



United States
Department of
Agriculture

Farmers
Home
Administration

Bluestone Professional Building
2112 Port Republic Road - Suite D
Harrisonburg, VA 22801
Tel. No. (703) 434-2501

January 31, 1989

• Mr. Ricky Purcell
c/o Mrs. Carolyn S. Purcell
Briarwood Apartments - Apt. J1
Staunton, VA 24401

• Dear Mr. Purcell:

Pursuant to a memorandum I received from our office of General Counsel, I am overturning the decision made by the housing officer in your appeal on December 13, 1988. The court cases noted by your attorney were reviewed and in our attorney's opinion it is not necessary in this case to determine whether FmHA's regulations or the Hearing Officer's interpretation of such regulations violate the Constitutional guarantee of freedom of association. The matter can be resolved instead by determination of whether Mr. Allen's interpretation of the regulations is correct.

The regulations do not specifically cover the situation in this case, namely, whether the new spouse of an existing tenant must qualify as an eligible tenant in order to occupy the premises previously leased by the tenant. The regulations do, however, cover the situation where a tenant's household is increased and the requirements which must be met with regard to reporting such increase. Therefore, it was their interpretation of the regulations that the tenant eligibility requirements are intended to cover initial tenancies and are not intended to cover additions to the household.

Therefore, the denial of your residence in Briarwood Apartments is overturned.

Sincerely,

RONALD R. BROWN
DISTRICT DIRECTOR, IV

cc: Knopp Enterprises, Inc.
Mr. John E. Whitfield, Attorney at Law
Blue Ridge Legal Services, Inc.

RRB/JHA/cjr



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United States
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Room 8225, Federal Building
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Richmond, Virginia 23240
(804) 771-2026; FTS 925-2026

JAN 27 1989

January 13, 1989

TO: State Director
Farmers Home Administration
Richmond, Virginia

Attention: Rural Housing Division

FROM: Demetrie L. Augustinos,
Attorney-In-Charge
Richmond, Virginia

SUBJECT: Mr. Ricky Purcell
Briarwood Apartments
Fisherville, Virginia

Reference is made to your memorandum of January 5, 1989 regarding the above-entitled matter. The facts are set out in your memorandum and we will not repeat them here. The issue involved is whether or not the decision made by Hearing Officer James H. Allen regarding Mr. Purcell is supported by the regulations contained in the Multiple Housing Management Handbook, Exhibit B, 7 C.F.R. 1930-C (1988). The identical regulations are found in FmHA Instruction 1930-C, Exhibit B.

We have carefully reviewed Exhibit B, Mr. Allen's letter of December 21, 1988, and the letter dated December 13, 1988 from Mr. John E. Whitfield, Attorney at Law, who represents Mr. and Mrs. Purcell. We have also reviewed the court cases cited by Mr. Whitfield in his letter. Those court cases basically deal with the constitutionally protected right of freedom of association. They involve rules promulgated by housing authorities, lease provisions, membership in the Jaycees, and a municipal ordinance. In our opinion, it is not necessary in this case to determine whether FmHA's regulations or the Hearing Officer's interpretation of such regulations violate the constitutional guarantee of freedom of association. The matter can be resolved instead by determination of whether Mr. Allen's interpretation of the regulations is correct. We have concluded that Mr. Allen's interpretation is erroneous. The regulations do not specifically cover the situation in this case, namely, whether the new spouse of an existing tenant must qualify as an eligible tenant in order to occupy the premises previously leased by the tenant. The regulations do, however, cover the situation where a tenant's household is increased and the requirements which must be met with regard to reporting such increase, tenant recertification, etc. It therefore, appears to us that the tenant eligibility requirements are intended to cover initial tenancies and are not intended to cover additions to the household. We therefore are of the opinion that Mr. Whitfield's comments regarding the regulations are well taken.

State Director

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In summary, it is our opinion that the Hearing Officer's interpretation of the regulations is erroneous.

