

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL NIEMAN, J.S. PROPERTY
MANAGEMENT, L.C., and ELDERS,
INC.,

Defendants.

Civil No. C10-2068-LRR-JSS

CONSENT ORDER

I. INTRODUCTION

1. This action was filed by the United States 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 of 1988, 42 U.S.C. §§ 3601–3631. The United States alleges that Michael Nieman, J.S. Property Management, L.C., and Elders, Inc. (collectively “Defendants”) engaged in discrimination on the basis of sex in violation of 42 U.S.C. §§ 3604(a), (b), (c), and 3617. The United States alleges that the Defendants’ conduct constitutes a pattern or practice of discrimination on the basis of sex or a denial of rights to a group of persons that raises an issue of general public importance, pursuant to 42 U.S.C. § 3614, in the rental of dwelling units at Park Towers Apartments in Waterloo, Iowa (“Park Towers”).
2. The United States further alleges that defendants J.S. Property Management, L.C. and Elders, Inc. are liable for the discriminatory conduct of their agent and manager,

defendant Michael Nieman, because the conduct occurred within the scope of his employment and/or agency.

3. Specifically, the United States alleges that the Defendants have engaged in housing practices that discriminate on the basis of sex, including:
 - a. Making housing unavailable on the basis of sex through sexual harassment that caused female tenants to move out;
 - b. Engaging in quid pro quo sexual harassment by conditioning or offering to exchange housing benefits such as rent, cable television, lockout fees, and permission to have roommates on the provision of sexual favors;
 - c. Discriminating on the basis of sex including severe, pervasive, and unwelcome sexual harassment. Such conduct is alleged to have included, but is not limited to, commenting on female tenants' body parts and making other inappropriate sexual remarks, making inappropriate sexual gestures, entering dwelling units of female tenants without permission or notice, and conditioning or offering to exchange tangible housing benefits for sexual favors;
 - d. Making statements with respect to the rental of units at Park Towers indicating discrimination on the basis of sex; and
 - e. Interfering with female tenants' exercise and enjoyment of their tenancies through sexual harassment.
4. The United States alleges that through this conduct the Defendants have:
 - a. Discriminated by refusing to rent, negotiate for the rental of, or otherwise making unavailable or denying dwellings to persons because of sex, in violation of

- 42 U.S.C. § 3604(a);
- b. Discriminated against persons in the terms, conditions, or privileges of rental, or in the provision of services or facilities in connection therewith, because of sex, in violation of 42 U.S.C. § 3604(b);
 - c. Discriminated by making, or causing to be made, statements with respect to the rental of a dwelling that indicate a preference, a limitation, or discrimination based on sex, in violation of 42 U.S.C. § 3604(c);
 - d. Coerced, intimidated, threatened, or interfered with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of 42 U.S.C. § 3617.
5. None of the Defendants is currently engaged in the residential rental business.
6. The Defendants dispute and deny the allegations in paragraphs 1 through 4, as well as in the United States' complaint. The Defendants deny any and all liability for any and all claims stated in the United States' complaint.
7. Notwithstanding paragraph 6, the 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.

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL INJUNCTION

8. Defendants, their officers, agents, employees, successors and assigns, and all other persons in active concert or participation with them, are enjoined, with respect to the rental of dwellings, from:

- a. Refusing to rent a dwelling unit, refusing or failing to provide or offer information about a dwelling unit, or otherwise making unavailable or denying a dwelling unit to any person because of sex;
- b. 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;
- c. 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
- d. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.

III. PERMANENT INJUNCTION RELATED TO DEFENDANT MICHAEL NIEMAN

9. Defendant Michael Nieman is hereby permanently enjoined from operating, consulting, managing, staffing, participating in, working in (whether paid or unpaid), or otherwise having any involvement in the management, rental, or maintenance of any dwelling, as defined by the Fair Housing Act, 42 U.S.C. § 3602(b).

