



JUN 15 1987

OFFICE OF THE ASSISTANT SECRETARY FOR
REGULATORY AFFAIRS - FEDERAL HOUSING COMMISSIONER

Mr. Nicholas Roomeliotis
State Attorney
Wayne County Neighborhood Legal Services
Downtown Intake Office
3550 Cadillac Tower
Detroit, MI 48226-2822

JUN 18 1987

Dear Mr. Roomeliotis:

This is in response to your letter of April 30, 1987, to Assistant General Counsel Joseph Gelletich, regarding late fee charges to welfare tenants. Your letter has been forwarded to this office because your request deals with interpretation of program policy rather than legal opinion.

Mr. Saul Green of the Detroit Office is correct in his statement that late fees may be collected by project owners for late payment of the monthly rent. The Kealoha case (Kealoha v. HUD) you reference relates to whether late rental payments constitute substantial noncompliance with the lease terms, thereby providing cause for eviction. My affidavit and the stipulation for dismissal of said case involves material noncompliance and evictions, but does not preclude the collection of late fees.

Owners may charge late fees when tenant rent payments are not received by the fifth calendar day after the due date; however, failure on the part of the tenant to pay such late fees does not precipitate eviction from the project.

This policy is outlined in paragraph 4-14 of HUD Handbook 4350.3, "Occupancy Requirements of Subsidized Multifamily Housing Programs," and has been acknowledged and supported in affidavits and administrative proceedings.

I trust this response satisfies your concerns and queries with respect to late fee charges. If I can be of further assistance to you, please let me know.

Very sincerely yours,

James J. Tahash
Director
Planning and Procedures Division



WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES

REPLY TO:

Downtown Intake Office
3550 Cadillac Tower
Detroit, MI 48226-2822
(313) 962-0466

April 30, 1987

Joseph Gelletich
Assistant General Counsel
U.S. Department of Housing & Urban Development
451 7th St. SW
Washington, D.C.

RE: Late Fee Charges to Welfare Tenants
Villa Apollo II
Wyandotte, Michigan
Project No. 044-44285

Dear Mr. Gelletich,

This letter is to request an opinion from you.

The project cited above is subsidized by HUD. They have a late fee policy in conformity with the HUD model lease. There are many residents who are recipients of welfare benefits, and the project has a policy of not accepting direct vendored rent payments from the Michigan Department of Social Services.

In Michigan, welfare recipients receive two checks a month, approximately on the 10th and 24th. Because their welfare income is strictly budgeted, it is difficult (if not impossible) to save money in advance. Therefore, they often must pay their rent late with the additional \$5.00 late fee. As you might imagine, this policy disproportionately affects welfare recipients.

Continued.....

BOARD OF DIRECTORS
FRANCESCA FERROSON,
Chairperson
Board of Education
CHARLES H. BROWN,
Vice-Chairperson
Charles H. Brown, P.C.
HOSEA B. SABBATH,
Secretary
Neighborhood Services
Department
LILLIAN BULLARD,
Treasurer
Parent Advisory Council
MARJORIE AUSTIN
Client's Council
E. JOHN BAILEY
Pepper, Hamilton & Sheets
HELEN BERNAUER
Concerned Citizens
of Cass Corridor
DOROTHY P. BYRD
American Progressive Assoc.
NELLIE CUELLAR
Coalition for the
Handicapped
GODFREY J. DILLARD
Godfrey J. Dillard, P.C.
WILLA M. DUNCOMBE
Client's Council
DORIS ANN GOLENIAK
M.E.S.C.
ELLIOT S. HALL
Dykema, Gossett,
AVIS HOLMES
Client's Council
THOMAS O. KIENBAUM
Dickinson, Wright
MICHAEL W. LEQQ
Compuware Corporation
MICHELLE Y. COLEMAN-MAYES
Burroughs Corporation
SHARON McPHAIL
Wayne County
Corporation Counsel
ROSALIND K. REED
Reed & Sasse, P.C.
CHARLES H. SCALES, Jr.
Charles H. Scales, P.C.
LYNN H. SHECTER
Roy, Shecter & Vocht, P.C.
FRANCISCO J. VILLARRUEL
Sowell & Evelyn
EDWARD REILLY WILSON, III
Wayne County Prosecutor's Office
DA D. BERNARD, J.D., L.L.M.,
Executive Director





WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES

REPLY TO:

Page 2

RE: Late Fee Charges to Welfare Tenants
Villa Apollo II
Wyandotte, Michigan
Project No. 044-44285

I learned that in the case Kealoha v. HUD, No. 83-05094 (US District Court, D. Hawaii, 1983), a similar late fee policy was challenged by the plaintiff. Mr. Tahash's affidavit, incorporated into the stipulation and order for dismissal, states that:

"HUD assumes that an owner will not consider a rental payment to be late, for purposes of substantial non-compliance with the lease such as to serve as a basis for eviction, if rent is tendered within three business days of receipt of the assistance check from the Hawaii Department of Social Services and Housing. It is HUD's interpretation of the model lease that such late payments do not constitute material noncompliance with the lease notwithstanding that such late payments occur more than once."

