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Cover: Opened in January 2015, Stephen Center's newly constructed 60,000 square foot Permanent Supportive Housing and Pettigrew Emergency Shelter facility provides a drug- and alcohol-free environment for homeless families and individuals in the Omaha metro area. Architect: Alley Poyner Macchietto Architecture. Photo by Alley Poyner Macchietto Architecture.

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Sexual Harassment and the Fair Housing Act: An Overview of Recent Cases

By Alyssa George, NHLP Law Student Extern*

In recent years, the U.S. Department of Justice (DOJ), the U.S. Department of Housing and Urban Development (HUD), and private plaintiffs have successfully brought sexual harassment claims against housing providers for violations of the Fair Housing Act's (FHA) ban on sex-based housing discrimination.¹ While many instances of sexual harassment outside of the employment context go unreported, "the reported cases, in conjunction with the daily realities of low-income women, suggest that each year thousands of women are subjected to inappropriate sexual comments, unwanted touching, and requests for sex or sexual favors by their landlords."² Low-income women are at particularly high risk for sexual harassment by housing providers because they often have limited housing choices and face difficulties leaving unsafe housing situations.³ Tenants who participate in subsidized housing programs may also fear losing crucial housing assistance if they refuse to endure a landlord's harassing behavior.⁴ Sexual harassment may occur in any form of rental housing, however, both federally subsidized and unsubsidized. This article briefly outlines the legal framework of FHA sexual harassment claims. It then analyzes recent DOJ complaints that settled out of court and summarizes two recent cases resulting in HUD fair housing discrimination charges.

Background

The FHA authorizes the HUD Secretary, the Attorney General, and any person who experiences sexual harassment in the home to pursue enforcement actions against housing providers, either in state or federal courts or through HUD's administrative procedures.⁵ Because judicial recognition of sexual harassment in housing has only

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¹See 42 U.S.C.A. § 3614.

²Jill Maxwell, *Sexual Harassment at Home: Altering the Terms, Conditions and Privileges of Rental Housing for Section 8 Recipients*, 21 WIS. WOMEN'S L.J. 223, 223 (2006).

³*Id.* at 224.

⁴Indeed, in October 2014, HUD issued a discrimination charge against three management company employees who threatened female tenants with the loss of Section 8 vouchers if they refused to provide sexual favors. Press Release, U.S. Dep't of Hous. & Urban Dev., West Virginia and Tennessee Landlords Charged with Sexual Harassment After Female Renters Coerced to Comply or Lose Home (Oct. 8, 2014), available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-126 [hereinafter HUD Press Release].

⁵42 U.S.C.A. §§ 3612-14.

emerged in the last few decades, however, there is little case law directly on point.⁶ Courts have therefore drawn on more-developed employment law to recognize two main forms of sexual harassment that violate the FHA:⁷ “hostile housing environment” and “quid pro quo” harassment.

Hostile Housing Environment

To successfully allege a hostile housing environment FHA claim, a plaintiff must establish that the housing provider engaged in unwelcome sexual harassment “sufficiently severe or pervasive so as to interfere with or deprive [the plaintiff] of her right to use or enjoy her home.”⁸ This standard is based on precedent interpreting Title VII’s prohibition of sex discrimination in employment as banning conduct that is “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.”⁹ In announcing this definition in a Title VII case, the U.S. Supreme Court located a middle ground between banning “any conduct that is merely offensive” on one extreme, and requiring evidence that the conduct caused “a tangible psychological injury” on the other.¹⁰ To be actionable, sexual harassment in the workplace must be both subjectively abusive to the complaining employee and objectively abusive to a reasonable observer.¹¹ In the context of housing, therefore, conduct that the tenant subjectively finds offensive, but that is objectively infrequent or not severe, will not support a hostile environment claim.¹² Since the court or fact-finder must consider all circumstances concerning the alleged harassment, however, more severe harassment may lessen the requirement to show it was repetitive.¹³

