

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARING AND APPEALS**

The Secretary, United States Department of Housing and Urban Development,	)	
	)	
Charging Party,	)	
	)	
on behalf of <b>NAME REDACTED</b>	)	
	)	OHA Case No.
Complainant,	)	
	)	<b>FHEO Case No. 02-22-9867-8</b>
v.	)	
	)	
Consejo de Titulares del Condominio Italia 2027,	)	
	)	
Respondent.	)	

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

**NAME REDACTED** (“Complainant”) filed a complaint with the U.S. Department of Housing and Urban Development (“HUD” or the “Department”) on October 21, 2021 (the “HUD Complaint”). Complainant alleges that the Consejo de Titulares del Condominio Italia 2027 (in English, the “Condominium Italia 2027 Council of Owners”) (“Respondent”) violated the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the “Act”), when it failed to grant Complainant’s requests for a disability-related reasonable accommodation and reasonable modification to allow her to maintain an elevator in her unit and a generator to power it.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons 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)(2). The Secretary has delegated to the General Counsel, who has retained and re-delegated to the Regional Counsel, the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011). The Regional Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for New York/New Jersey, on behalf of the Assistant Secretary for FHEO, has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. §§ 3610(b) and 3610(g)(2).

## **I. LEGAL AUTHORITY 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, Respondent is hereby charged with violating the Act as follows:

### **A. LEGAL AUTHORITY**

1. It is unlawful to discriminate against any person in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of (1) that buyer or renter, (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (3) any person associated with that buyer or renter. 42 U.S.C. § 3601(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful 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 with such dwelling, because of a disability of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. Discrimination under 42 U.S.C. §§ 3604(f)(1) and (f)(2) includes the refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203.
4. Discrimination under 42 U.S.C. §§ 3604(f)(1) and (f)(2) includes the refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.

### **B. PARTIES AND SUBJECT PROPERTY**

5. Respondent is the homeowner's association for the condominium known as Condominio Italia 2027, a walk-up residential development consisting of five residential units located at **ADDRESS REDACTED**, San Juan, Puerto Rico (the "Subject Property"). All registered unit owners are members of the Respondent.
6. The Subject Property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b).
7. Complainant is a person with a disability, as defined by the Act. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201(a)(2). Complainant has a physical disability that affects her mobility such that she requires the assistance of a walker or cane to ambulate.
8. Complainant is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of Respondent's conduct.

### C. FACTUAL ALLEGATIONS

9. Complainant is a person with a disability, having been treated for years by orthopedic surgeon Dr. Jorge Rodriguez Wilson for a mobility impairment. Dr. Rodriguez Wilson confirms that Complainant requires a walker or cane to ambulate and must have an elevator in her home “since stairs are not possible for her.”
10. At all times relevant to this Charge, Respondent has been the homeowners’ association formed for the purpose of enforcing the rules and managing the common elements of the Subject Property.
11. The Subject Property consists of five residential units, Apartments **ADDRESS REDACTED** through **ADDRESS REDACTED**.
12. Complainant purchased Apartment **ADDRESS REDACTED** in 1997. In or around 2012, Complainant purchased Apartment **ADDRESS REDACTED** and transferred the ownership of Apartment **ADDRESS REDACTED** to her daughter.
13. At all times relevant to this Charge, Complainant’s daughter leased Apartment **ADDRESS REDACTED** to a rental tenant.
14. At the time Complainant purchased Apartment **ADDRESS REDACTED**, the three-story unit had two entrances, both of which were only accessible by use of stairs. One entrance led directly into the first floor of the unit. A spiral staircase led to the second floor, containing the main living area, including the kitchen, living room, dining room, family room, a bathroom, and the balcony. Stairs led to the third-floor bedrooms and laundry room.
15. The layout of Apartment **ADDRESS REDACTED** made it impossible for Complainant to navigate her home, so in or around 2013, she informed Respondent of her disability-related need to remove the spiral staircase and install an elevator and a gas generator to power the elevator.
16. On or about December 17, 2013, having received no objection from Respondent, Complainant removed the spiral staircase and installed an elevator. She also installed a gas generator (“Generator 1”) along a pathway outside her unit to ensure power to the elevator during blackouts, which are not uncommon in Puerto Rico. Respondent did not object to the installation of the gas generator at this time.
17. Generator 1 was replaced with another gas generator (“Generator 2”) in or about April 2016. In or about August 2020, Complainant installed a diesel generator (“Generator 3”) alongside Generator 2.<sup>1</sup> By the time Generator 3 had been installed, Complainant had