IV. ADOPTION AND DISTRIBUTION OF NONDISCRIMINATION POLICY BY J.S. PROPERTY MANAGEMENT, L.C., AND ELDERS, INC.

10. Defendants J.S. Property Management, L.C. and Elders, Inc. shall take the following actions if they re-enter the residential rental business or engage directly or indirectly

in the rental of residential real property during the scope of this Consent Order:

- a. Within thirty (30) days after re-entering the residential rental business, the defendant shall adopt a written Nondiscrimination Policy for its residential rental properties. The Policy shall, at minimum: (a) identify the entity responsible for the overall management and operation of each rental property; (b) make clear that there is a strict policy against sexual harassment and against other discrimination prohibited by the Fair Housing Act or other applicable fair housing laws and that it is the defendant's policy not to discriminate on the basis of race, color, sex, religion, national origin, disability, or familial status; (c) designate a specific person to receive tenant complaints and invite tenants who believe they have experienced or seen sexual harassment or other unlawful discrimination at the rental property to contact this designee directly, file a complaint with the Department of Housing and Urban Development ("HUD"), or contact the Department of Justice; and (d) provide a mailing address, telephone number, and email address whereby such persons can contact the property-management designee, HUD, and the Department of Justice. The Nondiscrimination Policy must be approved in advance of its implementation by the United States.¹
- Thereafter, the defendant shall have fifteen (15) days to implement the Nondiscrimination Policy. The United States must approve any changes to the

¹ All documents or other communications required by this Consent Order to be sent to counsel for the United States shall be sent by commercial (non-USPS) overnight delivery service addressed as follows, unless otherwise directed by the United States: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ 175-27-33.

Nondiscrimination Policy made during the scope of this Consent Order.

- b. Within fifteen (15) days of the United States' approval of the Nondiscrimination Policy, the defendant re-entering the residential rental business shall distribute a copy of the Nondiscrimination Policy and a copy of the HUD booklet, "Fair Housing: Equal Opportunity for All," to each household occupying a unit at each rental property and shall provide to counsel for the United States a statement certifying under penalty of perjury that they have distributed the Nondiscrimination Policy and HUD booklet in compliance with this paragraph. Thereafter, the defendant re-entering the residential rental business shall provide a copy of the Nondiscrimination Policy and the HUD booklet to each new household occupying any rental dwelling at or before the time that the resident(s) sign a lease or otherwise take possession of the dwelling.
- c. Within thirty (30) days of re-entering the residential rental business, the defendant shall post an "Equal Housing Opportunity" sign in the rental office window at the residential property, 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. The form is also available at:
<http://www.hud.gov/offices/adm/hudclips/forms/hud9.cfm>.

V. TRAINING

11. Defendants J.S. Property Management, L.C. and Elders, Inc. shall take the following actions if they re-enter the residential rental business or engage directly or indirectly in the rental of residential real property during the scope of this Consent Order:
 - a. Within fifteen days (15) of the United States' approval of the Nondiscrimination Policy set forth in paragraph 10, the defendant shall provide a copy of this Consent Order and the Nondiscrimination Policy to their agent(s) and employee(s) involved in showing, renting, managing, or providing maintenance for units at each rental property. That defendant shall secure a signed statement from each such agent or employee acknowledging that he or she has received and read the Consent Order and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Order and Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Order and Nondiscrimination Policy. This statement shall be in the form of Appendix A.
 - b. During the terms of this Consent Order, within five (5) days after each new agent or employee becomes involved in showing, renting, managing, or providing maintenance for units at a rental property, the defendant shall provide a copy of this Consent Order and the Nondiscrimination Policy to each such agent or employee and secure a signed statement acknowledging that he or she has received and read the Consent Order and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Order and Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Order and Nondiscrimination Policy. This statement shall be in the form of

Appendix A.

- c. Within sixty (60) days from the re-entry into the residential rental business, the defendant, their managers and officers, and any agent or employee involved in showing, renting, managing, or providing maintenance for any dwelling unit shall undergo in-person training on the Fair Housing Act at a reasonable location, with specific emphasis on discrimination on the basis of sex. 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 the defendant. The defendant shall obtain from the trainer certifications of attendance, executed by each individual who received the training, confirming their attendance, and submit such certifications to counsel for the United States within ten (10) days of the conclusion of the training. This confirmation shall include the name of the course, the name of the instructor, the date the course was taken, and the length of the course and/or time within which the course was completed. At a minimum, the training shall consist of instruction on the requirements of all applicable federal and state housing discrimination laws, with an emphasis on sexual harassment, and a question and answer session for the purpose of reviewing the foregoing areas. The defendant shall submit the name and contact information of the proposed trainer to counsel for the United States within twenty (20) days of its re-entry into the residential rental business. The defendant will provide the trainer with a copy of this Consent Order at least ten (10) days before the training.

