

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:06-cv-06044-DW
)	
ERSIL F. JAMES; DAN MILLER;)	
ACTION MANAGEMENT AND)	
CONSULTING SERVICES, L.L.C.;)	
MISSOURI RURAL HOUSING OF)	
PLATTE CITY, L.P.; and)	
MACO MANAGEMENT CO., INC.,)	
)	
Defendants.)	
_____)	

CONSENT DECREE

I. INTRODUCTION

1. The United States filed this action to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-19. The United States alleges that Defendants engaged in a pattern or practice of discrimination and/or a denial of rights to a group of persons, on the basis of sex in the rental of dwelling units in Missouri. The subject properties are Platte Landing Apartments, located at 101 O'Rourke Drive, Platte City; Orange Blossom Apartments, located at 8 Wallingford Drive, Platte City; and Hillside Estates, aka Smithville Apartments, located at 501 N. 169 Hwy., Smithville. Defendant Action Management & Consulting Services, LLC, manages the subject properties. Defendants Dan Miller, apartment manager, and Ersil James, maintenance worker, were employed by and agents for Defendant Action Management & Consulting Services, LLC. Defendants Missouri Rural Housing of Platte City, L.P., and its

general partner MACO Management Co., Inc., own Platte Landing Apartments.

2. Specifically, the United States alleges that Defendant Ersil James subjected female tenants at the subject properties to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct is alleged to have included, but is not limited to, unwanted verbal sexual advances; unwanted physical sexual advances, such as unwanted kissing and unwanted touching of the breasts, buttocks, and other parts of the bodies of female tenants; forcible physical contact with the sexual parts of Defendant James' body; inappropriate statements; and threatening to withhold maintenance services or to have female tenants evicted when they refused or objected to his sexual advances, all in violation of 42 U.S.C. §§ 3604(b)-(c) and 3617. The United States alleges further that Defendants Action Management & Consulting Services, LLC, and Miller knew or should have known of Defendant James' illegal actions yet failed to take action to prevent them.

3. The United States alleges that Defendants Missouri Rural Housing of Platte City, L.P., and MACO Management Co., Inc., are liable for the above-described discriminatory conduct of their agents, Defendants James, Miller and Action Management & Consulting Services, LLC, because their conduct occurred within the scope of their employment and/or agency. Defendant Action Management & Consulting Services, LLC, is also liable for the actions of Defendants James and Miller, as well as for its own actions in failing to take action to prevent Defendant James from sexually harassing female residents, despite knowing that Defendants James had sexually harassed a female resident early in his employment.

4. Defendants deny the contentions and allegations of the United States, as set forth above in paragraphs 1-3 and in the Complaint, and deny any liability based on any of these allegations. This Consent Decree is neither an admission by Defendants of any factual or legal allegations

made by the United States nor an admission by Defendants of fault or liability or any violation of the Act and shall not be construed as such. The parties have agreed that in order to avoid protracted and costly litigation, this controversy should be resolved without further litigation. Therefore, the parties consent to the entry of this Decree without a trial or adjudication of any of the facts alleged by the United States. This agreement constitutes full resolution of the United States' claims on behalf of aggrieved persons who lived at the subject properties.

It is hereby ORDERED, ADJUDGED, and AGREED that:

II. SCOPE AND TERM OF DECREE

5. The provisions of the Decree shall apply to Defendants, their employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with any of them.
6. This Decree is effective immediately upon its entry by the Court. For purposes of this Decree, the phrase "date of this Decree" and "effective date" shall refer to the date on which the Court enters this Decree.

III. INJUNCTION

7. Defendants, their agents, employees, successors, and all persons currently in active concert or participation with them, are hereby enjoined from:
 - (a) Discriminating against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
 - (b) Making, printing, publishing, or causing to be made, printed, or published any notice, statement or advertisement with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based on sex; or
 - (c) Coercing, intimidating, threatening or interfering with any person in the exercise

or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by 42 U.S.C. §§ 3603-06.

8. Throughout the term of this Decree, Defendant Ersil James is hereby enjoined from operating, consulting, managing, staffing, participating in, working in (whether paid or unpaid), or otherwise having any involvement in the management, or maintenance of rental housing properties, including but not limited to those owned and/or managed by the other Defendants in this action, except that he may perform maintenance on completely unoccupied properties, *i.e.*, properties in which every unit is vacant.