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<sup>1</sup> Complainant obtained a permit from the Puerto Rico Department of Natural Resources (“PRDNR”) to own and operate a diesel generator at the Subject Property on or about June 7, 2021.

been maintaining a generator in this location without objection from Respondent for seven years.

18. In or around 2020, the tenant in Apartment **ADDRESS REDACTED** purchased a generator that he maintained in the parking space assigned to his unit. In an email to Complainant dated August 20, 2020, Respondent's then-President acknowledged the Apartment **ADDRESS REDACTED** tenant installed a generator without objection.
19. In 2021, Complainant learned that the owners of Apartments **ADDRESS REDACTED** and **ADDRESS REDACTED** were entering into illegal short-term leases. On or around May 12, 2021, she filed a lawsuit against other owners at the Subject Property asking the Superior Court of Puerto Rico, San Juan Part, to enjoin them from operating illegal short-term rentals.<sup>2</sup> Complainant's Lawsuit was successful and, on or about June 16, 2021, the Court ordered the owners of Units **ADDRESS REDACTED** and **ADDRESS REDACTED** to cease and desist from entering into short-term leases.
20. Shortly after the Court's decision, Respondent withdrew its yearslong approval of generators at the Subject Property. First, it ordered the tenant in Apartment **ADDRESS REDACTED** to remove his generator. Then, on or about July 8, 2021, Respondent filed a lawsuit before the Superior Court of Puerto Rico, San Juan Part against Complainant seeking an order requiring Complainant to remove her elevator and diesel generator.<sup>3</sup>
21. Respondent's lawsuit alleged that the installation of the elevator eight years prior was a change to the façade of the Subject Property, and that the generator was a harmful nuisance that interfered with the other owners' use and enjoyment of the property.
22. During a July 20, 2021 hearing, Complainant explained to the Court that she is a person with a disability that makes navigating her three-story home difficult without the use of the elevator. She also explained that the generator was necessary to operate the elevator in case of a power outage.
23. On or about September 28, 2021, the Court issued a Declaratory Judgment in Respondent's Lawsuit (the "Order"). The Court acknowledged that Complainant's disability made it difficult for her to navigate stairs and found that Respondent failed to establish that the modifications Complainant made to her apartment (*i.e.*, installing the elevator) were without its approval. The Court, therefore, denied Respondent's request to order Complainant to remove the elevator.
24. However, although the Court acknowledged that Respondent made no effort to challenge Complainant's installation and maintenance of the generators in eight years, it ordered Complainant to cease and desist from using the generators without Respondent's approval.

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<sup>2</sup> **NAME REDACTED** v. *Rodriguez Aparicio, et al.*, Case No. SJ2021CV02864 ("Complainant's lawsuit").

<sup>3</sup> *Consejo de Titulares del Condominio Italia 2027* v. **NAME REDACTED**, Case No. SJ2021CV04298 ("Respondent's lawsuit").

