

# **INVESTIGATIVE REPORT**

*(Final Finding and Closure)*

**\*\*\*PUBLIC VERSION\*\*\***

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

Alaska Ombudsman Complaint A098-0576

December 21, 1998

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## **SUMMARY OF THE COMPLAINT**

On August 10, 1998, the Office of the Ombudsman received a letter from a mother on behalf of her son, Gelbrade Felson, complaining about the University of Alaska Anchorage (UAA). Mr. Felson contacted the Ombudsman a few days later.

He said that UAA's Housing, Dining, and Conference Services Office had unfairly charged a cancellation fee of \$250 in addition to the \$100 security deposit he forfeited when he notified the Housing office on January 10, 1998, that he would not be taking a dorm room he had reserved for Spring semester 1998.

Mr. Felson's mother wrote that this university policy was unfair because it took advantage of young people from rural Alaska who have little experience with legal contracts. She stated this policy was just "a money maker for the University." In addition, she wrote,

My son alone is paying \$350.00 for a room he never set foot in!! This is quite steep considering this room was not left empty for the Spring semester. My son is being charged from 11/28/97 to the end of the fall semester when someone else occupied the room! He is being charged for Xmas vacation time when he was told he could not occupy that room until approximately 1/2/98. .

..

My son did not keep a copy of the contract, so I have none to

forward to you. I'm sure they use this same contract today and he is not denying that he did not sign it. I'm sure it says what the lady [at the UAA Housing office] says it says about the \$50/week reservation fee. That still does not make it right.

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### **ALLEGATION**

The Ombudsman opened a complaint file with the following allegation, stated in terms that conform with AS 24.55.150, which authorizes the Ombudsman to investigate complaints about administrative acts of state agencies:

***Unfair and unreasonable: The University of Alaska Anchorage Housing office kept the complainant's security deposit and charged excessive cancellation fees when the complainant gave notice of intent not to occupy a reserved residence hall space.***

Assistant Ombudsman Tom Webster investigated this complaint.

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### **INVESTIGATION**

Mr. Webster reviewed relevant documents and interviewed UAA Housing office Associate Director Cyndi Snyder and University of Alaska Associate General Counsel Paul Eaglin. The Ombudsman's review of this complaint was separated into four components.

First, the cancellation fees appear to be legal. Relations between most landlords and tenants in this state are governed by the Alaska Uniform Residential Landlord and Tenant Act (Alaska Statutes 34.03.010 - 380). The Act does not permit a landlord to charge an application fee that becomes the security deposit if the tenant moves in but is forfeited if the tenant decides not to take the rental unit. The law does permit a landlord to collect an amount that covers the actual, reasonable costs of finding a new tenant. AS 34.03.070.

However, university dormitory contracts are not subject to the Landlord and Tenant Act, which expressly excludes "residence at an institution, public or private, if incidental to . . . the provision of . . . educational . . . services." AS 34.03.330(b)(1). Because only students are permitted to reside in university residence halls, their residence there is directly linked with the provision of educational services, and so the university is permitted to set terms and conditions for renting residence hall space that might not be strictly permissible under the Act. The Alaska

Legislature approved this exclusion.

Second, the Residence Hall Agreement Mr. Felson signed on November 10, 1997, contains two statements in bold print that he initialed:

The student agrees to occupy residence hall space in accordance with the terms and conditions stated below on the University of Alaska Anchorage Residence Life Agreement (hereinafter “agreement”).

The student has read and agrees to the terms, conditions, and dates listed on the UAA Residence Hall Agreement Addendum (hereinafter “agreement addendum”) for the session indicated.

These two statements indicate that Mr. Felson read, understood, and agreed to the conditions set out in the Agreement and the Addendum. The session he indicated on the Agreement was Spring 1998. University records show Mr. Felson’s date of birth as June 20, 1978. If that is correct, he was 19 when he signed this contract. Under Alaska law, minors attain to adult status for most purposes, including signing contracts, at age 18. AS 25.20.010.

Third, the penalties for cancellation of this contract were stated clearly in the Agreement. Section IV (“Financial Information”) of the Agreement contains information about “Security deposit,” “Forfeiture of deposit,” and “Pre-session cancellation.” These sections state, in part,

B. 1. The purpose of the deposit is: (1) faithful performance of the agreement; . . . The \$100 deposit does not represent the maximum liability for fees associated with damages or violating terms of the agreement addendum. . . .

C. 1. To maximize availability of housing accommodations to all students, any cancellation of the agreement after the forfeiture due date indicated on the agreement addendum shall result in forfeiture of the security deposit and the assessment of any associated pre-session cancellation charges. . . .

D. 1. The cancellation fee schedule for students, who after submitting a cont[r]act choose to cancel their agreements, is indicated on the agreement addendum. All cancellations must be submitted to Residence Life in

writing and postmarked by the appropriate date.

Fourth, the fees and dates were explicitly stated in the Addendum, which is headed “UAA Residence Hall Agreement Addendum SP98,” and states that the Addendum “applies specifically to the SP98 UAA Residence Hall Agreement.” The Addendum gives the Spring 1998 housing term as January 8, 1998, to May 3, 1998. The schedule of pre-session cancellation charges states that the “forfeiture due date” (to use the phrase in C. 1. above) after which cancellation would result in forfeiture of the \$100 security deposit, was November 28, 1997. This document also indicated that cancellations submitted in writing between January 3 and January 11, 1998, would result in “Forfeit deposit & \$250.00 Charge.”

