

FAIR HOUSING CASE STUDIES

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APRIL 28, 2017

CWEREN

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WHERE THE *Best* WEST BEGINS

Texas Apartment Association
Education Conference & Lone Star Expo
April 26-29, 2017
Fort Worth Convention Center

Brian P. Cweren

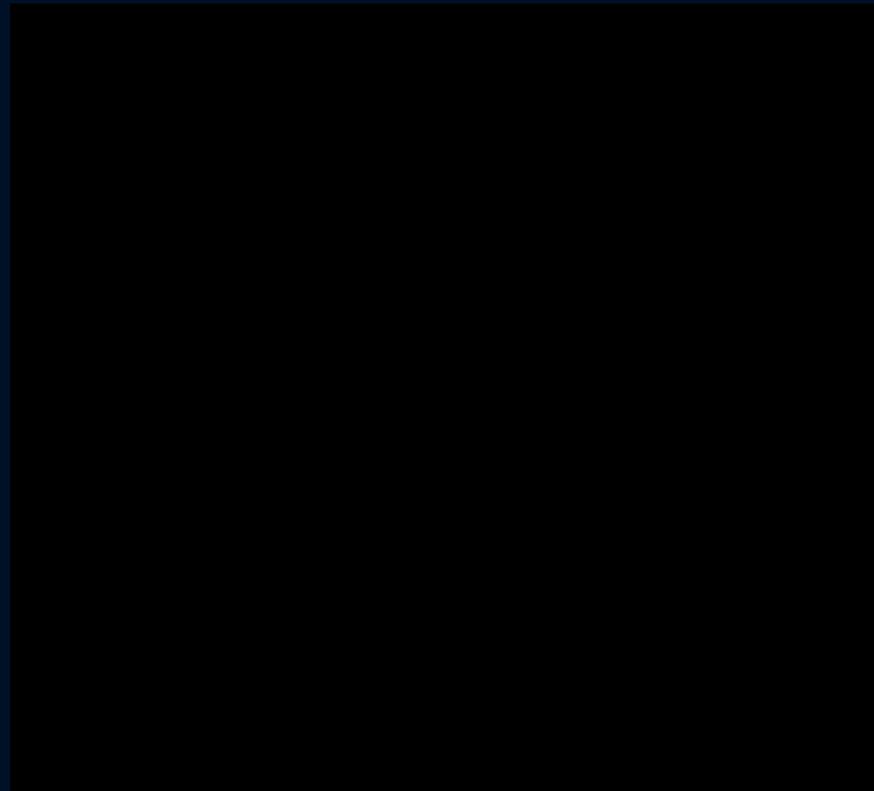
- ❖ Founder and Principal Attorney at The Cweren Law Firm
- ❖ Board Member, Texas Apartment Association
- ❖ President, Galveston County Apartment Association
- ❖ General Counsel, Galveston County Apartment Association
- ❖ Frequent Speaker and Author on Landlord-Tenant Law
- ❖ Texas Apartment Association “Redbook” Seminar Presenter



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Can I Have My 75lb Pit Bull At the Property?



Overview

- I. Ben Carson, Newly Appointed Secretary of Housing and Urban Development***
- II. Considering An Applicant's Criminal Background During Screening Process***
- III. Housing Discrimination Complaint Process, Generally***
- IV. Recommended Practices***
- V. War Stories***

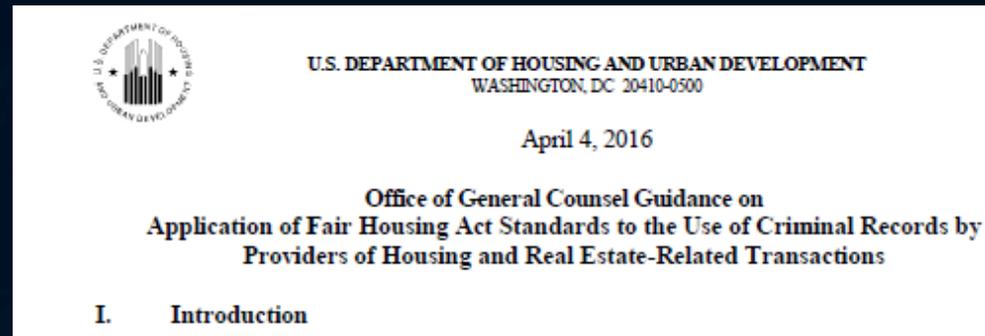
I. Ben Carson, Newly Appointed Secretary of Housing and Urban Development

- ❖ On March 2, 2017, Benjamin S. Carson, Sr., M.D., was sworn in as the 17th Secretary of the U.S. Department of Housing and Urban Development
- ❖ For nearly 30 years, Secretary Carson served as Director of Pediatric Neurosurgery at the Johns Hopkins Children's Center
- ❖ Republican Party Primary Presidential Candidate
- ❖ Since being sworn in, Secretary Carson has been touring the country on a listening tour
- ❖ Future policy?



