

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

The MUNICIPAL HOUSING AGENCY of
COUNCIL BLUFFS, IOWA; MARK SCHULTZ;
and DEE WENTZEL,

Defendants.

Civil Action Number 1:05-cv-30

CONSENT ORDER

I. INTRODUCTION

1. The United States filed a complaint on September 1, 2005, against The Municipal Housing Agency of Council Bluffs, Iowa ("the Housing Agency" or "MHA"), Mark Schultz ("Schultz"), and Dee Wentzel ("Wentzel") to enforce the provisions of the Fair Housing Act ("the Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.* Defendants own and operate Regal Towers, a 210-unit public housing complex for elderly and disabled persons located at 505 South 6th Street in Council Bluffs, Iowa. In its Complaint, the United States alleges that the Defendants have engaged in a pattern or practice of discrimination by:

- a. Discriminating in the rental of, or otherwise making unavailable or denying, dwellings to renters because of handicap¹, in violation of 42 U.S.C. § 3604(f)(1);

¹ Throughout this Consent Order, the term "handicap" is used interchangeably with "disability," as defined in 42 U.S.C. § 3602(h).

and

- b. Discriminating against persons in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

2. The Defendants are:

- a. The Municipal Housing Agency of Council Bluffs, Iowa, a public housing authority with its principal place of business located at 505 South 6th Street in Council Bluffs, Iowa;
- b. Mark Schultz, who was at times relevant to the events in this case the Executive Director of the Housing Agency. Defendant Schultz retired on September 30, 2005, and is no longer employed in a housing provider-related capacity. To the extent that during the term of this Consent Order, Defendant Schultz does not reenter the workforce in a housing provider-related capacity, the non-monetary provisions of this Consent Order do not apply to him; and
- c. Dee Wentzel, who was at times relevant to the events in this case employed by the Housing Agency as a housing specialist.

3. The United States and the Defendants (collectively "the Parties") desire to avoid costly and protracted litigation, and agree that the claims against the Defendants should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures below, the Parties agree to the entry of this Consent Order. This Consent Order represents full resolution of the United States' claims that the Defendants discriminated against persons with disabilities; as alleged in the United States'

Complaint.

THEREFORE, IT IS HEREBY ORDERED:

II. JURISDICTION AND SCOPE

4. The Court has subject matter jurisdiction over the claims in the civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).
5. The provisions of this Consent Order apply to all Defendants, their employees, officials, successors, officers, and agents.

III. GENERAL INJUNCTION

6. Defendants, their agents, employees, and all those acting in concert or participation with them, are hereby enjoined from:
 - a. Discriminating in the rental of, or otherwise making unavailable or denying, dwellings to renters because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
and
 - b. Discriminating against persons in the terms, conditions or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

IV. AFFIRMATIVE RELIEF

7. Application and Tenancy Procedures: The Defendants shall comply with the procedures in Paragraphs 8 through 11 with respect to the rental of dwellings at Regal Towers to ensure compliance with the Fair Housing Act and to ensure that these dwellings are made available for rent on an equal basis and on the same terms and conditions for all persons. Specifically, the Defendants will comply with the HUD regulations implementing the

Act's provisions that prohibit, with limited exceptions, property owners from inquiring whether an applicant for a dwelling has a handicap. 24 C.F.R. § 100.202(c) and (d).

Nothing in this Order prohibits Defendants from denying applications based on uniformly-applied neutral criteria unrelated to a person's disability.

8. Nondiscrimination Policy: Within thirty (30) days of the entry of this Order, the Defendants shall create and submit for approval to the United States² a written Nondiscrimination Policy. The Nondiscrimination Policy shall include a statement affirming that Defendants will not discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin. Within seven (7) days of the United States' approval of the Nondiscrimination Policy, the Defendants shall implement such Nondiscrimination Policy. During the term of this Order, if Defendants wish to modify or alter the Nondiscrimination Policy, they shall submit the proposed changes to counsel for the United States for review and approval.
9. Uniform and Nondiscriminatory Procedures: Within thirty (30) days of the entry of this Order, the Defendants shall create and submit for approval to the United States written Uniform and Nondiscriminatory Procedures for receiving, handling, processing, rejecting and approving rental inquiries and applications made in person, by telephone, by mail, or by other means. Within seven (7) days of the United States' approval of the Uniform and Nondiscriminatory Procedures, the Defendants shall implement such written Uniform and

² For purposes of this Order, all submissions to the United States or its counsel should be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W. - G Street, Washington, DC 20530. Attn. DJ 175-28-28.