Quid Pro Quo Harassment

Quid pro quo housing harassment occurs “when housing benefits are explicitly or implicitly conditioned on sexual favors.”¹⁴ If a landlord refuses to make repairs unless or until a tenant provides sexual favors, for example, the landlord’s actions constitute quid pro quo harassment.¹⁵ Altering the terms and conditions of the rental in

retaliation for a tenant’s refusal to comply with a landlord’s sexual demands, such as raising a tenant’s rent, could also constitute quid pro quo harassment.¹⁶ In addition to the FHA, existing HUD regulations prohibit this type of harassment by prohibiting the denial or limitation of services or facilities of a rental unit “because a person failed or refused to provide sexual favors.”¹⁷

A successful quid pro quo harassment claim under the FHA must provide evidence of a causal connection between the withholding of housing benefits and the tenant’s refusal to provide sexual favors. It is not sufficient to allege merely that a landlord failed to deliver housing benefits after a tenant rejected demands for sexual favors.¹⁸

HUD’s Proposed Rulemaking

In 2000, HUD proposed a rule “to provide guidance on the key aspects of evaluating sexual harassment claims.”¹⁹ The proposed regulation explained that sexual harassment may violate several sections of the FHA, including: (1) § 3604(a), prohibiting housing providers from refusing to sell or rent a dwelling because of one’s sex; (2) § 3604(b), prohibiting discrimination in “the terms, conditions, or privileges of sale or rental of a dwelling” because of one’s sex; (3) § 3604(c), prohibiting the printing or publishing of a notice, advertisement, or statement “that indicates any preference, limitation, or discrimination” based on one’s sex; and (4) § 3617, making it unlawful “to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of” any right protected by the FHA.²⁰

The proposed rule would have imposed liability for a housing provider’s own actions, as well as vicarious liability for sexual harassment by any of the housing provider’s agents.²¹

Additionally, under the proposed rule, a housing provider could have also been liable for the sexual harassment by third parties, such as tenants or independent contractors, if the housing provider or his or her agents

¹⁶Richards v. Bono, 2005 WL 1065141, at *5 (M.D. Fla. May 2, 2005).

¹⁷24 C.F.R. § 100.65(b)(5) (2015).

¹⁸Honce v. Vigil, 1 F.3d 1085, 1089–90 (10th Cir. 1993).

¹⁹Fair Housing Act Regulations Amendments Standards Governing Sexual Harassment Cases, 65 Fed. Reg. 67,666 (Nov. 13, 2000) (to be codified at 24 C.F.R. § 100.500(d)(2)) [hereinafter Sexual Harassment Proposed Rule].

²⁰*Id.*; 42 U.S.C.A. §§ 3604(a)–(c), 3617. Section 3617 claims in housing have typically overlapped with claims under other sections of the FHA rather than serving as independent grounds for liability. ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 11C:2 (2014); see, e.g., Richards, 2005 WL 1065141, at *6 (“[Section] 3617 overlaps with other provisions of the Act, including § 3604(b). The Plaintiff’s sexual harassment claim is therefore actionable under § 3617 as unlawful interference with the exercise of her right granted and protected by § 3604(b) to enjoy her rental property free from sexual discrimination.”).

²¹Sexual Harassment Proposed Rule, *supra* note 19, at 67,667. Courts have found that individuals who engage in discriminatory acts or enforce a corporation’s discriminatory rules or policies may be directly liable for sexual harassment. See Ponce v. 480 E. 21st St., LLC, 2013 WL 4543622, at *4 (E.D.N.Y. Aug. 28, 2013). In addition, principals or employers may be held vicariously liable for the discriminatory acts of agents. *Id.*

⁶Nicole A. Forckenbrock Lindemyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW & INEQ. 351, 358 (2000).

⁷Specifically, courts have looked to the test for workplace sexual harassment and applied the test to the housing context. See Ponce v. 480 E. 21st St., LLC, 2013 WL 4543622, at *2 (E.D.N.Y. Aug. 28, 2013) (“Courts apply the legal standard for Title VII sexual harassment claims to similar claims under the FHA.”).

⁸Quigley v. Winter, 598 F.3d 938, 946–47 (8th Cir. 2010).

