

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
TENNESSEE,)
)
Defendant.)
)
_____)

Civil Action No. 3:08-0961 ✓
JUDGE HAYNES

TEEN CHALLENGE INTERNATIONAL,)
NASHVILLE HEADQUARTERS, et al.,)
)
Plaintiffs,)
)
v.)
)
METROPOLITAN GOVERNMENT OF)
NASHVILLE AND DAVIDSON COUNTY,)
TENNESSEE,)
)
Defendant.)
)
_____)

Civil Action No. 3:07-0668
JUDGE HAYNES

RELATED CASES

CONSENT DECREE

BACKGROUND

1. The United States initiated United States v. Metropolitan Government of Nashville and Davidson County, Case No. 08-cv-0961 (M.D. Tenn.) to enforce the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("FHA") and the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.* The United States alleges that

3:8-0961

the Defendant, the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro Government" or "Defendant"), delayed and subsequently denied an application for a building permit from a group called Teen Challenge International, Nashville Headquarters ("Teen Challenge") because of the disabled status of the participants in the program. Teen Challenge is a substance abuse treatment program with a religious mission. The United States further alleges that, when Teen Challenge's application was pending, Metro Government passed an amendment to its zoning code that targeted housing for persons recovering from alcohol and drug dependency. In addition to being facially discriminatory, the United States asserts that Metro Government enacted this legislation to prevent Teen Challenge from operating in Davidson County. The United States filed a complaint in this matter claiming that, through the above-stated actions, Metro Government violated § 3604(f)(1) of the FHA by denying or otherwise making dwellings unavailable because of disability and violated § 3604(f)(2) of the FHA by discriminating in the terms, conditions, or privileges of housing, or in the provision of services or facilities in connection with housing, because of disability. Metro Government does not dispute that it violated the FHA. The United States also alleges in its complaint that Metro Government violated Section 2(a)(1) of RLUIPA by imposing a substantial burden on the religious exercise of Teen Challenge, without sufficient justification.

2. United States v. Metropolitan Government of Nashville and Davidson County, Case No. 08-cv-0961 (M.D. Tenn.) and Teen Challenge International, Nashville Headquarters, et al. v. Metropolitan Government of Nashville and Davidson County, Case No. 07-cv-0668 (M.D. Tenn.) are related cases.

3. To avoid costly and protracted litigation, the parties in the related cases have voluntarily

agreed to resolve the United States' claims, individual plaintiffs' claims, and Teen Challenge's non-monetary claims against the Defendant by entering into this Consent Decree.

Therefore, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. GENERAL NONDISCRIMINATION PROVISIONS

4. The Defendant shall not:
 - a. Discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, or of any person residing in or intending to reside in such dwelling, or of any person associated with that buyer or renter;
 - b. Discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person;
 - c. Adopt, maintain, enforce, or implement any zoning or land use laws, regulations, policies, procedures, or practices that discriminate on the basis of disability in violation of the FHA;
 - d. Implement or administer any zoning laws, regulations, policies, procedures, or practices in such a manner as to discriminate on the basis of disability in violation of the FHA;
 - e. Refuse to make reasonable accommodations in the application of rules, policies, practices, or services when such accommodations may be necessary to afford a

person or persons with disabilities an equal opportunity to use and enjoy a dwelling;

- f. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the FHA; or
- g. Substantially burden the religious exercise of a person, including a religious assembly or institution, in violation of RLUIPA unless the government demonstrates that imposition of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.

II. SPECIFIC INJUNCTIVE RELIEF

5. As a condition of settlement of the United States' claims, the Defendant adopted Ordinance No. BL2008-243, which repealed Ordinance No. BL2006-1260. A copy of Ordinance No. BL2008-243 is attached to and incorporated in this Consent Decree as Attachment B.

6. As a further condition of settlement, the Defendant adopted Ordinance No. BL2008-333, which amended Metro Government's zoning code to provide a process by which persons may request reasonable accommodations on the basis of disability from zoning and land use restrictions in the code. A copy of Ordinance No. BL2008-333 is attached to and incorporated in this Decree as Attachment F.

7. Nothing in this Decree shall be interpreted to require persons with disabilities – or providers of housing for persons with disabilities – acting or operating in accordance with applicable zoning, licensing and/or land use laws and practices, to seek permission from the

Defendant to continue such action or operation.

8. From the date of entry of this Consent Decree and throughout its term, if the Defendant declines, rejects, or denies any type of request or application for zoning or land use relating to a dwelling occupied by, or designated or intended for occupancy by, persons recovering from alcohol or drug dependency, including any request for a building permit or reasonable accommodation(s), the Defendant will prepare detailed written findings explaining the specific grounds for declining the request. For purposes of this provision, the failure to act on a request within thirty (30) days shall be deemed a denial. A copy of the Metro Government's written findings shall be provided to the person or persons making the request within ten (10) days of the date on which the final decision was made.