Nondiscriminatory Procedures. During the term of this Order, if Defendants wish to modify or alter the Uniform and Nondiscriminatory Procedures, they shall submit the proposed changes to counsel for the United States for review and approval.

10. Rental Applications: The Defendants shall write legibly on each rental application filled out by a prospective tenant the month, day, year, and time that the Defendants received the application. The Defendants shall process the applications in the order in which they are received. To the extent the Defendants reject any application for housing, the Defendants shall provide, either on the application or on an attachment to the application, a written explanation why the applicant was determined ineligible for tenancy, including all reasons therefor and any supporting documentation, and the name of the employee who made the decision. Within seven (7) days of the decision to reject an applicant, the Defendants shall notify such applicant of the rejection and the reason for the denial.
11. Information Provided to Prospective Applicants: The Defendants shall permit all persons who inquire about renting a dwelling unit the opportunity to complete a written rental application. The Defendants shall advise all persons who inquire about renting a dwelling that they may fill out an application and, if they qualify, be put on a waiting list. The Defendants shall inform all persons who inquire about renting units that they will be treated equally.

V. EDUCATIONAL PROGRAM

12. Within thirty (30) days of the entry of this Order, Defendant Wentzel, all agents or employees of the Defendant MHA who have responsibility for showing, renting, or managing dwellings at the MHA, and each agent or employee who supervises such

activities, shall attend and complete a fair housing training program, approved by the United States, at the Defendants' expense. The training shall be conducted by a qualified third party, unconnected to Defendants or their employees or officers, agents, or counsel, and approved by the United States.

13. The training shall include the following:

- a. Informing each individual of his or her duties and obligations under this Order as well as under the Fair Housing Act with an emphasis on discrimination based on disability;
- b. Furnishing to each individual a copy of this Order and the Defendants' Nondiscrimination Policy and Uniform and Nondiscriminatory Procedures, above;
- c. Conducting a question and answer session for purposes of reviewing and confirming that all trainees understand items a and b above; and
- d. Securing a signed certification in the form of the statement attached hereto as Appendix A, from each individual indicating that he or she attended the training and has received, read, and understood this Order and the Defendants' Nondiscrimination Policy and Uniform and Nondiscriminatory Procedures, above.

14. During the period in which this Order is in effect, within thirty (30) days of commencing an employment or agency relationship, all new agents or employees of Defendant MHA who have responsibility for showing, renting, or managing dwellings at the MHA, and all new agents or employees who supervise such activities, shall be given a copy of the written Nondiscrimination Policy and Uniform and Nondiscriminatory Procedures and of this Consent Order, and shall be required to sign the statement appearing at Appendix A.

VI. NOTIFICATION TO TENANTS AND PUBLIC

15. The Defendants shall:

a. Provide written notice summarizing the Nondiscrimination Policy and Uniform and Nondiscriminatory Procedures to:

1. each current tenant, within thirty (30) days of the entry of this Order; and
2. each new tenant, within five (5) days of the commencement of his or her tenancy.

This notice shall be submitted to the Justice Department for approval before distribution;

b. Post and prominently display a full size HUD fair housing poster, HUD Form 928.1, in a conspicuous location in or near the rental office at Regal Towers within thirty (30) days of the date of this Order;

c. Include the phrase "Equal Housing Opportunity" or the fair housing logo, as published in HUD Form 928.1, in all rental advertising, including billboards, telephone directory listings, radio, television, or internet; and

d. Include the following written statement on all of Defendants' Rental Applications, Leases, and Uniform and Nondiscriminatory Procedures:

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

VII. RECORD KEEPING

16. Throughout the duration of this Order, Defendants shall preserve and maintain all records that are the source of, contain, or relate to any information pertinent to Defendants'

obligations under this Order, including, but not limited to, the following

- a. Rental Applications;
- b. Leases;
- c. Nondiscrimination policies;
- d. Nondiscrimination procedures;
- e. Tenant rules and regulations; and
- f. Any other information related to any inquiries regarding the availability of any dwelling units at Regal Towers and the persons who made these inquiries.