⁹Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993) (internal quotations omitted).

¹⁰*Id.*

¹¹*Id.*

¹²See generally Tagliaferri v. Winter Park Hous. Auth., 486 F. App’x 771 (11th Cir. 2012) *cert. denied*, 133 S. Ct. 1496 (U.S. 2013) *reh’g denied*, 133 S. Ct. 2052 (U.S. 2013).

¹³Salisbury v. Hickman, 974 F. Supp. 2d 1282, 1291 (E.D. Cal. 2013).

¹⁴Quigley v. Winter, 598 F.3d 938, 947 (8th Cir. 2010) (internal quotations omitted).

¹⁵Grieger v. Sheets, 1989 WL 38707, at *5 (N.D. Ill. Apr. 10, 1989).

“knew or should have known of the conduct and failed to take immediate and appropriate corrective action, and had a duty to do so” under a lease, condominium bylaw, or local ordinance.²² Courts have split on this question, some reluctant to sustain FHA claims against defendants who have *no* control or authority over the terms, conditions, or privileges of the plaintiff’s housing.²³ However, at least one court was willing to impose liability against a landlord for tenant-on-tenant sexual harassment.²⁴

This proposed rule, however, has never been finalized. Fifteen years later, the Office of Information and Regulatory Affairs is currently reviewing a new proposed rule entitled “Standards Governing Harassment Under the Fair Housing Act.” This new proposed rule would “provide clear guidance for the benefit of housing consumers and providers, as well as legal practitioners for evaluating sexual harassment claims under the Fair Housing Act.”²⁵

Recent Litigation

Hostile Housing Environment

Successful Hostile Housing Environment Claims

Recent cases have considered hostile housing environment claims under the FHA. In *Salisbury v. Hickman*, the court allowed plaintiff’s claim to proceed even though the alleged harassment occurred on two separate occasions.²⁶ The plaintiff, a mobile home park resident, alleged that the park’s on-site manager visited her in her backyard, “grabbed [her] hand and told her that he had ‘urges,’” asked if he could “hold her in his arms,” and cornered her against the side of her mobile home.²⁷ On the second occasion, the plaintiff alleged that the manager entered her kitchen, advanced upon her until she “was pinned against the kitchen counter,” and asked to “hold [her] in [his] arms and kiss [her].”²⁸ On each occasion, the resident told the manager she was not interested in his sexual advances.²⁹

²²Sexual Harassment Proposed Rule, *supra* note 19, at 67,667.

²³*See* Cain v. Rambert, 2014 WL 2440596, at *4–5 (E.D.N.Y. May 30, 2014) (dismissing a sexual harassment claim against a tenant’s neighbors because the neighbors lacked any official authority over the tenant’s housing); *see also* Francis v. Kings Park Manor, Inc., ___ F. Supp. 3d ___, 2015 WL 1189579, at *5–12 (E.D.N.Y. Mar. 16, 2015) (refusing to allow FHA claims against housing provider due to actions of another tenant to proceed under a racial hostile housing environment theory, absent a demonstration of the housing provider’s discriminatory intent, but allowing habitability claim under state law to proceed).

²⁴Fahnbulleh v. GFZ Realty, LLC, 795 F. Supp. 2d 360, 364 (D. Md. 2011); *but see* Francis, 2015 WL 1189579, at *5–12 (declining to impose liability on a landlord, in a race discrimination context).

²⁵Office of Info. & Regulatory Affairs, Standards Governing Harassment under the Fair Housing Act, FR 5248 (Fall 2014), available at <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=2529-AA94>.

²⁶*Salisbury v. Hickman*, 974 F. Supp. 2d 1282, 1293 (E.D. Cal. 2013).

²⁷*Id.* at 1285.

²⁸*Id.* at 1285–86.