9. For the duration of this Decree, Defendants Action Management & Consulting Services, LLC, Missouri Rural Housing of Platte City, L.P., and MACO Management Co., Inc., shall for all residential properties each owns and/or manages:

- (a) Implement, subject to the United States' approval, a written policy against sexual harassment, including a formal complaint and enforcement procedure. A copy of this policy and procedure shall be provided to the United States within thirty (30) days after the date of entry of this Decree.¹ This policy and procedure shall be implemented within fifteen (15) days after the United States indicates that the policy and procedure are satisfactory to the United States, and at that time, the relevant Defendant shall provide a copy of the policy and procedure to all tenants

¹All documents or other communications that are required to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ # 175-43-142, U.S. Department of Justice, 950 Pennsylvania Avenue, NW (NWB), Washington, DC 20530, or as otherwise directed in writing by the United States. If the Decree requires transmission by facsimile, the communication shall be sent to (202) 514-1116.

at such properties. New tenants shall be provided with a copy of the policy and procedure at the time they apply to rent a unit.

- (b) Within ninety (90) days of the date of entry of this Consent Order, provide to employees who have any interaction with tenants or prospective tenants and all supervisors of such persons in-person training, so as to ensure that such employees are familiar with the policy and procedure described in the preceding paragraph and the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment. The training shall be conducted by an independent, qualified third party, approved by the United States, and any expenses associated with this training shall be borne by Defendants. Within thirty (30) days after the training, Defendants shall provide to the United States copies of the training outlines, any materials distributed by the trainers, and certifications executed by all covered employees confirming their attendance in a form substantially similar to Appendix C. For the purpose of compliance with the requirements of this subparagraph, Defendants Missouri Rural Housing of Platte City, L.P., and MACO Management Co., Inc., hereby notify the United States that, as of the date of this Consent Order, they have no employees who have any interaction with tenants or prospective tenants or who supervise such employees. If, however, during the term of this Consent Decree, either Missouri Rural Housing of Platte City, L.P., or MACO Management Co., Inc., employs such persons at properties managed by Action Management Consulting Services, LLC at the time of the entry of this Consent Decree, the relevant defendant shall notify the United States in writing within ten days of the

commencement of the employment and shall otherwise comply with the requirements of this subparagraph.

- (c) Post an “Equal Housing Opportunity” sign in any rental office through which its properties are rented, which sign indicates that all apartments are available for rent on a nondiscriminatory basis. An 11-inch-by 14-inch poster substantially equivalent to HUD Form 928.1 will satisfy this requirement. Such poster shall be placed in a prominent, well-lit, and easily readable location. Copies of HUD Form 928.1 are available free of charge by calling HUD directly at 800-669-9777 or at www.hud.gov/offices/fheo/promotingfh/928-1.pdf.
- (d) Require that all advertising for any of the properties in newspapers, telephone directories, radio, television or other media, and all billboards, signs (including at the entrance to the property), pamphlets, brochures and other promotional literature, include either a fair housing logo, the words “equal housing opportunity,” and/or the following sentence:

We are an equal opportunity housing provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability.

The words or logo should be legible and prominently placed.

- (e) Send to the United States every six (6) months, a list of all tenants at the properties under management. With respect to residential properties for which MACO Management Co., Inc., is the general partner or owner, this requirement shall apply only to those properties that are managed by Action Management & Consulting Services, LLC at the time of the entry of this Consent Decree; neither MACO Management Co., Inc., nor Missouri Rural Housing of Platte City, L.P.,

shall be required to submit lists but shall ensure that their agent, currently Action Management & Consulting Services, LLC, submits the requisite lists.

- (f) Maintain all rental records kept in relation to rental of the future properties, and allow the United States to inspect and copy all such records upon reasonable notice.
- (g) Provide any information reasonably related to compliance with this Decree that is requested by the United States, including tenant files, tenants' telephone numbers, fair housing complaints (including sexual harassment complaints) and the investigation files for such complaints, and advertisements.