When Mr. Felson signed this Agreement and initialed acknowledgements (1) that he agreed “to occupy residence hall space in accordance with the terms and conditions stated below on the University of Alaska Anchorage Residence Life Agreement,” and (2) that he had read and agreed to “the terms, conditions, and dates listed” in the Addendum, and when he paid the \$100 security deposit, he entered into a legal contract requiring him to do certain things in exchange for having a dorm space reserved in advance.

UAA Residence Life records pertaining to Mr. Felson’s dorm reservation contain the following comment: “1/10/98 – Cancel his space, charge 250.00 and forfeit deposit per addendum.” The date given here for his oral notice of cancellation agrees with the date stated on the ombudsman complaint form.

According to UAA Housing Associate Director Cyndi Snyder, the purpose of the refundable security deposit and the schedule of progressively larger cancellation fees was to discourage students from doing what in fact Mr. Felson did, which was to cancel at the last possible moment before the move-in deadline. The argument that he was charged for periods of time when either someone else or no one was occupying the room, she said, misses the point. The cancellation fees are not rent, but a penalty. While it is true that there was a waiting list and the room was occupied soon after Mr. Felson gave notice of cancellation, it is also true, Ms. Snyder said, that no one on the waiting list was guaranteed a space. She said Mr. Felson’s reservation and late cancellation made that room unavailable to another student who might have planned on coming from out-of-town but decided not to attend without the assurance of a reserved room. In the words of the Agreement, the purpose of UAA’s policy on forfeit of security deposit and imposition of cancellation fees is “to maximize availability of

housing accommodations to all students' (C. 1.).

Ms. Snyder's explanation of UAA Housing office policy on cancellation fees seems reasonable. If there were no penalties for late cancellations, there would be little to discourage students from making reservations they did not seriously intend to make good on. This would inconvenience other students and possibly discourage some students from other parts of the state or other states from attending the University of Alaska.

UAA records include a brief letter from Mr. Felson dated February 26, 1998, stating, "I do not need a room any more. Here is a signed letter releasing the room out of my name." Because the Agreement he signed on November 10, 1997, requires notice of cancellation to be submitted in writing (see paragraph D. 1., quoted above), UAA could have charged him a \$300.00 cancellation fee had they wanted to do so.

Mr. Eaglin, an attorney in the University of Alaska Statewide System General Counsel's office in Fairbanks, commented that students attend college to obtain an education not just in their course work, but also in basic life skills. One such skill, he said, is to read a contract carefully before signing it. "People have to abide by contracts all the time," he said. This seems a reasonable point. Ombudsman staff have talked to many students who signed contracts promising to repay tens of thousands of dollars in student loans without giving the matter much thought, and who later found themselves in serious financial difficulties.

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## **STANDARDS**

According to Ombudsman policies and procedures, unfair means "violating some principle of justice." Investigation of a complaint that an administrative act was "unfair" considers both the process by which the action was taken or the decision was made, and also the equitableness of that decision, that is, the balance between the agency and a complainant in the decision-making process. Procedurally, a complaint that an administrative act was "unfair" usually involves an examination of one or more of the following possibilities:

(A) was adequate and reasonable notice of the matter provided to the complainant?

(B) was the complainant given adequate opportunity to be heard or, if applicable, to secure full disclosure of the facts?

(C) was the decision maker biased or disqualified in some other way?

(D) was the decision made on the record, or was it made without consideration of pertinent facts and circumstances?

(E) was the decision supported by reasons?

(F) did the agency apply standards or principles inconsistently in making the decision?

According to Ombudsman policies and procedures, a complaint that an administrative act or procedure was unreasonable requires examination of the following possibilities:

(A) a procedure adopted and followed by an agency in managing a program is inconsistent with, or fails to achieve, the purposes of the program;

(B) a procedure defeats the complainant's valid application for a right or program benefit; or

(C) an act is inconsistent with agency policy and thereby places the complainant at a disadvantage relative to all others.

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## **FINDING**

***Allegation--Unfair and unreasonable: The University of Alaska Anchorage Housing office kept the complainant's security deposit and assessed cancellation fees when the complainant gave notice of intent not to occupy a reserved residence hall space.***

The UAA Housing office action Mr. Felson complained about does not appear to be unfair or unreasonable.

One basic element of fairness in administrative actions is adequate notice. In reading and signing the Agreement and acknowledging having read the Addendum Mr. Felson agreed to abide by the terms, conditions, and dates contained in those documents. Thus, he was given advance notice of the policy that called for forfeiture of the security deposit if he cancelled after a certain date as well as of the progressive cancellation fees and the schedule according to which they would be assessed.

Our investigation found no evidence that the Housing office decision was the result of personal bias or inconsistent application of standards.

All applicants for residence hall space sign the same contract and pay the same fees. The decision is documented in agency records and accords with the terms set out in the contract. In short, I cannot conclude that the decision was unfair.

In addition, the policy on forfeiture of the security deposit and imposition of cancellation fees appears to have a reasonable basis, namely, to maximize availability of on-campus housing. That is the principal purpose of the UAA housing program. Investigation turned up no evidence to suggest that the decision was inconsistent with agency policy or that it defeated Mr. Felson's application for a right or housing program benefit.

Based on the information and analysis set out above, and in accordance with ombudsman regulation 21 AAC 20.210, I find this allegation to be not supported by the evidence.