

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 02-274J
v.)	Judge Gibson
)	Chief Magistrate Judge Caiazza
THE CITY OF JOHNSTOWN,)	
PENNSYLVANIA,)	
)	
Defendant.)	
_____)	

CONSENT ORDER

_____The United States initiated this action pursuant to Section 814(a) of the Fair Housing Act, as amended 42 U.S.C. § 3614(a), which authorizes the Attorney General to initiate a lawsuit in federal court whenever he has reasonable cause to believe that any person or group of persons has been denied any of the rights granted by the Fair Housing Act and such denial raises an issue of general public importance. In its Complaint, the United States alleged that Defendant City of Johnstown (“Defendant” or “City”) violated Sections 804(f)(1), and 804(f)(2) of the Fair Housing Act. Specifically, the United States contends that the City violated the Act by denying a conditional use application for the establishment of a housing facility at 1040 Jacoby Street, which is located in Johnstown. The proposed home was for homeless veterans and was to house, educate, and provide assistance to veterans with disabilities, including persons who are recovering from alcohol and/or drug dependency. By refusing to approve the application, the City prevented the Pennsylvania American Legion Housing for Homeless Veterans Corporation (“American Legion”), the applicant, from establishing and operating the home at the proposed site. The American Legion is a non-profit group.

The City denies that it violated any provisions of the Fair Housing Act in this instance.

In order to avoid costly and protracted litigation, the United States and the City agree that the claims against the defendant should be resolved without a finding of liability or an evidentiary hearing and stipulate to the following facts:

- The Western Pennsylvania Veterans Development Center, a non-profit group, operated a home for homeless veterans at 1040 Jacoby Street in the mid to late 1990s. After the Western Pennsylvania Veterans Center ceased operations, the property was sold to the American Legion.
- On April 15, 1999, the American Legion applied for a conditional use to open and operate a home for homeless veterans at that same property. In its application, the American Legion notified the City that the purpose of the proposed facility was to house, educate, and provide assistance to homeless veterans with disabilities.
- On May 5, 1999, the City's Planning Commission held a public hearing to consider the American Legion's application for a conditional use and recommended the application to the City Council for approval.
- On June 9, 1999, the City Council held two public meetings relating to the American Legion's application for a conditional use. At the first meeting, neighbors of 1040 Jacoby Street and area residents made comments opposing the American Legion's application based on the fact that the prospective residents of the home would be people with disabilities. Immediately following that public meeting was the regularly-scheduled City Council meeting. During the City Council meeting, neighbors of 1040 Jacoby Street and area residents also made comments indicating opposition to the siting of the proposed

facility based on the fact that the prospective residents of the home would be people with disabilities.

- On June 9, 1999, the City Council, after hearing these comments from the public, denied by a vote of 6-0 the American Legion's application. As part of the vote, various council members stated that they were voting to deny the American Legion's application based on neighborhood opposition.
- On October 21, 2002, after an investigation conducted by the United States with the City's cooperation, and after presuit negotiations failed, the United States filed its Complaint against the City.
- On December 30, 2002, the City Council held a special meeting at which it rescinded the previous denial of the American Legion's conditional use application and voted to issue the conditional use permit by a vote of 7 to 0.

The parties have agreed to entry of this Consent Order, which resolves all of the United States' claims for injunctive and monetary relief.

The parties jointly enter into and file this Consent Order. Accordingly, the parties AGREE, and the Court ORDERS, as follows:

I. JURISDICTION AND SCOPE OF ORDER

1. The parties stipulate and the Court finds that the Court has personal jurisdiction over the Defendant for purposes of this civil action, and subject matter jurisdiction over the claims in this civil action pursuant to 28 U.S.C. § 1345, and 42 U.S.C. § 3614(a).
2. This Consent Order shall remain in effect for a period of three (3) years from the effective date of the Consent Order. The Court shall retain jurisdiction over this Action for the

duration of this Consent Order for the purpose of enforcing any of its provisions and terms.