²⁹*Id.*

The *Salisbury* court identified two specific factors that supported the resident’s claim of severe sexual harassment.³⁰ First, although the manager did not commit violence or use overt physical force against the resident, his alleged behavior involved “a degree of physical intimidation and apprehension” when he advanced toward the resident and trapped her against her mobile home and against her kitchen counter.³¹ In addition, the second occasion occurred inside the resident’s home, making it “particularly egregious.”³² Second, the court noted the manager’s position of authority and his ability to interfere with the resident’s use and enjoyment of her home. The court found that these circumstances made the alleged harassment especially threatening, even without explicit quid pro quo harassment.³³ Accordingly, the court denied summary judgment to the landlord on the plaintiff’s FHA hostile housing environment claim.

Courts have also recognized hostile housing environment claims based on state anti-discrimination laws, drawing on an FHA analysis.³⁴ A Washington court, for example, cited federal precedent in establishing that sexual harassment constituted discrimination under state law.³⁵ The tenant alleged that her landlord engaged in inappropriate behavior on 14 occasions—touching her buttocks, making sexually explicit comments, and pushing her onto his bed—and sued under Washington’s statute prohibiting sex discrimination in real estate transactions.³⁶ The court found the landlord’s conduct sufficiently severe and pervasive to constitute sexual harassment.³⁷ Citing *Quigley v. Winter* (discussed below) as persuasive authority,³⁸ the court affirmed the prior administrative law judge’s findings in favor of the tenant.

Failed Hostile Housing Environment Claims

If a tenant fails to establish that the alleged harassment was severe or pervasive, a hostile housing environment claim will likely fail. In *Tagliaferri v. Winter Park Housing Authority*, the court affirmed the dismissal of the hostile housing environment claims of two tenants who alleged that a maintenance man photographed them outside, set up a video camera at their bedroom window, and interrupted their conversations with other men.³⁹ Although

³⁰*Id.* at 1292.

³¹*Id.*

³²*Id.*

³³*Id.* at 1293.

³⁴*See, e.g., id.* at 1293–94 (rejecting landlord’s motion for summary judgment under California’s Fair Employment and Housing Act and California Civil Code § 51.9, stating that these state claims “mirror the elements and analysis under the FHA and under Title VII”).

³⁵*Tafoya v. State Human Rights Comm’n*, 311 P.3d 70, 76 (Wash. App. 2013), *amended* (Nov. 13, 2013).

³⁶WASH. REV. CODE ANN. § 49.60.030(1)(c).

³⁷*Tafoya*, 311 P.3d at 77.

³⁸*See supra* notes 43–44 and accompanying text.

³⁹*Tagliaferri v. Winter Park Hous. Auth.*, 486 F. App’x 771, 774 (11th Cir. 2012) *cert. denied*, 133 S. Ct. 1496 (U.S. 2013) *reh’g denied*, 133 S. Ct. 2052 (U.S. 2013). The plaintiffs proceeded *pro se*.

this conduct might be “annoying and offensive,” the court concluded it did not constitute sexual harassment because it was not “serious, persistent, and explicitly humiliating or threatening.”⁴⁰

Courts have also dismissed complaints for lack of specificity, such as when a tenant vaguely alleged that her building’s superintendent made “unwanted sexual advances” and “sexually explicit and humiliating comments about her anatomy.”⁴¹ Without further details about the frequency of the conduct or the content of the comments, the court concluded the complaint was insufficient to establish a plausible claim.⁴²

Quid Pro Quo Harassment

Successful Hostile Housing Environment Claims

A housing provider may also violate the FHA by engaging in quid pro quo harassment, demanding sexual favors in exchange for housing benefits. In *Quigley v. Winter*, a landlord responded to a tenant’s inquiry about returning her security deposit by “flutter[ing] his hand against [her] stomach and sa[ying] ‘My eagle eyes have not seen everything yet.’”⁴³ Although the evidence of quid pro quo harassment was “not overwhelming,” the court found that a jury could reasonably infer that the landlord was conditioning “the return of her deposit... upon...seeing more of [tenant]’s body or even receiving a sexual favor.”⁴⁴

