leased by Respondent M.M. and S., Inc. The maximum occupancy of a two bedroom two bathroom home is two (2) adults and two (2) children, or three (3) adults and no children. The maximum occupancy for a three bedroom two bathroom home is two (2) adults and three (3) children or three (3) adults and two (2) children. The maximum occupancy for a four bedroom two bathroom home is two (2) adults and four (4) children or three (3) adults and three (3) children.
23. Respondent Ina Magee told prospective tenants with more than four (4) children that they had "too many children" to occupy the Subject Property or any other three bedroom home in the Pecan Grove subdivision.
24. By refusing to rent the Subject Property to Complainant because she had four (4) children, Respondents Marcus and Ina Magee violated 42 U.S.C. § 3604(a).
25. By refusing to rent the Subject Property to Complainant and only permitting Complainant to rent a four bedroom home outside of the Pecan Grove subdivision, Respondents Marcus and Ina Magee otherwise made housing unavailable and engaged in steering based on familial status in violation of 42 U.S.C. § 3604(a).

26. By renting three bedroom homes to persons with less than four (4) children and refusing to rent the same home to Complainant because she had four (4) children, Respondents Marcus and Ina Magee engaged in steering and otherwise violated 42 U.S.C. § 3604(b).
27. By stating to Complainant and other prospective tenants with four (4) or more children that they had “too many children,” to occupy a three bedroom home, Respondents Marcus and Ina Magee violated 42 U.S.C. § 3604(c).
28. Respondents Marcus and Ina Magee acted within their capacity and authority as employees and/or agents of Respondent M.M. and S., Inc. to secure tenants for homes owned by Respondent M.M. and S., Inc.
29. Respondent Ina Magee acted within her capacity and authority as an employee and/or agent of Respondent M.M. and S., Inc. to secure tenants for homes owned by Respondent Marcus Magee.
30. Respondent M.M. and S., Inc. is vicariously liable for discriminatory acts committed by Respondents Marcus and Ina Magee as it pertains to properties owned and/or managed by Respondent M.M. and S., Inc.
31. Respondent Marcus Magee is also vicariously liable for discriminatory acts committed by Respondent Ina Magee as it relates to properties owned by Respondent Marcus Magee and managed by Respondent M.M. and S., Inc.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Ina Marcus, Marcus Manly Magee III and M.M. and S., Inc. with violating 42 U.S.C. § 3604(a), (b), and (c) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act;
2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them from discriminating against any person because of race and/or color, sex, familial status, disability, religion and national origin in any aspect of the rental, sale, occupancy, use, enjoyment, or advertisement of a dwelling;