10. During the duration of the Decree, if Defendant Dan Miller manages or owns any residential rental property, Defendant Miller shall be required to attend training on the requirements of the non-discriminatory requirements of the Fair Housing Act, and to take the steps in paragraph 9 to ensure compliance with the Fair Housing Act for any residential rental properties he manages or owns.

IV. COMPENSATION OF AGGRIEVED PERSONS

11. Defendants will pay a total of Seventy-Five Thousand Dollars (\$75,000) in monetary damages to persons whom the United States has identified as aggrieved persons. A list of such persons (hereinafter "identified aggrieved persons") specifying the amount to be paid to each person is attached as Appendix A. Within ten (10) business days of the date of this Consent Decree, Defendants shall send via overnight courier to counsel for the United States checks made payable to each such person, in the amounts listed in Appendix A. In no event shall the aggregate of all checks to the identified aggrieved persons exceed the sum of seventy-five thousand dollars (\$75,000).

12. When counsel for the United States has received the checks described in the preceding paragraph and the signed releases (in the form of Appendix B) of the aggrieved persons, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release to counsel for Defendants. No aggrieved person shall be paid until she has signed and delivered to counsel for the United States the release at Appendix B.

V. PAYMENT TO VINDICATE THE PUBLIC INTEREST

13. Within thirty (30) days after the date of this Decree, Defendants shall issue a check or money order in the amount of Twenty Thousand Dollars (\$20,000), payable to the United States Treasury to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(c). Defendants shall deliver this payment to counsel for the United States, via overnight mail.

14. In the event that Defendants Ersil F. James or Action Management and Consulting Services, L.L.C., their agents or employees engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d).

VI. MISCELLANEOUS PROVISIONS

15. All parties shall be responsible for their own attorney’s fees and court costs, except as provided in paragraph 17 below.

16. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

VII. DISMISSAL

17. The Parties shall employ their best efforts to resolve any differences that arise in the implementation or interpretation of this Consent Order. In the event that such efforts fail, either party, after meeting and conferring with the other party, may bring the matter to the Court’s attention for resolution. In the event the United States contends that there has been a failure by

Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Decree or in the event of any other act violating any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of such acts, or deeming such acts to have been performed, and an award of any damages, costs, and attorneys' fees which may have been occasioned by the relevant Defendant's non-actions or actions or the violation of failure to perform.

18. This Decree shall be in effect for a period of three (3) years from the effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Plaintiff may move the Court to extend the duration of the Decree in the interests of justice.

Ordered this 3rd day of April, 2008.

/s/ DEAN WHIPPLE
DEAN WHIPPLE
UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to the entry of this Decree:

FOR PLAINTIFF THE UNITED STATES:

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SERVICES, LLC, AND DAN MILLER:

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APPENDIX A

SETTLEMENT DISTRIBUTION TO IDENTIFIED AGGRIEVED PERSONS

AGGRIEVED PERSON	AMOUNT
Marva Watson	\$27,500
Donna Kieffer	\$15,500
Joan Marr	\$15,500
Ann Bradshaw	\$16,500

APPENDIX B

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the parties' agreement to the terms of the Consent Decree entered in United States v. James, et al., Civil Action No. 5:06-cv-06044-DW (W.D. Mo.) and the Defendants' payment to me of \$ _____, I, _____, hereby agree, effective upon receipt of payment, to remise, release and forever discharge any and all claims of any kind, nature or description whatsoever, related to the facts at issue in the litigation referenced above, or in any way related to that litigation, or any other claims arising from alleged housing discrimination by these defendants up to and including the date of execution of this release, or any claims which were or could have been pursued based upon the allegations in the Consent Decree or made during the litigation referenced above that I may have against Defendants Ersil James, Dan Miller, Action Management & Consulting Services, LLC, Missouri Rural Housing of Platte City, L.P., and MACO Management Co., Inc., and their agents, employees, officers, heirs, executors, spouses, administrators, successors, assigns or owners.

I acknowledge and understand that, by signing this Release and accepting this payment, I am waiving any right to pursue my own legal action based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

The Release constitutes the entire agreement between the above-specified Defendants and me, without exception or exclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 2008.

Name

APPENDIX C

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act and my employer's sexual harassment policy. I have had all of my questions concerning these topics answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)