Another tenant successfully alleged that her landlord engaged in quid pro quo harassment by raising her rent in retaliation for her refusal to provide sexual favors.⁴⁵ Specifically, the tenant alleged that shortly after she moved in, her landlord began making sexually suggestive comments to her.⁴⁶ He also entered her home several times to make sexual demands.⁴⁷ After the tenant refused to comply with his demands, the landlord raised her rent \$200 per month. The court found that the tenant’s allegations could constitute quid pro quo harassment and denied the landlord’s motion to dismiss.⁴⁸

Failed Quid Pro Quo Claims

Absent evidence that a housing provider conditioned benefits on sexual favors, a plaintiff will not succeed with a quid pro quo claim. In *Butler v. Carrero*, for example, a prospective tenant alleged that staffers of a property

manager’s office stated they would pay the prospective tenant to read them a bedtime story because his “voice is so sexy” and they would “pay for more than that.”⁴⁹ Because the plaintiff did not allege that the staffers *conditioned* the rental of the apartment on his compliance with their advances, however, he could not establish quid pro quo harassment, and the court granted defendant’s motion to dismiss.⁵⁰

Similarly, in *Hurst v. Hochman*, the trial court awarded a tenant a judgment for battery against her landlord based on his touching of her several times over her objections, including “reach[ing] his hand up [her] shirt” and “touch[ing] [her] butt a couple times.”⁵¹ The lower court also found, however, that the tenant’s FHA claim failed because she “was charged and paid normal rent” and “was not deprived of any services available to other tenants.”⁵² The appellate court affirmed, finding that the tenant failed to carry her burden of proof under the FHA—despite the finding of battery—because she did not show that the landlord took any adverse housing actions in response to her refusal to submit to his sexual advances.⁵³

Recent DOJ Settlements

The DOJ has statutory authority to pursue civil enforcement actions regarding sexual harassment and other claims under the FHA when the allegations represent a “pattern or practice of resistance to the full enjoyment of rights granted” by the FHA, or when a “group of persons has been denied any of the rights granted by” the FHA and the denial “raises an issue of general public importance.”⁵⁴ In addition to claims evaluated by courts, the DOJ has settled housing sexual harassment cases out of court.

United States v. Lowrey Hotel

In 2011, the DOJ brought suit on behalf of a formerly homeless woman who alleged that the manager of a hotel offering month-to-month rentals sexually harassed her.⁵⁵ The hotel owner had allowed the tenant to work for the hotel’s manager to offset her rent.⁵⁶ The manager, though, allegedly stopped giving the tenant work after she refused his sexual advances.⁵⁷ On one occasion, the manager had allegedly locked himself in a room with her, exposed himself, asked her to engage in sexual acts, and stated that “if

⁴⁰*Id.*

⁴¹*Ponce v. 480 E. 21st St., LLC*, 2013 WL 4543622, at *2 (E.D.N.Y. Aug. 28, 2013).

⁴²*Id.*

⁴³*Quigley v. Winter*, 598 F.3d 938, 948 (8th Cir. 2010).

⁴⁴*Id.*

⁴⁵*Richards v. Bono*, 2005 WL 1065141, at *5 (M.D. Fla. May 2, 2005).

⁴⁶*Id.* at *1.

⁴⁷On one occasion, he “pulled her towards him, tried to kiss her, and asked for [her] to touch his genitals.” On another, he “demanded oral sex,” then “exposed his genitals and ejaculated.” *Id.*

⁴⁸*Id.* at *5–7. The court also found a viable claim for hostile housing environment. *Id.*

⁴⁹*Butler v. Carrero*, 2013 WL 5200539, at *7–8 (N.D. Ga. Sept. 13, 2013). The plaintiff proceeded *pro se*.

⁵⁰*Id.* at *7–9.

⁵¹*Hurst v. Hochman*, 2012 WL 6479297, at *1–2, *6 (Tenn. Ct. App. Dec. 14, 2012).

⁵²*Id.* at *8 (summarizing trial court findings).

⁵³*Id.*

⁵⁴42 U.S.C.A. § 3614 (2014).

⁵⁵Complaint at 2, *United States v. Lowrey Hotel*, No. 11-CV-790 (W.D. Mich. Nov. 23, 2011).

⁵⁶*Id.* at 3.

