

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 08-CV-4099
)	
v.)	
)	
S & S GROUP, LTD. d/b/a RE/MAX)	
EAST-WEST, through its successor)	
in interest, S&W ELMHURST, LLC,)	
also d/b/a RE/MAX EAST-WEST,)	
JOHN DEJOHN,)	
)	
)	
Defendants.)	

CONSENT ORDER

I. INTRODUCTION

1. This action was filed by the United States to enforce the provisions of the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601 - 3619. The United States alleges that Defendants S & S Group, Ltd. d/b/a RE/MAX East-West; its successor in interest, S & W Elmhurst, LLC, also d/b/a RE/MAX East-West (collectively hereinafter, “Defendant RE/MAX East-West”); and agent John DeJohn (hereinafter, “Defendant DeJohn”) discriminated on the basis of race and national origin in violation of the Fair Housing Act, 42 U.S.C. §§ 3604 (a)-(d), in the sale of dwellings in the Chicago metropolitan region.
2. This action was brought by the United States on behalf of the National Fair Housing Alliance (hereinafter, “NFHA” or “Complainant”) pursuant to Section 812 (c) of the Fair Housing Act, as amended, 42 U.S.C. § 3612(o). From June 2004 through February

2005, NFHA conducted tests using “testers” to compare the treatment afforded by Defendants to prospective home buyers who were of different races and national origin. As a result of its testing, on August 22, 2005, NFHA filed a timely complaint, later amended, with the United States Department of Housing and Urban Development (“HUD”), alleging that Defendants had discriminated on the basis of race, color, and national origin.

3. HUD conducted and completed an investigation of the complaint, determined that reasonable cause existed to believe that discriminatory housing practices had occurred, and on June 9, 2008, issued a Charge of Discrimination. On June 18, 2008, NFHA elected to have the claims in HUD's Charge of Discrimination heard in federal court, and HUD referred the case to the Department of Justice for filing pursuant to 42 U.S.C. §3612(o)(1).
4. The United States’ complaint alleges that Defendants RE/MAX East-West and John DeJohn treated a white and an Hispanic tester differently because of their race and national origin in violation of the FHA when Defendants showed the testers available homes for purchase in the Chicago metropolitan area in September 2004. Specifically, the United States alleges that Defendants steered the Hispanic tester toward predominantly African-American and Hispanic neighborhoods and steered the white tester away from these neighborhoods and toward predominantly white neighborhoods. The United States further alleges that when showing homes, Defendant DeJohn made

discriminatory statements to the white tester, treated the Hispanic tester less favorably than the white tester, and misrepresented the availability of homes to the Hispanic tester.

5. Defendants deny the United States' allegations.
6. The United States and Defendants (hereinafter, "Parties") have agreed that in order to avoid protracted and costly litigation, this controversy should be resolved without a trial. Therefore, the Parties consent to the entry of this Consent Order.

It is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL INJUNCTION

7. Defendants RE/MAX East-West and DeJohn, their officers, agents, employees, successors and assigns, and all other persons in active concert or participation with them, are enjoined, with respect to the sale of dwellings, from
 - a. Refusing to sell a dwelling, refusing or failing to provide or offer information about a dwelling, refusing to negotiate for the sale of a dwelling, or otherwise making unavailable or denying a dwelling to any person because of race and/or national origin, in violation of 42 U.S.C. § 3604(a);
 - b. Discriminating against any person in the terms, conditions or privileges of selling a dwelling, or in the provision of services or facilities in connection therewith, because of race and/or national origin, in violation of 42 U.S.C. § 3604(b);
 - c. Making statements with respect to the sale of a dwelling that indicate a preference, limitation, or discrimination based on race and/or national origin, in violation of 42 U.S.C. § 3604(c); and

- d. Representing to persons because of race and/or national origin that a dwelling is not available for sale or inspection when such dwelling is, in fact, so available, in violation of 42 U.S.C. § 3604(d).
- e. Restricting or attempting to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, or buying a dwelling because of race and/or national origin, so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development in violation of 24 C.F.R. § 100.70(a)
- f. Discouraging any person from inspecting or purchasing a dwelling because of race and/or national origin, or because of the race and/or national origin of persons in a community, neighborhood or development in violation of 24 C.F.R. § 100.70(c)(1).
- g. Discouraging the purchase of a dwelling because of race and/or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development in violation of 24 C.F.R. § 100.70(c)(2).
- h. Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race and/or national origin in violation of 24 C.F.R. § 100.70(c)(3).