VIII. REPORTING REQUIREMENTS

17. Within ninety (90) days of the entry of this Order, the Defendants shall submit the following records to counsel for the United States:
 - a. Copies of all written verifications of the training conducted pursuant to the requirements set forth in Section V;
 - b. A photograph showing the Fair Housing Poster as is being displayed in the rental office at Regal Towers as required by the terms indicated in Section VI;
 - c. Representative copies of all of the documents required in Paragraphs 7 through 13, as well as any other materials prepared pursuant to the requirements of the terms indicated above;
 - d. Copies of any existing tenant rules and regulations; and
 - e. Written verification that the Notice to Tenants has been distributed as required by the terms indicated in Section VI.
18. Beginning eight (8) months after the entry of this Order, and every eight (8) months

thereafter for the duration of this Order, the Defendants shall deliver to counsel for the United States a report covering the preceding eight (8) months and containing the following information:

- a. To the extent that these documents have not been provided previously, copies of all written verifications of the training conducted pursuant to the requirements indicated above; and
- b. Copies of advertising used by Defendants in the preceding six months.

The last report will be due to the United States one (1) month prior to the end of the term of this Order.

19. During the term of this Order, the Defendants will notify counsel for the United States in writing within fourteen (14) days of receipt of any written complaint against them or any of their agents or employees, made by any resident of or applicant to Regal Towers regarding discrimination in housing based on disability. A copy of the complaint will be provided with the notification, which will include the full details of the complaint, including the complainant's name, address, and telephone number (unless the complaint is made anonymously). All information concerning the actual or attempted resolution of any such complaint will be provided to counsel for the United States within fourteen (14) days of its resolution.

IX. INSPECTIONS

20. During the term of this Order, representatives of the United States shall be permitted, upon providing reasonable notice to the Defendants, to inspect and copy at reasonable times any and all records related to the rental of dwellings at Regal Towers, or related to

Defendants' obligations under this Order.

X. COMPENSATION FOR IDENTIFIED AGGRIEVED PERSONS

21. Within ten (10) days of the entry of this Consent Order, Defendants will pay to the individuals listed below the amounts specified for a total lump sum payment of thirty one thousand seven hundred dollars (\$31,700). This sum will resolve all claims these individuals may have for alleged damages, costs and attorney fees that may have been occasioned by the events that led to this action. This amount will be paid by check, made payable to each person in the amounts specified below, and delivered to counsel for the United States. Upon or before receipt of said check, each individual will execute a release of liability in form similar to that attached as Appendix B, and same will be delivered to counsel for the United States. When counsel for the United States has received both the check from Defendants and the release from the individual, counsel for the United States will deliver the release to counsel for Defendants and the check to the individual.

<u>Name</u>	<u>Amount</u>
Pamela Hebert	\$8,000
Joshua Collins	\$8,000
Jhonny Claybrook	\$5,500
Malissa Feilen	\$1,840
Annette Larrew	\$1,840
Aron Koppold	\$1,840
Jimmy Anderson	\$1,840

David Birnley \$1,840

Sandy Franke \$1,000

These are all the individuals who are to be compensated under the terms of this Order.

XI. COMPENSATION FOR FAIR HOUSING ORGANIZATION

22. Within ten (10) days of the entry of this Consent Order, Defendants will pay to the Family Housing Advisory Services, Inc. ("FHAS") the total lump sum of three thousand three hundred dollars (\$3,300). This sum will resolve all claims the FHAS may have for alleged damages, costs and attorney fees that may have been occasioned by the events that led to this action. This amount will be paid by check, made payable to FHAS, and delivered to counsel for the United States. Upon or before receipt of said check, the Director of FHAS will execute a release of liability in form similar to that attached as Appendix B, and same will be delivered to counsel for the United States. When counsel for the United States has received both the check from Defendants and the release from FHAS, counsel for the United States will deliver the release to counsel for Defendants and the check to FHAS.