⁵⁷*Id.* at 4.

she did enough for him he could possibly get her a job.”⁵⁸ In addition, he allegedly took her to his home and told her “they were not leaving until she performed oral sex on him,” and later offered to waive her rent if she would “give him a sexual favor in exchange.”⁵⁹ After the tenant filed a HUD complaint, HUD issued a charge of discrimination against the hotel, its owner, and the manager, asserting that all parties engaged in sex discrimination prohibited by the FHA. The tenant then elected to have her claims heard in federal district court and the DOJ filed suit. As part of a settlement, defendants agreed to pay the tenant \$50,000.⁶⁰ They further agreed not to discriminate on the basis of sex, adopt a nondiscrimination policy and grievance procedure, display fair housing information, keep rental records, and receive FHA training.⁶¹

Hawecker v. Sorensen

In 2012, the DOJ obtained its largest sexual harassment settlement.⁶² The Department and two private plaintiffs alleged that the plaintiffs’ landlord subjected actual and prospective female tenants to “severe, pervasive, and unwelcome sexual harassment.” Specifically, the landlord had allegedly made unwelcome sexual advances and comments, exposed his genitals, entered residences of female tenants without permission or notice, “touch[ed] female tenants on their breasts and buttocks without their consent,” offered to reduce rent and install new appliances “in exchange for sexual favors,” and took adverse housing actions, including evictions, against female tenants who would not grant sexual favors.⁶³

Along with granting damages and a civil penalty, the settlement also enjoined the landlord and his agents from engaging in sex-based discrimination. Additionally, the settlement required the housing provider to establish and abide by a nondiscrimination policy.⁶⁴ Although the landlord may retain ownership of certain rental properties, he must hire an independent manager who will conduct all management activities, including showing apartments, supervising repairs, selecting tenants, and conducting evictions.⁶⁵ The settlement also required the landlord to fully cooperate in vacating evictions and related

judgments, and striking eviction complaints filed or rendered against the plaintiffs and others who experienced his sex discrimination.⁶⁶

United States v. VanderVennen

Most recently, in August 2014, the DOJ settled a case in which the property manager of an apartment complex in Grand Rapids, Michigan used his position to sexually harass female tenants and applicants.⁶⁷ The manager allegedly made unwelcome sexual comments and advances to female tenants and prospective tenants, subjected female tenants to unwanted sexual touching and “touch[ed] himself in a sexual manner” in their presence, entered female tenants’ apartments “without permission or notice,” offered “housing benefits in exchange for sexual acts,” threatened female tenants who refused to provide sexual favors, and “regularly expressed a preference for female tenants.”⁶⁸ The complaint further alleged that the owners of the apartment complex either knew or should have known about the manager’s conduct and failed to stop him.⁶⁹

In the settlement agreement, the manager and owners agreed to pay \$510,000 in damages to the individuals harmed by the discriminatory conduct.⁷⁰ Both the manager and the owners agreed not to engage in discriminatory conduct and to institute nondiscriminatory policies.⁷¹ In addition, the agreement permanently bans the manager from performing any property management responsibilities at any residential rental property.⁷²

Recent HUD Discrimination Charges

In September 2014, HUD issued fair housing discrimination charges against housing providers in West Virginia and Tennessee.⁷³ In the West Virginia case, HUD alleged that property management employees sexually harassed five female Section 8 tenants.⁷⁴ The employees allegedly sent one of the tenants “unwelcome, offensive, and sexually suggestive text messages,” entered her locked apartment and bedroom, and demanded that she “participate

⁵⁸*Id.* at 4–5.

⁵⁹*Id.* at 5.

⁶⁰Consent Decree at 7, *United States v. Lowrey Hotel*, No. 11-CV-790 (W.D. Mich. Nov. 23, 2011).

⁶¹*Id.* at 4–7.