II. Considering Applicant's Criminal Background During Screening Process

- ❖ **What are we talking about?**
- ❖ **HUD's "Guidance on Application of Fair Housing Act Standard to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" published on April 4, 2016**



II. Considering An Applicant's Criminal Background During Screening Process

What does it say?

- While the Fair Housing Act does not prohibit Landlords from appropriately considering criminal history information when making housing decisions, arbitrary and overly broad criminal history-related bans likely lack legally sufficient justification and are a violation of the Fair Housing Act
- A Landlord with a rental policy or practice of excluding individuals because of one (1) or more prior arrests (without any conviction) cannot satisfy its burden of showing that such rental policy or practice is necessary to achieve a substantial
- A Landlord's rental policies that exclude persons based on criminal convictions must be tailored to serve the Landlord's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction

General Take Away:

While a Landlord should not consider an applicant's arrest record, a Landlord may reasonably consider a criminal conviction record when screening an applicant for residency.

III. Housing Discrimination Complaint Process, Generally

The Fair Housing Act prohibits housing providers from discriminating against housing applicants or residents because of any one (1) of the following protected class:

- (1) race
- (2) color
- (3) national origin
- (4) religion
- (5) sex
- (6) familial status
- (7) handicap

III. Housing Discrimination Complaint Process, Generally

Step 1: Housing Discrimination Complaint Intake

Step 2: Filing - If HUD accepts the complaint for investigation, the investigator will draft a formal complaint on HUD's standard form . The complainant must swear to the allegations asserted in the complaint

Step 3: Investigation Process. Possible voluntary mediation immediately proceeding or concurrent to the investigation process

Step 4: Potential Conciliation or Settlement

Step 5: No Cause Determination

OR

Step 5: Cause Determination and Charge

Step 6: Request for Reconsideration

OR

Step 6: Request for Reconsideration

Step 7: Complainant Can File a Civil Lawsuit in US District Court

OR

Step 7: Hearing before HUD Administrative Law Judge or a US District Court

Step 8: Petition Secretary of HUD for review

III. *Housing Discrimination
Complaint Process, Generally*

***After Receiving “No Cause” Determination,
is it Really Over?***

- Both the State and Federal Fair Housing Acts also provide that a Complainant may file a civil action in an appropriate United States District Court or State Court no later than two years after the occurrence or the termination of the alleged discriminatory housing practice, notwithstanding this dismissal by HUD and the Division.
- The computation of this two (2) year period does not include any time during which an administrative proceeding under the Act was pending.
- The court may appoint an attorney if, in the opinion of the court, such person is financially unable to bear the cost of such action. See U.S.C. 3613.

IV. Recommended Practices for Effectively Dealing with the Unavoidable HUD Complaint

- ❖ It is not a question of whether your property will face a baseless HUD complaint, it's a matter of when
- ❖ Reasons baseless HUD complaints are filed include:
 - ❖ Attempt to override the rental criteria
 - ❖ Attempt to override the community policies
 - ❖ Attempt to override a fee
 - ❖ Anger / revenge
 - ❖ Attempt to use as leverage against an unrelated Lease default such as non-payment of rent
- ❖ Select an experienced attorney with the following attributes:
 - ❖ strong knowledge of Landlord Tenant Law
 - ❖ good working relationship with the investigatory agency (i.e. Texas Workforce Commission, Civil Rights Division; City of Fort Worth Human Relations Commission; etc.)
 - ❖ highly practical and a problem solver

*IV. Recommended Practices for Effectively
Dealing with the Unavoidable HUD Complaint*

❖ What your attorney wishes they could have told you before defending your HUD Complaint:

- Maintain resident's file including regularly update same with all written communications in chronological order
- Maintain a guest card system for prospective residents
- Maintain notes or a conversation log documenting each time you speak with a particular resident or prospective resident
- Never deny a resident's or prospect's request for anything during a teleconference
- Refrain from treating a resident differently when you receive a baseless housing discrimination complaint
- Do not discontinue providing services (provided to other residents) after resident files a baseless housing discrimination complaint
- Maintain a copy of your rental qualification guidelines on display in your leasing office

