

INVESTIGATIVE REPORT

(Final Finding and Closure)

*****PUBLIC VERSION*****

Information identifying the complainant has been removed in this public report.

Alaska Ombudsman Complaints A098-0610 and A098-0622

November 10, 1998

SUMMARY OF THE COMPLAINT

An Anchorage woman contacted this office on September 18 to complain that the Alaska Housing Finance Corporation (AHFC) Public Housing Division (PHD) had unreasonably refused to allow her daughter to rent a home she bought for that purpose. The mother's letter stated that AHFC had allowed her daughter, to rent a home the mother owned in a rural area outside Anchorage but then refused to allow her to rent under similar circumstances in a urban area.

Within a week of receiving the mother's complaint, we received another complaint from her daughter about the same issue.

The two stated that the daughter wanted to move from the rural area to the urban area because the job market is better there. Their letters stated that when the daughter first decided to move she asked her PHD caseworker if PHD would allow her to transfer her Section 8 contract up to the urban area. Their letters stated that the PHD caseworker told her there would be no problem. The mother said she purchased a home in the urban area for her daughter because of the caseworker's comment. When the daughter returned to PHD to set up the rental, her caseworker told her that she would not be allowed to rent from her mother because she is a close relative and agency policy now prohibits people from renting from their close relatives.

The mother then complained to this office. She contended it is unfair to penalize her daughter for living in a safe home that her parent owns. Both women believe the caseworker should have warned the daughter that she would not be able to rent from her mother.

Based on their complaint, Assistant Ombudsman Linda Lord-Jenkins investigated the following complaint:

A098-0610 Unreasonable and Unfair: The AHFC Public Housing Division reneged on an agreement with the complainant's adult child allowing the child to live in the complainant's house with a PHD subsidy.

A098-0622 Unreasonable and Unfair: AHFC Public Housing worker refuses to allow the complainant to rent from a relative after moving from one area to another. Complainant is currently renting from the relative and wants the agency to bend the rule.

INVESTIGATION

Ms. Lord-Jenkins spoke with the daughter on September 23 and asked about her conversations with the caseworker. She told the investigator that she first contacted him in August about moving to the urban area. The daughter said that he told her she could move her Section 8 contract to that area. Ms. Lord-Jenkins asked her if she had told the caseworker during that first conversation that she intended to rent from her mother. She said she did not tell him that at that time. She said that she returned to PHD in September and then told him of her plans to rent from her mother. She said at that point the caseworker told her that agency rules prohibited such a practice. He said that if she stayed in her current housing, her contract with her mother would be "grandfathered" in but if she left that house, she would receive no such privilege.

The investigator also spoke with the caseworker on September 23 and, although he did not recall discussing this with the daughter in August, he did recall speaking to her on two occasions about moving. He, too, said the daughter did not mention she intended to rent from her mother during their first conversation. He said the daughter first mentioned her mother's involvement in mid-September at which time he told her agency policy would not allow her to rent from a close relative if she moved. He said she can continue the arrangement if she remained in her current housing. Essentially, his version of the events was consistent with the daughter's version and both agree that AHFC was not aware of the mother's plan to rent to her daughter at a new home when he gave

verbal approval to her move.

Ms. Lord-Jenkins contacted AHFC PHD legal liaison Martha Gore to determine the origin of this policy. Ms. Gore answered the inquiry with a letter copied to the mother's home. The letter stated that AHFC is governed in large part by federal Public Housing Administration regulations. On May 8, 1998, the U.S. Department of Housing and Urban Development (HUD) adopted regulation 24 CFR Section 982.306, Housing Authority Disapproval of Owner.

This regulation states:

(d) The HA (Housing Authority) must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the HA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

Ms. Gore said that AHFC management interprets the admonition "must not" to eliminate the possibility of appeals to this ruling unless the appeal involves a disability or, as in the daughter's case, a 'grandfather right' is involved. She said that the HUD regulations did not give local housing authorities the option of denying or approving the relative rentals on a case by case basis.

Ms. Gore provided the investigator a copy of the Federal Register for the hearing on the proposed federal regulation banning people from renting from their close relatives. The register noted that some of those testifying cautioned that this policy might pose a hardship on those in rural areas where rental properties are uncommon.

The PHD caseworker said the daughter was the only person he knows of on the program in the area who rents from a relative. He said he is aware of two or three others in the urban area but believes they are disabled and, as such, are eligible to rent from a relative under 24 CFR 982. He said that AHFC posted no notice when the regulation was instituted. He pointed out that the HUD/PHD regulations are constantly changing and said such a sign would be impractical.

The caseworker said that he had noted difficulty in finding qualifying rental units in the area prior to the implementation of this policy. He said the difficulty could grow worse with the implementation of the no-relative policy.

The Federal Register hearing narrative also noted that some of those testifying criticized the proposal because there was no statistical basis to

support the need for the rule. HUD responded to that criticism with the following:

The Department acknowledges that information on the practice of owners leasing to relatives is anecdotal. Nonetheless, the Department continues to believe that both the actual instances of program abuse and allowing leasing among closely related persons create a systemic incentive to misuse the program. In addition, public perception that the program can be used in such a manner is itself detrimental to the program.

Based on that reasoning, HUD implemented the regulation.