III. ADDITIONAL INJUNCTIVE RELIEF AGAINST JOHN DEJOHN

8. As of the date of this decree, Defendant DeJohn represents that he has voluntarily surrendered his real estate license, that he is no longer providing real estate services in Illinois or in any other state, and that his license will expire on April 30, 2009. In the event that Defendant DeJohn renews, reinstates, applies or reapplies for a real estate license or otherwise seeks to provide real estate services in the State of Illinois or in any other state, he must: (1) notify counsel for the United States within 14 days of renewing, reinstating, or applying or reapplies for such license; and (2) comply with the terms of paragraphs 9-12 of this Consent Order. The time period set forth for compliance with those paragraphs, including the time periods specified for notification in paragraph 9, displaying a fair housing sign in paragraph 10, and training in paragraph 12, shall run from the date upon which Defendant DeJohn's license is renewed or reinstated by the State of Illinois or by any other state or from the date upon which Defendant DeJohn otherwise begins providing real estate services.¹
9. Within ten (10) days of the trigger date specified in paragraph 8 of this Consent Order, Defendant DeJohn must notify the current real estate agency with whom he is employed or otherwise affiliated of this lawsuit and its resolution by providing the agency with a copy of the Consent Order. If during the term of this Order Defendant DeJohn becomes employed by or otherwise affiliated with a different agency(s) providing real estate

¹ For purposes of this Decree, that date shall hereinafter be referred to as “the trigger date”.

services, he must notify said agency(s) of this lawsuit and of its resolution by providing said agency(s) with a copy of this Order within ten (10) days of becoming employed or otherwise affiliated with such agency(s). Within twenty (20) days of the notification to any agency pursuant to this paragraph, Defendant DeJohn must provide written notice to counsel for the United States of the identity, address and telephone number of the agency and sworn certification that he has informed the agency of this lawsuit by providing it with a copy of this Consent Order.

10. Within twenty (20) days of the trigger date specified in paragraph 8 of this Consent Order, Defendant DeJohn must prominently display at the office or offices where Defendant DeJohn does business a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all properties are available on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.
11. Defendant DeJohn must include the words "Equal Housing Opportunity" and the fair housing logo in all advertising that Defendant DeJohn conducts after entry of this Consent Order, including on any website owned or operated by Defendant DeJohn that he uses to advertise or promote his real estate services; in print advertising, including in newspapers, magazines, flyers, for sale or for rent signs, pamphlets, handouts, telephone directories, brochures, and on other written or promotional literature; and in advertising on the radio, television or other broadcast media. The words and logo shall be prominently placed and easily readable (or audible in the case of radio advertising). This requirement does not compel Defendant DeJohn to advertise in any of these media, but

does require compliance with this provision whenever Defendant DeJohn so advertises. For purposes of this requirement, an advertisement is considered to be conducted by Defendant DeJohn if DeJohn is the listing agent for the property at the time of the advertisement, or is named in the advertisement, even if the advertisement is actually sponsored by another entity, including the agency with whom DeJohn is employed or otherwise affiliated.

12. Within thirty (30) days of the trigger date specified in paragraph 8 of this Consent Order, Defendant DeJohn must undergo training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race and national origin. The training shall be conducted by an independent, qualified third party, approved by the United States in advance. All expenses associated with this training shall be borne by Defendant DeJohn. Defendant DeJohn shall obtain from the trainer a certification of attendance confirming his attendance. This certification shall include the name of the course, the date the course was taken, and the length of the course and/or time within which the course was completed.

IV. DAMAGES TO AGGRIEVED PERSON

13. Within thirty (30) days of the entry of this Order, the Defendants shall pay the Complainant \$120,000 in monetary damages. The Defendants shall pay said money by sending to the United States two checks payable to the National Fair Housing Alliance

totaling \$120,000.² Upon receipt of the checks, the United States shall provide to the Defendants an executed release of all claims, legal or equitable, that the Complainant might have against the Defendants relating to the claims asserted in this lawsuit (Appendix A).