I posed the question to Mr. Saul Green, Chief Counsel of HUD in Detroit, as to whether this would prohibit collection of late fees from welfare tenants, if the rent were tendered within the time Mr. Tahash described. He replied that late fees may be collected by project owners, notwithstanding Mr. Tahash's affidavit, because the Kealoha case was a material non-compliance case and therefore distinguishable.

Mr. Gelletich, I am writing to you more or less as an informal "appeal". It makes no sense to me that HUD "will not consider a rental payment to be late", but still require a late charge. Why make an artificial distinction between material non-compliance cases and rent cases?

Continued.....

- BOARD OF DIRECTORS
- FRANCESCA FEROUSON,
Chairperson
Board of Education
- CHARLES H. BROWN,
Vice-Chairperson
Charles H. Brown, P.C.
- HOSEA B. SABBATH,
Secretary
Neighborhood Services
Department
- LILLIAN BULLARD,
Treasurer
Parent Advisory Council
- MARJORIE AUSTIN
Client's Council
- E. JOHN BAILEY
Pepper, Hamilton & Sheetz
- HELEN BERNAUER
Concerned Citizens
of Cass Corridor
- DOROTHY P. BYRD
American Progressive Assoc.
- NELLIE CUELLAR
Coalition for the
Handicapped
- DREY J. DILLARD
Dfrey J. Dillard, P.C.
- WILLA M. DUNCOMBE
Client's Council
- DORIS ANN GOLENIAK
M.E.S.C.
- ELLIOT S. HALL
Dykema, Gossett,
- AVIS HOLMES
Client's Council
- THOMAS G. KIENBAUM
Dickinson, Wright
- MICHAEL W. LEGG
Compuware Corporation
- MICHELLE Y. COLEMAN-MAYES
Burroughs Corporation
- SHARON McPHAIL
Wayne County
Corporation Counsel
- ROSALIND K. REED
Reed & Sasse, P.C.
- CHARLES H. SCALES, Jr.
Charles H. Scales, P.C.
- LYNN H. SHECTER
Roy, Shecter & Vocht, P.C.
- FRANCISCO J. VILLARRUEL
Sowell & Evelyn
- EDWARD REILLY WILSON, III
Wayne County Prosecutor's Office
- INDA D. BERNARD J.D., L.L.M.,
Culture Director





WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES

REPLY TO:

BOARD OF DIRECTORS

FRANCESCA FERGOUSON,
Chairperson
Board of Education

CHARLES H. BROWN,
Vice-Chairperson
Charles H. Brown, P.C.

HOSEA B. SABBATH,
Secretary
Neighborhood Services
Department

LILLIAN BULLARD,
Treasurer
Parent Advisory Council

MARJORIE AUSTIN
Client's Council

E. JOHN BAILEY
Pepper, Hamilton & Sheetz

HELEN BERNAUER
Concerned Citizens
of Cass Corridor

DOROTHY P. BYRD
American Progressive Assoc.

NELLIE CUELLAR
Coalition for the
Handicapped

ODFREY J. DILLARD
Jodfrey J. Dillard, P.C.

WILLA M. DUNCOMBE
Client's Council

DORIS ANN GOLENIAK
M.E.S.C.

ELLIOT S. HALL
Dykema, Gossett,

AVIS HOLMES
Client's Council

THOMAS G. KIENBAUM
Dickinson, Wright

MICHAEL W. LEGG
Compuware Corporation

MICHELLE Y. COLEMAN-MAYES
Burroughs Corporation

SHARON McPHAIL
Wayne County
Corporation Counsel

ROSALIND K. REED
Reed & Sasse, P.C.

CHARLES H. SCALES, Jr.
Charles H. Scales, P.C.

LYNN H. SHECTER
Roy, Shecker & Vocht, P.C.

FRANCISCO J. VILLARRUEL
Sowell & Evelyn

EDWARD REILLY WILSON, III
Wayne County Prosecutor's Office

MINDA D. BERNARD, J.D., L.L.M.,
Executive Director

Page 3

RE: Late Fee Charges to Welfare Tenants
Villa Apollo II
Wyandotte, Michigan
Project No. 044-44285

Specifically, I am asking you for an opinion on the following questions:

- (1) If a welfare tenant pays the rent within three business days of receipt of the first welfare check in the month, may a late fee be charged, in light of Mr. Tahash's affidavit in Kealoha?
- (2) If a welfare tenant pays the rent within 3 business days of receipt of the first welfare check in the month, but did not tender a late fee, would that constitute material noncompliance, in light of Mr. Tahash's affidavit?
- (3) May a project unilaterally refuse to accept directly vended rent payments?
- (4) If rent payments were directly vended twice a month by the Department of Social Services, would a late charge be permissible?

For easy reference, I am enclosing copies of the Kealoha documents as well as my prior correspondence with Saul Green. You should also note that we litigated this issue in Federal Court against the project owner and HUD. We lost on an equal protection argument against the project owner, and voluntarily dismissed against HUD. In lieu of further litigation, I am writing this request for your opinion.

I truly appreciate your attention to this matter, and I look forward to your reply. Please do not hesitate to contact me if problems arise.

Sincerely,

Nicholas Roomeliotis
Staff Attorney

NR/pjw
Enclosure