If we can be of any further assistance in the matter, please let us know. In the meantime we are closing our file subject to reopening later should further additional assistance be requested.

DLA:dmr

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204 NORTH HIGH STREET
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EXECUTIVE DIRECTOR

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PLEASE RESPOND TO BOX 551

BRANCH OFFICE
POINT OF SALE BOX 114
19 N. GARDEN STREET MALL
WINCHESTER, VIRGINIA 22601
(703) 662-5021

December 13, 1988

Mr. Jim Allen, Assistant District Director
Farmers Home Administration
2112 Port Republic Road
Harrisonburg, VA 22801

Re: Knopp Enterprises, Inc.'s Refusal to Allow Mr. Ricky Purcell
to Live with His Family at Briarwood Apartments

Dear Mr. Allen:

I am submitting the following to you in your capacity as hearing officer in Mr. and Mrs. Ricky Purcell's appeal of Knopp Enterprises, Inc.'s refusal to allow Mr. Purcell to live with his family in their apartment at Briarwood Apartments. This appeal is made pursuant to Subpart L of 7CFR Ch. XVII, Part 1944. For the reasons set forth below, Knopp Enterprises, Inc.'s actions are contrary to FmHA's regulations, and the First and Fifth Amendments to the Constitution of the United States.

I. SUMMARY OF FACTS

At all times relevant to this matter, Mrs. Carolyn Purcell and her two children have been tenants at Briarwood Apartments, having been previously granted admission by Knopp Enterprises, Inc., in accordance with FmHA regulations. Sometime prior to October 3, 1988, Mrs. Purcell (then, Ms. McCray) advised Knopp Enterprises, Inc., of her plans to marry Mr. Ricky Purcell and to have him move into her apartment on a permanent basis. She was advised by Knopp Enterprises, Inc., that she and Mr. Purcell would need to come in and fill out some forms. Mr. and Mrs. Purcell were married on October 3, 1988. They went to Knopp's offices on the following day to complete the necessary paperwork.

By letter dated October 11, 1988, Mr. Purcell was advised by Knopp Enterprises, Inc., that his "application for residency at Briarwood Apartments J-1 has been denied due to unsatisfactory credit." The letter went on to state as follows:

Also, be advised that since your application has been denied, you cannot live at Briarwood Apartments J-1. Mrs. Purcell has advised me that you did in fact reside at the apartment on a two or three night basis, prior to your application, which is



strictly against the lease, tenant certification, and the rules and regulations. Should this occur again, you will be jeopardizing Mrs. Purcell's lease and termination of tenancy could occur.

In response to this letter, Mr. and Mrs. Purcell have filed this appeal.

II. ARGUMENT

A. KNOPP ENTERPRISE'S EXCLUSION OF MR. PURCELL VIOLATES THE PURCELLS' CONSTITUTIONAL RIGHT TO LIVE AS A FAMILY.

By attempting to deny Mr. Purcell permission to reside with his wife at Briarwood, and by threatening his wife with eviction if he should do so, Knopp Enterprises, Inc., in concert with FmHA, is infringing on the Purcells' Constitutional rights guaranteed to every citizen under the First Amendment to the Constitution. See, for example, McKenna v. Peekskill Housing Authority, 647 F.2d 332 (2nd Cir., 1981); Lancor v. Lebanon Housing Authority, 760 F.2d 361 (1st Cir., 1985). Also see Roberts. v. Jaycees, 468 U.S. 609, 104 S.Ct. 3244 (1984) and Moore v. City of East Cleveland, 431 U.S. 494, 97 S. Ct. 1932 (1977).

B. KNOPP ENTFRPRISE'S PROCEDURES ARE CONTRARY TO FmHA REGULATIONS

Knopp Enterprises, Inc. is erroneously treating Mr. Purcell's wish to reside with his new family in their apartment at Briarwood Apartments as an "admissions" decision, governed by "VI. Renting Procedure" of the FmHA regulations. Certainly, under VI. 3.a., "credit reports to reflect the applicant's past record of meeting obligations" are among the permissible criteria in determining the eligibility of an applicant for admission to the project. If Mr. Purcell were applying for an apartment for himself, it would be entirely appropriate for Knopp Enterprises, Inc. to follow its normal tenant selection procedures and deny Mr. Purcell admission to an apartment for himself if his credit history were unfavorable enough to justify this.