⁶²The defendants agreed to pay over \$2 million in damages to tenants affected by the harassment, as well as a \$55,000 civil penalty. *Recent Accomplishments of the Housing & Civil Enforcement Section*, U.S. DEPT OF JUSTICE, <http://www.justice.gov/crt/about/hce/whatnew.php> (last updated Dec. 2, 2014); Consent Decree at 3–4, 14–15, *Hawecker v. Sorensen*, No. 1:10-CV-00085-JLT (E.D. Cal. Sept. 13, 2012) [hereinafter *Hawecker* Consent Decree]. Based on the defendant’s financial disclosures, the parties agreed to suspend \$1,265,000 of the judgment. *Hawecker* Consent Decree at 20.

⁶³*Hawecker* Consent Decree, *supra* note 62, at 2–3.

⁶⁴*Id.* at 4–5, 10.

⁶⁵*Id.* at 5–6.

⁶⁶*Id.* at 21.

⁶⁷Consent Decree, *United States v. VanderVennen*, No.13-01069-RJJ (W.D. Mich. Aug. 19, 2014) [hereinafter *VanderVennen* Consent Decree].

⁶⁸Complaint at 4, *United States v. VanderVennen*, No.13-01069-RJJ (W.D. Mich. Aug. 19, 2014).

⁶⁹*Id.* at 4–5.

⁷⁰*VanderVennen* Consent Decree, *supra* note 67, at 17. The damages will be divided among the 13 affected individuals known to the DOJ at the time of settlement, and any additional individuals who come forward in response to the newspaper advertisements that defendants must run to notify the public of the availability of damages. *Id.* at 18.

⁷¹*Id.* at 4–5, 9.

⁷²*Id.* at 5.

⁷³HUD Press Release, *supra* note 4.

⁷⁴Charge of Discrimination at 7, No. 03-13-0258-8 (Sept. 30, 2014), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=14WVCHARGEREDACT2.PDF> [hereinafter *WV Charge*]. The complex also receives Low-Income Housing Tax Credits.

in a violent sexual act.” One employee allegedly told her “he could deprive her of her Section 8 voucher and have her evicted if she refused.”⁷⁵ The employees allegedly engaged in similar conduct with the other four tenants, including making sexually suggestive comments and texts, demanding sexual acts, and threatening eviction or loss of Section 8 vouchers.⁷⁶ The employees had allegedly created “a hostile and burdensome housing environment” for the tenants by “making unwelcome, sexually suggestive or explicit statements” and by engaging in quid pro quo harassment.⁷⁷

In the Tennessee case, the manager of a rental property allegedly sent a female tenant “sexually suggestive text messages” and requested “sexually suggestive photographs.”⁷⁸ The manager allegedly later appeared at the tenant’s door and demanded that she allow him to take partially undressed photos of her, then sent further requests for photos through text messages.⁷⁹ When the tenant refused a later request for additional nude photographs, the manager allegedly told her that “she would receive a 30-day notice to vacate” and “texted her to ‘get the hell out.’”⁸⁰

Both discrimination charges seek damages for the residents who experienced harassment, civil penalties, and injunctions prohibiting the defendants from engaging in further discriminatory behavior.⁸¹ As of April 2015, HUD has not issued any press releases stating that these charges have been resolved.

Conclusion

Sexual harassment in housing is a serious violation of a tenant’s housing rights under the FHA. Sexual harassment is particularly threatening to low-income tenants because of their limited housing options. As a result of those limited options, tenants experiencing sexual harassment may be reluctant to refuse or report sexual advances by a housing provider for fear of endangering their housing. Advocates should look for further developments in this area as courts, the DOJ, and HUD continue to enforce the FHA against providers who engage in sexual harassment. ■

⁷⁵*Id.* at 8. The tenant ultimately succumbed to the employee’s demands to participate in the sexual act. *Id.*

⁷⁶*Id.* at 9–11.

⁷⁷*Id.* at 10, 12.

⁷⁸Charge of Discrimination at 4, No. 04-12-0157-8 (Sept. 29, 2014), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=14TNCHARGEREDACT.PDF> [hereinafter TN Charge].

⁷⁹*Id.* at 4–5.

⁸⁰*Id.* at 5.

⁸¹WV Charge, *supra* note 74, at 16–17; TN Charge, *supra* note 78, at 7.