

March 24, 2015

HOUSING DISCRIMINATION COMPLAINT

Case Number:

1. Complainant

The Arc of Delaware  
2 S. Augustine St, Ste B  
Wilmington, DE 19804  
Phone: 302-996-9400 Ext. 110

ADC 1, Inc.  
2 S. Augustine St, Ste B  
Wilmington, DE 19804

Complainant's Counsel

Sasha Samberg-Champion  
Ryan C. Downer  
Michael Allen

Relman, Danc & Colfax PLLC  
1225 19<sup>th</sup> Street, NW, Suite 600  
Washington, D.C. 20036-2456  
(202) 728-1888

2. Other Aggrieved Persons

None

3. Respondent(s)

Sugar Maple Farms Property Owners' Association, Inc.  
122 West Market St.  
Georgetown, DE 19947

4. The following is alleged to have occurred and is continuing to occur:

Complainant The Arc of Delaware is an organization dedicated to improving and enhancing the quality of life of people with intellectual and developmental disabilities. One of the ways it accomplishes this goal is by making it possible for people with such

disabilities to live in community settings and to achieve the greatest possible societal integration. Complainant's subsidiary ADC 1 is a nonprofit corporation that procures and builds affordable, community-based housing to serve The Arc's clients. ADC 1 currently owns and operates 56 group homes throughout Delaware. These homes are rented to individuals with intellectual and developmental disabilities through a partnership with the Delaware Department of Health and Social Services. Each home houses approximately four individuals who are attended by a staff of non-resident professional aides.

Respondent Sugar Maple Farms Property Owners' Association, Inc. ("POA") is the homeowners' association for Sugar Maple Farms, a residential subdivision with 66 lots in Milford, Delaware. Respondent maintains and implements a Declaration of Covenants, Conditions, and Restrictions ("DCCR"). One provision of the DCCR restricts the use of lots to single-family homes and prohibits the use of any property for business purposes. Specifically, DCCR 3.1 states, in pertinent part, as follows:

Each lot located in Sugar Maple Farms shall be used solely and exclusively for single family residential purposes. For the purposes of these Restrictions, the word "family" shall mean a single person occupying the dwelling or unit and maintaining a household; two or more persons related by blood or marriage or or adoption maintaining a common household; or not more than three (3) unrelated persons occupying a dwelling, living together, and maintaining a common household. No commercial or business enterprise, except a home occupation as defined by the Sussex County zoning ordinances, may be conducted on any lot.

Per DCCR 6.1 and 6.2, Respondent must review and approve architectural plans for any prospective new home before any land sale becomes final.

In its normal course of operations as a provider of housing to people with disabilities, Complainant sought out land to develop into affordable housing for its clients. After determining that the lot met its requirements, on July 8, 2014, Complainant made a bid of \$39,000 for lot #65 in Sugar Maple Farms. On or before July 14, 2014, the seller, Ronald Ritthaler, accepted the offer contingent on the Respondent's approval of the sale. Soon thereafter, Complainant tendered a \$5000.00 deposit to Ritthaler.

On or around July 30, 2014, Complainant submitted its architectural plans to Respondent for approval in accordance with DCCR rules. Simultaneously, Complainant contacted Kathy List, the POA's secretary, to discuss its plans for the property. Complainant

explained its organizational mission and purpose to Ms. List and described the prospective residents as having intellectual and developmental disabilities. Complainant explained that the intended use for the lot was to build a home specially designed to accommodate four people with intellectual and developmental disabilities who would be attended by professionally trained staff.

Complainant also spoke to Barbara Popham, the POA president. Complainant again explained its organizational mission and how the home would be used. Popham raised several concerns.

Primarily, Popham asserted that DCCR 3.1 forbade Complainant's use of the lot to build a home for people with intellectual and developmental disabilities. This was so, Popham contended, because the people who would reside in the home were not a "single family." In addition, Popham noted that the DCCR provision restricted the use of lots for business purposes. Popham did not explain why she thought the Complainant's proposed use was for business purposes.