3. The parties and their attorneys agree to work cooperatively with one another and in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution, and to effectuate the purposes of this Consent Order.

II. DEFINITIONS

4. For the purposes of this Order, the terms “discriminate,” “otherwise make unavailable” and “deny” refer to what the term “discrimination” includes under Section 804 of the Fair Housing Act, as amended, 42 U.S.C. § 3604, including, but not limited to, treating persons differently because of their disabilities. In addition, it refers to any refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.
5. For purposes of this Order, the term “handicap” and “disability” are defined as the term “handicap” is defined in Section 802(h) of the Fair Housing Act as amended, 42 U.S.C. § 3602(h), and include, but are not limited to, recovery from alcohol and/or drug addiction, and mental or emotional disabilities that otherwise meet the definition contained in Section 802(h).
6. “Effective date” of the Consent Order refers to the date the Court gives final approval to and enters this Consent Order.

III. GENERAL NONDISCRIMINATION PROVISION

7. The City is enjoined from discriminating on the basis of disability in violation of the Fair Housing Act in all respects, including but not limited to, its consideration of and decision making regarding applications for residential treatment facilities and any other use of a dwelling.

IV. SPECIFIC INJUNCTIVE RELIEF

8. The City shall take the following steps to afford the American Legion the opportunity to operate the property at 1040 Jacoby Street as a home for homeless veterans:
 - a. The American Legion will be allowed to operate a facility at 1040 Jacoby Street, for homeless veterans in conformity with its stated purpose on the conditional use application dated April 15, 1999. This permission shall not be revoked for any reason that violates the Fair Housing Act. The City reserves the right to ensure that the property operates in compliance with all codes and legal requirements applicable, provided, however, that the City shall not enforce any restriction in a manner that discriminates against the American Legion or any of the residents of the facility, or persons associated with the American Legion or the residents, on the basis of disability;
 - b. Within thirty (30) days of the entry of this Order, the City shall provide a copy of this Order to all City Council members, the City's Planning Commission staff, and the City's Department of Community and Economic Development staff and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and had an opportunity to have questions

about the Order answered. This statement shall be substantially in the form of Exhibit A;

- c. During the term of this Order, within thirty (30) days after the date he or she commences an agency or employment with the City, each new agent or employee employed by one of the offices referenced in paragraph 7 (b) above, shall be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and had an opportunity to have questions about the Order answered. This statement shall be substantially in the form of Exhibit A; and
- d. Within ninety (90) days of the date of entry of this Consent Order, all City agents and employees referenced in paragraph 7 (b), shall undergo training on the Fair Housing Act, with specific emphasis on discrimination on the basis of disability. The training shall be conducted by an independent, qualified party, approved by the United States. The City will bear the cost of this training, but not to exceed \$500.00 (five hundred dollars). The City shall obtain from the trainer certifications of attendance executed by all agents and employees confirming their attendance, in a form substantially equivalent to Exhibit B. Such records of the attendees at the training sessions will be forwarded to Counsel for the United States during the pendency of this Order, within thirty (30) days of the completion of said training.¹

¹ All correspondence under this Consent Order shall be addressed to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Northwestern Building, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

V. REPORTING AND RECORD KEEPING

9. During the pendency of this Order, the City will advise Counsel for the United States of each application or request for a land use permit or zoning approval received by the City that relates to any request for a conditional use permit for housing for persons with disabilities, or similar request, as well as the City's decision regarding each such application or request. Notice of each application and each decision shall be submitted to Counsel for the United States within thirty (30) days of the City's receipt of the request or application, and within thirty (30) days of each decision regarding each such application or request. After receiving such notice, if the United States determines that additional information is necessary in order to assess the information provided in the report, the United States shall make such a request in writing to the City and it shall provide such information to Counsel for the United States within thirty (30) days of receipt of the request.
10. Throughout the term of the Order, the Defendant shall retain all records relating to the implementation of all provisions of this Order. The United States shall have the opportunity to inspect and copy any such records after giving reasonable notice to Defendant.