V. NOTICE TO PUBLIC OF NONDISCRIMINATION

14. Within thirty (30) days after the date of entry of this Consent Order, Defendant RE/MAX East-West shall take the following steps to notify the public that it does not discriminate:
 - a. Prominently display at all offices where Defendant, and/or its agents or employees currently or subsequently use for the sale of dwellings or otherwise do business a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all properties are available on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement;
 - b. Include the words "Equal Housing Opportunity" and the fair housing logo in all advertising conducted by Defendant RE/MAX East-West, and/or its agents and employees, including on any website owned or operated by them; in print advertising, including in newspapers (except in classified ads only the words "Equal Housing Opportunity" or "Equal Housing Opp" are required), magazines, flyers, for sale or for rent signs, pamphlets, handouts, telephone directories, brochures, and other written and promotional literature; and on the radio,

² One check shall be paid by or on behalf of Defendant S&S Group, Ltd. d/b/a RE/MAX East-West and John DeJohn in the amount of \$72,500. The other check shall be paid by or on behalf of Defendant S&W Elmhurst, LLC d/b/a RE/MAX East-West in the amount of \$47,500.

television or other media broadcasts. The words and logo shall be prominently placed and easily readable (or audible in the case of radio advertisement). This requirement does not compel Defendant RE/MAX East-West to advertise in any of these media, but does require compliance with this provision whenever Defendant so advertises;

- c. Include the following phrase in all listing contracts, exclusive or non-exclusive, and on their website, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status (having children under age 18).

VI. EDUCATIONAL PROGRAM

15. Within thirty (30) days of the entry of this Consent Order, Defendant RE/MAX East-West shall provide a copy of this Consent Order to all agents and employees involved in showing, listing, selling, promoting or providing information about properties in the Chicago metropolitan region and secure a signed statement from each agent or employee acknowledging that he or she has received and read the Consent Order, has had the opportunity to have questions about the Consent Order answered, and agrees to abide by the relevant provisions of the Consent Order. This statement shall be in the form of Appendix B.
16. During the term of this Consent Order, within five (5) days after each new agent or employee becomes involved in showing, listing, selling, promoting or providing

information about any property in the Chicago metropolitan region, Defendant RE/MAX East-West shall provide a copy of this Consent Order to said agent or employee and secure the signed statement (in the form of Appendix B) from each agent or employee acknowledging that he or she has received and read the Consent Order, has had the opportunity to have questions about the Consent Order answered, and agrees to abide by the relevant provisions of the Consent Order.

17. Within sixty (60) days from the date of entry of this Consent Order, Defendant RE/MAX East-West's agents and employees involved in showing, listing, selling, promoting, or providing information about properties in the Chicago metropolitan region shall undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race and national origin. The training shall be conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with this training shall be borne by Defendant. Defendant shall obtain from the trainer certifications of attendance, executed by each individual who received the training, confirming their attendance, in a form acceptable to the United States. This confirmation shall include the name of the course, the date the course was taken, and the length of the course and/or time within which the course was completed.

VII. COMPLIANCE TESTING

18. The United States and NFHA may take steps to monitor the compliance by Defendant DeJohn and Defendants RE/MAX East-West with this Consent Order including, but not limited to, conducting fair housing tests of Defendants and their agents or employees.

VIII. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

19. Within ninety (90) days of the date of entry of this Consent Order, and thereafter on the first and second anniversary of the Order and sixty (60) days before the Order expires, Defendants DeJohn and RE/MAX East-West shall each deliver to counsel for the United States³ a report containing the following information about each Defendant's compliance efforts during the preceding reporting period.
- a. The signed statement of each agent and employee of Defendant RE/MAX East-West referred to in paragraphs 15-16 above;
 - b. The sworn certification of defendant DeJohn referred to in paragraph 10 above.
 - c. Representative copies of standard advertising used by Defendants RE/MAX East-West and DeJohn during the reporting period sufficient to verify that such advertisement complies with paragraphs 11 and 14 (b).
 - d. Representative copies of Defendant RE/MAX East-West's standard listing contract and the home page of its website sufficient to show that these documents comply with paragraph 14(c);
 - e. For the first 90 day report, photographs of the offices of Defendants RE/MAX and DeJohn showing the fair housing signs, pursuant to paragraphs 10, and 14(a), and

³ All documents or other communications required by this Consent Order to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-23-793, United States Department of Justice, 950 Pennsylvania Avenue N.W.- G St., Washington, D.C. 20530, or as otherwise directed by the United States. If the Consent Order requires transmission by facsimile, the communication shall also be sent via facsimile to (202) 514-1116.

for subsequent reports, a sworn statement from Defendants DeJohn and RE/MAX that the signs mentioned in the previous report are still displayed along with photographs of signs at any new office not previously photographed in a report.