Complainant explained that, as a housing provider for individuals with disabilities, its ability to operate a group home in the manner described was protected by the Fair Housing Act.<sup>1</sup>

Popham also expressed concern that Complainant's intended structure would not feature an enclosed garage like other homes in the development and that parking for the residents and staff would create a problem. Complainant addressed each of these concerns. Complainant offered to construct a garage façade to maintain the neighborhood's uniform look. Complainant also agreed to build a larger-than-normal driveway to accommodate staff vehicles and assured her that the residents themselves would not be driving.

In an effort to address any remaining, unspoken concerns that the POA might have, Complainant offered to give Popham and other POA members a tour of one its existing

---

<sup>1</sup> Indeed, courts have held that such homes do not constitute "businesses" within the meaning of zoning ordinances or restrictive covenants and do not violate "single family" restrictions. These courts have endorsed the notion that group homes are "more closely akin to a family residence, than a business." *E.g., Martin v. Constance*, 843 F. Supp. 1321, 1325 (E.D. Mo. 1994). Moreover, Delaware law expressly recognizes group homes as "single family" properties for zoning purposes. *See* 22 Del. C. § 309; 9 Del. C. §§ 2612, 4923, 6819.

homes. Although Popham initially expressed interest and a tour was scheduled, she later canceled.

On August 7, 2014, Complainant received a letter from Respondent rejecting Complainant's application. It stated:

Per the Boards [sic] decision, we are declining your request to purchase and construct a dwelling on Lot 65 in Sugar Maple Farms. Our decision is based upon Covenant 3.1 of the Declaration of Restrictive Covenants, Conditions, Easements and Remedial Clauses for Sugar Maple Farms, which states each lot in Sugar Maple Farms shall be used solely and exclusively for single family residential purposes.

We have an obligation to the present lot and home owners to maintain property value, provide and maintain utilities and common areas, and insuring [sic] the quiet and peaceful enjoyment of all residential lots and land located in the Sugar Maple Farms subdivision.

We thank you for your interest in Sugar Maple Farms, but at this time we cannot approve your request for the above stated reason.

5. Complainant is a victim of housing discrimination because:

Respondent denied Complainant, an organization committed to providing housing to individuals with disabilities, the opportunity to purchase land and construct a dwelling because the intended users of that dwelling had intellectual and developmental disabilities. Respondent's conduct had the purpose and/or effect of making housing unavailable on the basis of disability and interfered with rights protected by the FHA.

Furthermore, Complainant requested reasonable accommodations in Respondent's rules, policies or practices that were necessary, because of the prospective residents' disabilities, to ensure equal housing opportunity. Without justification, Respondent refused to make such accommodations.

Respondent's conduct thus violates 42 U.S.C. §§ 3604(f)(1) and 3604(f)(3)(B).

Courts have found violations of the Fair Housing Act by home owners associations in comparable circumstances. *See, e.g., Martin*, 843 F. Supp. at 1325; *United States v. Scott*, 788 F. Supp. 1555, 1560 (D. Kan. 1992). Like the plaintiffs in these cases, Complainant here has been denied a housing opportunity based on disability and/or its association with disabled individuals. Complainant has also been denied reasonable accommodations to the POA's rules and policies.

6. The alleged violation occurred because of:

Disability

7. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Lot # 65, Sugar Maple Farms development in Milford, DE.

8. The most recent date on which the alleged discrimination occurred:

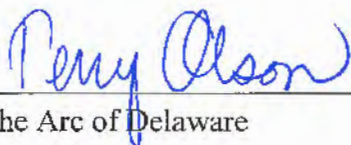
Respondent was denied a housing opportunity on August 7, 2014.

9. The acts alleged in this complaint, if proven, may constitute a violation of the following:

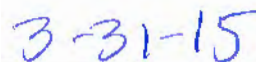
Section 3604(f) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, et seq.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.



For The Arc of Delaware



Date

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.