9. The Defendant shall designate a Metro Government employee as the FHA and RLUIPA Compliance Officer. The Compliance Officer shall have the responsibility to receive complaints of alleged housing or religious land-use discrimination against Metro Government and coordinate Metro Government's compliance with this Decree. The Officer shall maintain copies of this Decree, a RLUIPA complaint form (substantially similar to the sample appearing at Attachment A), the HUD Complaint form, and the HUD pamphlet entitled "Are you a victim of housing discrimination?" (HUD official forms 903 and 903.1, respectively). The Officer shall make these materials available free of charge to individuals upon request, including all persons making housing or religious land-use discrimination complaints to Metro Government. The Officer shall have the additional responsibility of advising Metro Government officials, departments, and agencies about zoning and land use decisions where FHA or RLUIPA issues are implicated, including but not limited to decisions involving requests for rezoning and for reasonable

accommodations from zoning and land use laws and procedures. In addition to attending the training described below, the Officer will be responsible for monitoring legal developments that may create new FHA or RLUIPA responsibilities for the Defendant. The Defendant shall provide to the United States the name and contact information of the Compliance Officer in the manner stated in Section IV.

III. FAIR HOUSING AND RLUIPA TRAINING

10. Within ninety (90) days of entry of this Consent Decree, the Defendant shall provide training(s) on the requirements of the Decree, the FHA (in particular, those provisions that relate to disability discrimination), and RLUIPA. The training(s) shall be provided to: the Metropolitan Council; the sponsors of Ordinance No. BL2006-1260; the Director of Council Staff; all Special Counsel employed by the Metropolitan Council that may advise the Metropolitan Council on matters related to zoning or land use; the Director of Law's designee(s) who advise the Metropolitan Council pursuant to Ordinance BL 2008-245; other attorneys who advise the Metropolitan Council on matters related to zoning or land use; commissioners on the Metropolitan Planning Commission ("MPC"); individuals with authority to make recommendations to the MPC related to zoning or land use; the Compliance Officer described in paragraph 9; the Zoning Administrator; individuals with authority to make recommendations to the Zoning Administrator related to zoning or land use; members of the Board of Zoning Appeals; and individuals with authority to make recommendations to the Board of Zoning Appeals related to zoning or land use. The training(s) should be conducted in accordance with the following subparagraphs:

- a. The training(s) shall be conducted in person by a qualified third part(y/ies),

subject to the approval of the United States. The trainer(s) shall not be connected to the Defendant or its officials, employees, agents or counsel. Any expense associated with the training(s) shall be borne by the Defendant;

- b. The training(s) shall be videotaped and shown to newly elected, appointed, or hired individuals covered by this section. The training(s) of each new official or staff member shall take place within thirty (30) days of the date he or she commences service or employment.

11. The Defendant shall provide a copy of this Decree to each person required to receive the training(s).

12. The Defendant shall provide to the United States, in the manner stated in Section IV, proof of attendance at the training(s) and the date(s) of the training(s).

13. Each person with responsibilities relating to the implementation and enforcement of all zoning or land use regulations within Metro Government shall be given a copy of, and be required to read this Decree. Within ninety (90) days of entry of this Decree, the covered individuals shall acknowledge that they have reviewed and understand this Decree by signing the Certification of Receipt of Consent Decree (Attachment C) or, if they are required to attend the training, the Certification of Training and Receipt of Consent Decree (Attachment B).

14. For the duration of this Decree, all individuals covered by paragraph 13 who become agents, employees, or officials of Metro Government shall sign Attachments B or C within 10 days of commencing the membership, employment, or an agency relationship with Metro Government. The Defendant shall provide the United States with a copy of these executed acknowledgments in the manner stated in Section IV.

IV. REPORTING AND RECORD KEEPING

15. Within thirty (30) days after entry of this Decree, the Defendant shall notify the United States in writing¹ of the name, address and telephone number of the Compliance Officer described in paragraph 9, above. Should the identity of the Compliance Officer change during the term of this Decree, the Defendant will, within ten (10) days of such change, notify the United States in writing of the name of the new Officer and his or her contact information.
16. Within one hundred (100) days after entry of this Decree, Defendant shall submit proof that all the necessary individuals have received and reviewed a copy of this Consent Decree, as described in paragraph 13, by producing all executed copies of the Certification of Training and Receipt of Consent Decree (Attachment B) and/or the Certification of Receipt of Consent Decree (Attachment C). At this time, Defendant also shall submit proof of attendance at the training(s), described in paragraph 10, in the form of a dated sign-in sheet and a typed list of all of the attendees or the executed copies of Attachment B.
17. During the term of this Decree, the Defendant shall provide the United States with a copy of any proposed change to the Code of Laws for the Metropolitan Government that relates to or affects in any way housing for persons recovering from alcohol or drug dependency, at least thirty (30) days prior to the adoption of the proposed change by the Metropolitan Council.
18. The Defendant shall prepare biannual compliance reports that detail all actions it has

¹ All notifications required by this Consent Decree to be sent to the United States or counsel for the United States shall be addressed to "Chief, Housing and Civil Enforcement Section, Matter No. 210-71-3" and sent via overnight courier to U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 1800 G Street, N.W., Suite 7002 Washington, D.C. 20006, or as otherwise directed by the United States.

taken to fulfill its obligations under the Decree since Metro Government's last compliance report was issued. The Defendant shall submit its first report to the United States within six (6) months of the effective date of the Decree, and subsequent reports every six (6) months thereafter for the duration of the Decree, except that the final report shall be delivered to the United States not less than sixty (60) days prior to the expiration of the Decree.