PHD policy governing AHFC's authority to approve new lease units is governed by Section 5 of the PHD manual. The manual states clearly that PHD must approve and certify each rental unit for rental before Section 8 assistance can be given to a program participant. On July 28, 1998, AHFC adopted an amendment to PHD manual Section 5 II C (7) based on the federal CFR. That policy section states:

AHFC may deny approval to lease a unit from an owner for any of the following reasons:

7. The owner wishes to rent to a parent, child, grandparent, grandchild, sister or brother under the Section 8 Tenant-based program. The exception to this restriction would be if the owner were to rent to a family member in order to provide reasonable accommodation for a family member who is a person with disabilities. (Federal Register, 24 CFR 982.306(d), 5/8/98)

The relationship between Alaska PUD and the federal housing program is integral to this question. HUD provides a percentage of the funds that PHD uses to provide housing assistance and, in turn, Alaska must adhere to regulations established for the expenditure of those funds. If this or any other state wishes to not adhere to the federal requirements, the state must request a waiver from the federal government.

PHD Director Wes Weir said that the division has requested and been granted waivers in the past. He said, however, that PHD usually does not ask for individual waivers but instead for blanket waivers or more broad-based waivers such as a waiver for one geographic area or city in the state. He said that the research and work necessary to seek a waiver is generally not cost effective if the waiver is only for one household. He said PHD has not seen the need to request a waiver to the relative rental

prohibition.

Regarding the specifics of rural rental problems, Mr. Weir said that AHFC provides services in areas where there are 30-40 active rental subsidy cases. That would include the more populated areas of Alaska but not smaller villages such as, for example, Selawick. He said AHFC two years ago requested a waiver from providing services in Barrow because there was only one recipient in town. To provide services, AHFC would have had to fly one person to Barrow to conduct annual recertification inspections, which was not cost-efficient for only one person. Because AHFC serves more populated areas, the question of few rental units does not arise, he said.

HUD Alaska Director Arlene Patton said that federal regulation waivers are very difficult to obtain. She said HUD would be more likely to grant a waiver on a community-by-community basis and she added that in this case, the state would have to demonstrate a lack of available rental housing. And, even in such a case, the state “would have to have its ducks in order” because HUD is very tough on waiver requests.

She said that based on her knowledge of the urban area, there are sufficient low-income rentals in the area. Ms. Patton also pointed out that situations change: Two years ago Juneau’s vacancy rate was one-half of one percent which could have triggered a waiver. Now Juneau’s vacancy rate is 12 percent for multi-family units, a situation which would not constitute proper circumstances for granting a waiver.

ANALYSIS AND FINDING

A review of the federal and state regulations shows clearly that PHD was following its statutory mandate in telling the mother she could no longer rent from her mother. The federal and PHD regulations are clear on the one exemption and the daughter does not qualify to live in her mother’s house if she moved from her current home. AHFC did not renege on its agreement. The daughter changed the terms of the agreement by attempting to move. Had she decided to stay in her current housing she would not be forced to move from her mother’s home.

The question then turns to whether the caseworker’s denial of the daughter’s proposed move was reasonable based on his August comments to her upon learning she hoped to leave her current house. The daughter and caseworker agree that she did not tell him that she planned to move into another home owned by her mother when she moved to the urban area. The conversation also did not occur as a result

of a formal meeting and from their descriptions, was brief. Nothing was formally documented. The daughter was scheduled for an annual recertification meeting with the caseworker later in September.

If the daughter had told the caseworker that she was moving into property owned by her mother and he had verbally approved such a move, PHD would be unreasonable for later denying the move. But that was not the case.

The only remaining issue is whether the caseworker was unreasonable by not proactively informing the daughter during her August conversation that she couldn't rent from a relative. Put another way, was it unreasonable of him to not anticipate that her mother might purchase a house in another city to rent to the daughter? One might also question whether the daughter was partially responsible for this situation by not telling the caseworker that her mother was going to buy a house for her to live in if she could move her Section 8 contract.

The Office of the Ombudsman Policies and Procedures manual at 4040(2) defines unreasonable as:

- (A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,
- (B) a procedure that defeats the complainant's valid application for a right or program benefit, or
- (C) an act that is inconsistent with agency policy and thereby places the complainant at a disadvantage to all others.

The three criteria for unreasonableness are not met by the caseworker's failure to anticipate this special circumstance. This situation was not common, in fact was quite uncommon in the area, according to the caseworker. More uncommon is the possibility of a relative purchasing another home for the daughter to live in. Common sense does not hold the caseworker accountable for not anticipating something that the daughter herself did not mention. I therefore find both allegations to be unsupported by the facts.

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Although these allegations are unsupported, the information uncovered has prompted the Ombudsman to consider a suggestion to AHFC.

Testimony cited in the Federal Register voiced concerns about this regulation limiting the ability of rural and small town residents to find housing that does not fall under this prohibition on relative landlords.

The State of Alaska has the option of requesting a waiver from this requirement for specific areas. The Ombudsman does not suggest that such a waiver be requested based on anecdotal evidence, as the federal regulation was implemented. However, I suggest that AHFC direct rural housing officers to be aware of and document instances where this prohibition forced AHFC to deny an otherwise qualified applicant the right to rent an otherwise acceptable house with public housing subsidy. If the facts indicate that the regulation has limited low income housing opportunities in rural areas, AHFC should seek a waiver from this provision.