25. On or about October 7, 2021, Complainant filed a motion with the Court for a modification of the Order to allow her to temporarily connect Generator 2, which was gas and not diesel, explaining she was concerned she would be stranded and unable to move around her apartment in the event of a blackout. The Court denied Complainant's motion on or about October 13, 2021.
26. Pursuant to the Order, Respondent scheduled a special meeting of the Council of Owners for November 14, 2021, to vote on Complainant's request to use Generator 3. The minutes of the meeting reflect that three (3) of the five (5) owners voted against approving Complainant's request. Respondent informed the Court of the decision that same day.
27. In a decision dated December 3, 2021, the Court stated that Complainant may relocate Generator 3, but must obtain any required government agency endorsements and permits and inform Respondent of the new location of the diesel generator. Respondent appealed this Order.
28. On or about December 16, 2021, at her own expense, Complainant relocated Generator 3 and the generator owned by the Apartment **ADDRESS REDACTED** tenant to her private patio. She informed the Court that Generator 3 was moved to an area on her private property and that she obtained all required permits and endorsements. Because the generators were placed on her private property, she did not obtain prior approval.
29. On or about December 22, 2021, Respondent filed an objection with the Court alleging that Complainant did not obtain all necessary permits or their approval to relocate the generators.
30. On or about December 24, 2021, the President of the Council of Owners emailed Complainant stating she was acting illegally because she did not relocate the diesel tank with the diesel generator. Following this email, Complainant arranged to have the diesel tank relocated to be near the diesel generator (Generator 3).
31. On or about March 18, 2022, acting on a complaint filed by the owner of Apartment **ADDRESS REDACTED**, PRDNR inspected Generator 3 and found that the noise it created in Apartment **ADDRESS REDACTED** exceeded the regulatory limit. Complainant was then ordered to abate the noise before a follow-up inspection on April 29, 2022.
32. Complainant engaged an engineer to develop a plan to mitigate the noise and investigate any permitting requirements. The engineer recommended installing a Plycem wall and stated no permits were necessary to do so.

33. Respondent cancelled PRDNR's reinspection of Generator 3, claiming that the owners of Apartment **ADDRESS REDACTED** would not be available. PRDNR informed Complainant that she would have to wait approximately eight (8) weeks for a new inspection date.
34. On or about May 4, 2022, the Court issued a Resolution and Order requiring that Complainant cease and desist from using the generators located on her terrace by May 11, 2022. Complainant was further ordered to remove Generator 3 and the cables distributing energy from Generator 3 to Apartment **ADDRESS REDACTED**.
35. On or about June 22, 2022, Complainant filed a motion with the Court requesting a new date for the PRDNR reinspection. However, on or about June 24, 2022, PRDNR informed Complainant that the owner of Apartment **ADDRESS REDACTED** was not interested in continuing with his noise complaint.
36. On or about August 15, 2022, the Court issued a Resolution and Order authorizing Complainant to perform a sound test to verify that the noise issue had been corrected. Complainant and Respondent agreed to schedule the reinspection for September 6, 2022, but it was subsequently canceled and never rescheduled.
37. Respondent's Lawsuit is still pending.
38. Respondent's continued refusal to allow Complainant to use Generator 3 forced her to leave her apartment in October 2021. From October 2021 to May 2022, Complainant lived in an assisted living facility in Orlando, Florida at a cost of five thousand dollars (\$5,000) per month. Complainant briefly moved to another property she owns, before moving in with her daughter in Orlando, Florida, where she has resided since October 2023.

### **III. FAIR HOUSING ACT VIOLATIONS**

39. As described in the paragraphs above, Respondents discriminated against Complainant by failing to approve a reasonable modification that resulted in housing being made unavailable to Complainant. 42 U.S.C. §§ 3604(f)(1)(A) and (f)(2)(A), as defined by 42 U.S.C. § 3604(f)(3)(A).
40. As described in the paragraphs above, Respondents discriminated against Complainant by failing to provide a reasonable accommodation to Complainant. 42 U.S.C. §§ 3604(f)(1)(A) and (f)(2)(A), as defined by 42 U.S.C. § 3604(f)(3)(B).

### **IV. CONCLUSION**

**WHEREFORE**, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(2) of the Act, and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate Sections 804(f)(1) and 804(f)(2), as defined by Section 804(f)(3)(B), of the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondent, its agents, officers, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling;
3. Enjoins Respondent, its agents, officers, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having made a reasonable accommodation request;
4. Mandates Respondent, its agents, employees, officers, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
5. Awards such monetary damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
6. Assesses a civil penalty against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
7. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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