19. The Defendant shall include the following information in the compliance reports:

- a. the name, address, and telephone number of the Compliance Officer, referenced in paragraph 9, above, as of the date of the report;
- b. any documentation of a complaint received subsequent to the preceding report alleging discrimination in housing, including discrimination in zoning or land use actions or practices, because of disability or religion. The Defendant shall indicate any action it took in response to the complaint, and shall provide all pertinent documents, including a copy of the complaint, any documents filed with the complaint, and any written response to the complaint by Metro Government;
- c. copies of the Certification of Receipt of Consent Decree (Attachment C) referenced in paragraphs 13 and 14, above, signed after the preceding compliance report was issued;
- d. copies of the Certification of Training and Receipt of Consent Decree (Attachment B) referenced in paragraphs 12 and 14, above, signed after the preceding compliance report was issued;
- e. a summary of each zoning request or application related to housing for persons recovering from alcohol or drug dependency (including those for building permits,

site plans, variances, or reasonable accommodations) for which Metro Government has made a determination, indicating: I) the date of the application; ii) the applicant's name; iii) the applicant's current street address; iv) the street address of the proposed housing; v) Metro Government's decision(s) regarding the matter, including any decision on appeal; vi) the reasons for each decision, including a summary of the facts upon which Metro Government relied; and vii) complete copies of any minutes or video recordings from all meetings or hearings discussing the zoning request or application;

- f. copies of any changes to the Code of Laws for the Metropolitan Government relating to or affecting any housing for persons with disabilities enacted after Metro Government's last compliance report was issued.

20. Throughout the term of this Decree, the Defendant shall retain all records relating to implementation of all provisions of this Decree. The United States shall have the opportunity to inspect and copy any such records after giving reasonable notice to counsel for the Defendant.

V. MONETARY RELIEF

21. Within ten days after the date of entry of this Consent Decree, the Defendant shall pay to individual plaintiffs the sum of fifty thousand dollars (\$50,000). The Defendant shall send to counsel for individual plaintiffs checks totaling fifty thousand dollars (\$50,000), written out to the individual plaintiffs as directed by their counsel. The Defendant also shall send copies of the checks to the United States Department of Justice. Upon receipt of the checks, counsel for individual plaintiffs shall send to the Defendant an executed release of all claims, legal or equitable, from the individual plaintiffs, attached hereto as Attachment D.

22. The Defendant shall pay compensatory damages to Teen Challenge pursuant to the final court order in Teen Challenge International, Nashville Headquarters, et al. v. Metropolitan Government of Nashville and Davidson County, Case No. 07-cv-0668.

VI. CIVIL PENALTY

23. Within ten (10) days of entry of this Decree, the Defendant shall pay to the United States a civil penalty of twenty thousand dollars (\$20,000) to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(c). The sum shall be paid by submitting to counsel for the United States a check made payable to the "United States Treasury."

24. In the event that Defendant Metro Government, its agents, or its 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).

VII. JURISDICTION AND SCOPE OF DECREE

25. The parties stipulate and the Court finds that the Court has personal jurisdiction over the Defendant for purposes of these related cases, and subject matter jurisdiction over the United States' and individual plaintiffs' claims in these civil actions pursuant to 28 U.S.C. § 1345, and 42 U.S.C. § 3614(a).

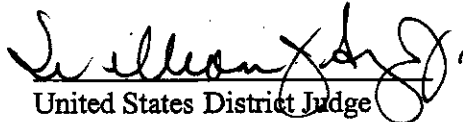
26. This Consent Decree shall remain in effect for a period of four (4) years from the date of entry. The Court shall retain jurisdiction over the action for the duration of the Decree for the purpose of enforcing its provisions and terms. The case shall be dismissed with prejudice when the Decree expires. Plaintiff may move the Court to extend the duration of the Decree in the interests of justice.

VIII. ENFORCEMENT OF THIS DECREE

27. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Defendant to perform in a timely manner any act required by this Decree, 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. In the event of a failure by the Defendant to comply with the provisions of Paragraph 21 of the Decree, the individual plaintiffs may move this Court to impose any remedy authorized by law or equity. In the event of a failure by the Defendant to comply with the provisions of Paragraph 22 of the Decree, Plaintiff Teen Challenge may move this court to impose any remedy authorized by law or equity. Remedies include, but are not limited to, findings of contempt, 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.

IT IS SO ORDERED:

This 30th day of January, 2009.


United States District Judge