However, Mr. Purcell is not applying for an apartment. Rather, Mrs. Purcell simply wishes for him to join her household in the apartment she already occupies at Briarwood. Accordingly, Knopp Enterprises, Inc. is following the wrong procedures and has incorrectly advised the Purcells that Mr. Purcell cannot move in.

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A review of FmHA's regulations will make this clear. Paragraph VIII.B.3.b. of Exhibit B of FmHA's regulations requires the following clause to be included in the lease:

I agree to immediately notify the lessor of any permanent change in the adjusted monthly income or change in the number of persons living in the household.

Similarly Paragraph VIII.B.4. requires the following language to be included in the lease:

I also understand and agree that my monthly tenant contribution under this lease may be raised or lowered based on changes in the household income,...[and] changes in the number and age of persons living in the household....

Likewise, Paragraph VIII.C. requires that the lease include provisions regarding the information which a tenant is required to provide to permit redetermination of tenant contributions and eligibility, e.g. "names and ages of household members," and requiring the tenant's household agreement to move to a unit of appropriate size if the household size changes.

Paragraph VIII.F. ["Occupancy Rules"] 9. provides as follows:

Tenant may be permitted to have a guest(s) visit their household. However, an adult person(s) making reoccurring visits or one continuous visit of 14 days and nights in a 45-day period without consent of the management will be counted as a household member(s).

Finally, Paragraph VII. ["Verification and Certification of Tenant Income and/or Employment"] F.3. states:

Any substantial change in income or change in family size requires a new tenant certification to be promptly filed with the FmHA.

The foregoing regulations make the following points clear:

1. A tenant may have temporary guests without permission of the management, and without even notifying management;
2. If a tenant has someone move in on a permanent basis (i.e. more than 14 days out of a 45 day period), the tenant must report this change in household size to management;

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3. Upon notification of this increase in the size of the household, the management must conduct a new tenant certification and verification of income.

Nowhere in the regulations is there a requirement that a new household member be screened for admission. Nowhere in the regulations is there authority for management to forbid a tenant from adding a new household member, either by birth, marriage, or other relationship. Instead, the regulations require only that the tenant report the change, at which time management is required to conduct a recertification and verification of income.

Of course, there may be adverse consequences to the tenant as a result of this recertification. If the household's income increases as a result of the addition to the household, the tenant's rent may increase. In fact, if the income exceeds the maximum allowable, the tenant may be rendered ineligible for continued occupancy. Finally, if the tenant's household size exceeds the occupancy standards for the apartment it is then occupying, it may be forced to move to a unit of appropriate size or face eviction.

In a nutshell, Knopp Enterprises, Inc., has violated FmHA regulations by using the wrong procedure when Mrs. Purcell notified them of the change in her household size. Instead of conducting a recertification and verification of income, as clearly provided in Paragraph VII.F.7., Knopp Enterprises, Inc., required Mr. Purcell to fill out a rental application, i.e., apply for admission.

III. CONCLUSION

For these reasons, you should rule that Knopp Enterprises, Inc., should have the Purcells complete the appropriate forms, i.e., those necessary for a tenant certification and verification of income. In the meantime, Mr. Purcell should be allowed to move in with his wife. Then Knopp Enterprises, Inc. should make any appropriate adjustments in the household's rent contribution, and the matter will be correctly resolved as required by FmHA regulations.

Thank you for your careful consideration of these matters.

Yours truly,

John E. Whitfield
Attorney at Law

JEW:t

December 13, 1988

cc: Ms. Jenine Ash,
Knopp Enterprises, Inc.

Mr. and Mrs. Ricky Purcell