- f. Copies of all training certificates referred to in paragraphs 12 and 17.
20. During the period in which this Consent Order is in effect, Defendants RE/MAX East-West and DeJohn shall preserve all records that are the source of, contain, or relate to any of the information pertinent to the obligations under this Consent Order, including, but not limited to, all contracts for the sale or purchase of dwellings; all listings of dwellings to which Defendants have access; representative samples of advertising literature; and all logs or records prepared or maintained by Defendants' agents, if any, that relate to the showing of dwellings to any prospective purchasers. Upon reasonable notice to counsel for Defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times.
21. During the period in which this Consent Order is in effect, Defendants RE/MAX East West and DeJohn shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against Defendants, or Defendants' agents or employees, regarding discrimination based on race and national origin in housing. If the complaint is written, Defendants shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number (if known). Defendants shall also promptly make available to the United States all relevant, non-privileged information the United States

may request concerning any such complaint and shall inform the United States within fifteen (15) days of any resolution of such complaint.

IX. SCOPE AND DURATION OF CONSENT ORDER

22. The provisions of this Consent Order shall apply to Defendants RE/MAX East-West and DeJohn, their officers, agents employees, successors and assigns, and all persons acting in active concert or participation with them. In the event that Defendants seek to transfer, sell or assign all or part of their interest in RE/MAX East-West, and the successor or assign intends to carry on the same or similar use, as a condition of sale, the Defendants shall notify the successor or assign to any obligations remaining under this Consent Order for the remaining term of the Order.
23. This Consent Order shall remain in effect for three (3) years from its entry. By consenting to entry of this Consent Order, the United States and Defendants agree that in the event that a Court determines that Defendants have engaged 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)(1) (C)(ii).
24. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Consent Order, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.

X. REMEDIES FOR NON-COMPLIANCE

25. The Parties shall endeavor 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. The United States shall notify Defendants in writing of defendants' non-compliance with the consent order and shall give the Defendants 30 days (or a shorter reasonable period of time if 30 days is not practical) to resolve such non-compliance before bringing the matter to the court for a resolution. However, in the event the United States contends that there has been a failure by any of the Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent 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 of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

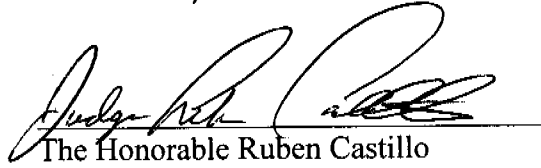
XI. TIME FOR PERFORMANCE

26. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties. The other provisions of this Order may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective within thirty (30) days of filing the written agreement with the Court, and shall remain in effect for the duration of the Order or until such time as the Court indicates through written order that it has not approved the modification.

XII. COSTS OF LITIGATION

27. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

IT IS SO ORDERED this 17th day of February, 2009.


The Honorable Ruben Castillo
United States District Judge

By their signatures below, the parties consent to the entry of this Consent Order.

For the United States:

ERIC H. HOLDER, JR.
Attorney General

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Northern District of Illinois

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**For Defendants S&S Group, Ltd
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For Defendant S&W Elmhust, LLC:

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Appendix A

FULL AND FINAL RELEASE OF CLAIMS

I, _____, on behalf of NFHA, its agents, executors, administrators, successors and assigns, pursuant to the terms, provisions, and conditions of the Consent Order approved by the United States District Court for the Northern District of Illinois on _____, 2008 in the case of United States v. S & S Group Ltd., d/b/a ReMax East-West (“lawsuit”) and in consideration of the payment of _____ do fully, finally and forever release, discharge, and hold harmless S & S Group, Ltd. d/b/a RE/MAX East-West, its successor in interest, S & W Elmhurst, LLC, also d/b/a RE/MAX East-West, and agent John DeJohn (hereinafter “Defendants”), along with their insurers, attorneys, related companies, principals, predecessors, successors, assigns, affiliates, partners, directors, officers, agents, employers, shareholders, subsidiaries, employees, former employees, heirs, executors, and administrators and any persons acting under their respective direction or control (hereinafter “Releasees”), from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that NFHA may have against Defendants or any of the Releasees for any of Defendants’ actions or statements related to those claims through the date of this Consent Order, including claims for damages (both compensatory and punitive), costs, fines and attorneys’ fees.

I affirm that the only consideration for signing this Full and Final Release of Claims are the terms stated in the Consent Order signed by the parties, and the monetary payment referenced above. NFHA accepts the terms of this Release and the Consent Order because it believes them to be a fair and reasonable settlement and for no other reason. This Release and the Consent Order contain and constitute the entire understanding and agreement between the parties.

Executed this _____ day of _____, 2009.

[Print Name]

[Signature]

Appendix B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 200 __, I was provided copies of the Consent Order entered by the Court in United States v. S & S Group, Ltd., d/b/a ReMax East-West, Civil Action No. 1:08-cv-4099 (N.D. Ill.). I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date