IV. *Recommended Practices for Effectively
Dealing with the Unavoidable HUD Complaint*

Desired End Result: “No Cause” Determination

Texas Workforce Commission
A Member of Texas Workforce Solutions

Complainant

By and through their representative,

The Cweren Law Firm
3311 Richmond Avenue, Suite 305
Houston, TX 77098

DETERMINATION OF NO REASONABLE CAUSE

I. JURISDICTION

Andres Alarcon, Chairman
Commissioner Representing the Public

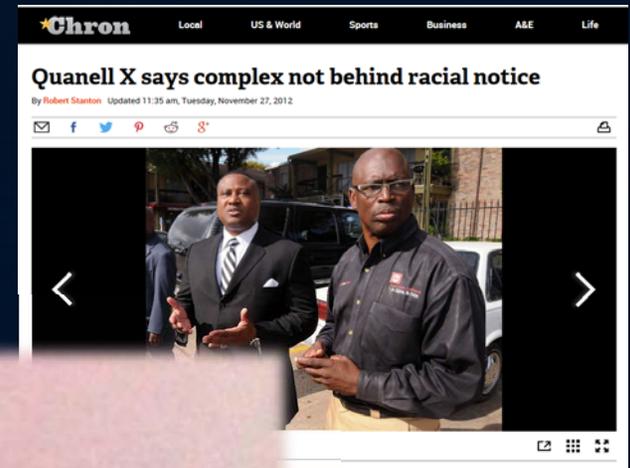
Scott R. Wright
Commissioner Representing
Employers

Julian Alvarez
Commissioner Representing
Labor

Larry E. Temple
Executive Director

V. War Stories

❖ *Racist Laundry Room Note From Resident Impersonating the Landlord*



ROCK SPRINGS APTS.
9000 TOWN PARK Houston TX 77036
713-776-2385

DEAR RESIDENTS:

We ask you to please contact the office immediately every time you see teenagers or adolescents of Afro-American race or any other suspicious people in the property.

WE APPRECIATE YOUR COOPERATION WITH US.

OFFICE



V. *War Stories*

❖ *Linguistically-Based Racial Profiling; It is a Real Thing?*

Background:

Testing organization with a White Tester and Black Tester

Testing occurred via phone calls; no in-person testing occurred.

Complainant's Allegations:

Complainant contended that because the protected Black Tester did not receive a return phone call from any of Respondents agents despite having left two (2) voicemail messages during a holiday weekend, Respondents refused to rent to the protected Black Tester on the basis of her race.

Complainant further contends and considers “linguistic profiling” when conducting tests and asserts that individuals are able to differentiate between race and/or national origin based on the caller’s voice and/or name. Complainant alleges that it is not a coincidence that the Black Tester was not given the same treatment as the White Tester

HUD’s Investigator’s “No Cause” Determination:

Complainant’s tester admits that because of her voice and English being her second language, she is often mistaken as being a race other than White. Furthermore, the PT tester asserted that she does not believe someone would be able to distinguish her race from her voice or her name. Absent supporting evidence in addition to the claim of linguistic profiling, the investigation did not show that Respondents’ agents were able to discern the testers’ race based on the sound of their voice, as alleged by Complainant.

Teaching Points:

- (1) Linguistic Profiling may potentially be considered evidence to establish housing discrimination on the basis of race and national origin
- (2) Be diligent in returning prospects telephone calls and voice messages
- (3) Caution you about testing situations such as this

V. *War Stories*

❖ *Transgender Discrimination Complaint*

7. The following is a brief and concise statement of the facts regarding the alleged violation:

I am a transgender female and was a resident of [REDACTED] Apartments. Beginning in May 2013, I began having problems with management. For example, I made requests for repairs of my air conditioner, which took four months to properly address. Also, I was late paying my rent but paid it in full including late fees. LNU, Manager, placed it on my credit but never removed it even though payment was received in full.

I was having problems with the maintenance man, approaching my guest and asking, "Did you know he is gay?" In addition, I believe management disclosed my gender identity to my neighbors as they began calling me "gay". My neighbors harassed me by putting dog feces on my doorstep and putting screws in my tires. I reported this to management seven times and they did nothing to resolve the problem. Early in the month of July 2013, I agreed to a mutual rescission of lease with [REDACTED] Regional Manager. They filed an eviction against me despite our agreement. On August 4, 2013, I received a notice to vacate and on August 26, 2013, management proceeded to file an eviction against me. I believe that I have been subjected to different terms and conditions of rental, harassed, denied the opportunity to rent and discriminated against because of my gender identity.

V. *War Stories*

❖ *There's Truth in Death*

Background:

Resident claiming racial discrimination for receiving non-renewal and further denied being in town on a day in question where he entered the leasing office and threatened an assistant property manager

Resident represented to the investigator that he was out-of-town on the day in question because he was attending his mother's funeral

Result:

After Cweren Law conducted independent research, it discovered the following:

- (1) The obituary for the Resident's mother indicated the funeral as almost a week after the day in question; and,
- (2) The Resident had filed or requested a tow hearing via a time-stamped request

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Questions and Answers...

**Thank you and I look forward to
seeing you next year!**

***For any additional questions, please feel free to
email Mr. Cweren at bcweren@cwerenlaw.com.***



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