XII. CIVIL PENALTY

23. Defendants shall pay a civil penalty to the United States of five thousand dollars (\$5,000). This civil penalty is paid pursuant to 42 U.S.C. § 3614(d)(1) (C). Said sum shall be paid within thirty (30) days of the date of entry of this Order by submitting a check to counsel for the United States made payable to the United States of America.

XIII. DURATION OF ORDER

24. This Consent Order shall remain in effect for two (2) years from the date of the entry of

this Order. However, in the event that there is a material and substantial failure by any Defendant to satisfy the terms or provisions of the Consent Order, the United States may file a motion requesting that the term of the Consent Order be extended.

25. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Order. The United States may move the Court to extend the duration of the Order in the interests of justice.
26. 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 of a failure by Defendants to perform in a timely manner any act required by this Order or otherwise to act in conformance with any provision thereof, 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 deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the Defendants' violation or failure to perform.

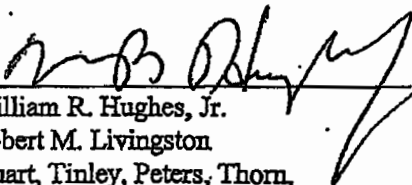
XIV. TIME FOR PERFORMANCE

27. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the Parties.

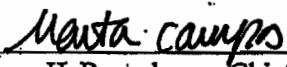
XV. COSTS OF LITIGATION

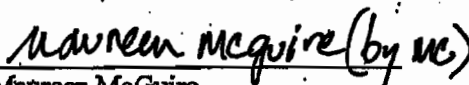
28. Each party to this Order shall bear its own costs and attorney's fees associated with this litigation.

Respectfully submitted on this 25th day of October 2007.


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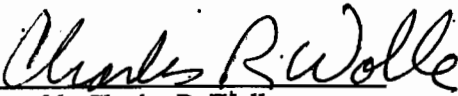
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For Plaintiff United States of America

IT IS SO ORDERED.


Honorable Charles R. Wolle
United States District Judge

Dated: October 25, 2007

APPENDIX A

United States v. Municipal Housing Agency of Council Bluffs, Iowa, et al.
Civil Action No. 1:05-cv-30

**Certification of Fair Housing Training Attendance
And Acknowledgment of Receipt of Consent Order**

I certify that I attended fair housing training on _____. I attended the full training course provided on that date.

I also certify that I have received a copy of the Consent Order entered by the federal district court in United States of America v. The Municipal Housing Agency of Council Bluffs, Iowa, et al., Civil Action Number 1:05-cv-30 (S.D. Iowa). This Consent Order was explained to me at the training and all of my questions were answered concerning it. I have read and understood the Consent Order.

Executed this ____ day of _____, 2007.

Trainee's Signature

Trainee's Name (printed)

Trainee's Job Title

I certify that to the best of my knowledge, the information presented above is true.

Trainer's Signature

Trainer's Name (printed)

APPENDIX B

Release of Claims

In consideration for the parties' agreement to the terms of the Consent Order entered in United States of America v. The Municipal Housing Agency of Council Bluffs, Iowa, et al., Civil Action Number 1:05-cv-30 (S.D. Iowa), and the Defendants' payment to me [or to Family Housing Advisory Services, Inc.] _____ dollars [\$ _____], I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above. I understand the payment made to me by Defendants does not constitute an admission of liability on their part.

I fully acknowledge and agree that this release of Defendants shall be binding on my heirs, representatives, executors, administrators, successors and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences. I also acknowledge that I have had the opportunity to review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained that legal advice, I voluntarily waive the right to do so.

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

Executed this ____ day of _____, 2007

[Releasor's Name]
[Address]