VI. MONETARY RELIEF

11. In order to settle the monetary claims in the United States' Complaint, the City shall pay, pursuant to the Fair Housing Act, 42 U.S.C. § 3601 et seq., the sum of \$82,500.00 (eighty two thousand five hundred dollars) to the American Legion. Within thirty (30) days of

the effective date of this Order, Defendant shall provide to the United States a check made payable to Pennsylvania American Legion Housing for Homeless Veterans Corporation. In consideration of this payment, the American Legion, through its President, will execute a release of claims form as attached as Exhibit C signifying that the payment the American Legion receives will constitute full settlement of any claims it may have relating to the subject matter of this lawsuit. Counsel for the United States shall obtain the signed release form and shall provide it to Defendant upon receipt of the damages check.

VII. CIVIL PENALTY

12. Defendant shall pay the total sum of \$15,000 (fifteen thousand dollars) to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). Such payment shall be paid within thirty (30) days of the date of entry of this Order by submitting a check to the United States made payable to the United States of America.

It is hereby ORDERED, ADJUDGED and DECREED this _____ day of

_____, 2004.

United States District Judge

FOR THE CITY OF JOHNSTOWN:

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Exhibit A

ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER

On _____, I received copies of and have read the Consent Order entered by the federal district court in United States v. City of Johnstown, Pennsylvania, Civil Action Number 02-274J (W.D. Penn.), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Order and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Date)

Exhibit B

CERTIFICATION OF ATTENDANCE AT FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Date)

Exhibit C

GENERAL RELEASE IN FULL AND FINAL SETTLEMENT OF CLAIM

relating to

United States v. City of Johnstown, Pennsylvania

Civil Action No. 02-274J

FOR AND IN CONSIDERATION of the sum of Eighty-two thousand five hundred dollars (\$82,500.00) to The Pennsylvania American Legion Housing for Homeless Veterans Corporation in hand paid by, or on behalf of the City of Johnstown receipt and sufficiency of which is hereby acknowledged, The Pennsylvania American Legion Housing for Homeless Veterans Corporation (hereinafter Releasor), with the intent to be legally bound hereby, fully and forever release, acquit, and discharge the City of Johnstown, their underwriters and any and all other persons, firms, partnerships and corporations (hereinafter released parties) which are and might be claimed to be liable to The Pennsylvania American Legion Housing for Homeless Veterans Corporation and their successors and assigns from any and all actions, causes of action, claims, joinders and demands of whatsoever kind or nature as a result of the determination by the City of Johnstown to deny the releaser a conditional use application to operate a group home at 1040 Jacoby Street in the City of Johnstown, as more fully set forth in the Complaint filed by the United States of America on behalf of the releaser against the City of Johnstown in the United States District Court for the Western District of Pennsylvania at Civil Action No. 02-274J.

It is understood and agreed that: (a) the acceptance of the said sum is in full satisfaction of all claims, disputed or otherwise, of the Releasor and that payment of said sum is not an admission of liability by the defendants in said action or any released party; and (b) this release and settlement is intended to cover and does cover not only all known injuries, losses and damages on account of said alleged matters but also any and all injuries, losses or damages which later may develop or be discovered, including all the effects and consequences thereof; and (c) this agreement shall be construed and interpreted under the laws of the Commonwealth of Pennsylvania; and (d) this agreement shall be binding upon and inure to the successors, assigns, heirs, executors, administrators and legal representatives of the parties hereto; (e) the Releasor acknowledges that Releasor has been represented by counsel of Releasor's choosing in negotiating and executing the release and settlement agreement and executed the same after consultation with counsel of Releasor's choosing; and (f) this agreement is the entire agreement between the parties hereto; and that there are no written or oral understandings or agreements, directly or indirectly connected with this Release and Settlement, that are not incorporated herein.

The consent order filed at Civil Action No. 02-274J in the United States District Court for the Western District of Pennsylvania is incorporated herein.

I hereby declare that the terms of this agreement have been completely read by me and are fully understood and voluntarily accepted by me for the purpose of making full and final compromise settlement as aforesaid.