VI. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

12. Defendants J.S. Property Management, L.C. and Elders, Inc. shall take the following actions if they re-enter the residential rental business or engage directly or indirectly in the rental of residential real property during the scope of this Consent Order:
 - a. During the period in which this Consent Order is in effect, the defendant shall notify counsel for the United States in writing within ten (10) days of receipt of any written or oral complaint against the defendant, or their agents or employees regarding housing discrimination. If the complaint is in writing, the defendant shall provide a copy of the complaint along with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. The defendant shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within fifteen (15) days of the substance of any resolution of such complaint.
 - b. On or before the first, second, third, and fourth anniversaries of the entry of this Consent Order, and within sixty (60) days of the fifth anniversary of the entry of the Consent Order, the defendant shall deliver to counsel for the United States a report containing information about any manager, officer, agent, or employee who became involved in showing, renting, managing, or providing maintenance for any dwelling unit at any of the defendant's rental properties during the previous year. The report shall contain signed statements in the form of Appendix A from each such manager, officer, agent or employee, as set forth in paragraph 11.

- c. From the execution of this Consent Order and during the period in which this Consent Order is in effect, the defendant shall preserve all records related to its residential rental business, including, but not limited to, availability lists, waiting lists, rental applications, leases, tenant files, maintenance logs, and occupancy lists. Upon reasonable notice to counsel for the defendant, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, the defendant shall provide copies of such documents.

VII. COMPENSATION OF AGGRIEVED PERSONS

13. The Defendants shall pay a total of eighty thousand dollars (\$80,000) in monetary damages to persons whom the United States has identified as aggrieved persons. A list of such persons is attached as Appendix B. Within thirty (30) days of the entry of this Consent Order, the Defendants shall send via overnight courier to counsel for the United States checks made payable to each aggrieved person in the amount listed in Appendix B. When counsel for the United States has received a check from the Defendants payable to an aggrieved person and a signed release from the aggrieved person in the form of Appendix C, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release to counsel for the Defendants. No aggrieved person shall be paid until she has executed and delivered to counsel for the United States the release at Appendix C.
14. No defendant shall seek to discharge any part of the compensation provided for in paragraph 13 in bankruptcy.

VIII. CIVIL PENALTY

15. Within forty-five (45) days after the entry of this Consent Order, the Defendants shall make a payment of fifteen thousand dollars (\$15,000) to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be delivered to counsel for the United States in the form of a cashier's check payable to the "United States Treasury."
16. No defendant shall seek to discharge any part of the civil penalty provided for in paragraph 15 in bankruptcy.

IX. SCOPE AND DURATION OF CONSENT ORDER

17. The provisions of this Consent Order shall apply to all of the Defendants' officers, agents, employees, successors and assigns, and all persons acting in active concert or participation with them.
18. This Consent Order shall remain in effect for five (5) years after the date of its entry. The United States may move to extend the duration of the Consent Order in the interests of justice.
19. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time the case shall be dismissed with prejudice.
20. 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.

X. TIME FOR PERFORMANCE

21. Any time limits for performance imposed by this Consent Order may be extended by

mutual written agreement of the parties. The other provisions of this Consent 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 upon filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through written order that it has not approved the modification.

XI. COSTS AND ATTORNEYS' FEES

22. The parties shall bear their own costs and attorneys' fees associated with this litigation.

IT IS SO ORDERED this 22 day of Sept, 2011.



CHIEF JUDGE LINDA R. READE
UNITED STATES DISTRICT COURT

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

Dated: September 19, 2011

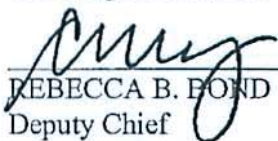
For Plaintiff:

STEPHANIE M. ROSE
United States Attorney

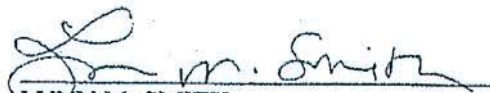
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For Defendants:

A handwritten signature in black ink, appearing to read "Lynn M. Smith", written over a horizontal line.

LYNN M. SMITH

Swisher & Cohrt, P.L.C.

528 W. Fourth Street

Waterloo, IA 50704

Phone: (319) 232-6555

Email: lsmith@s-c-law.com

Appendix A

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 201_, I was provided copies of the Consent Order entered by the Court in *United States v. Nieman, et al.*, Civil Action No. 6:10-cv-2068 (N.D. Iowa), and the Nondiscrimination Policy of [J.S. Property Management or Elders, Inc.]. 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

Home Address

Home Address Continued

Home Telephone Number

Date

Appendix B

Ms. Eula Harris	\$20,000.00
Ms. Darlene Jensen	\$20,000.00
Ms. Ruth Allen	\$8,000.00
Ms. Raquel Glass	\$8,000.00
Ms. Linda Nieman	\$6,500.00
Ms. Peggy Gelder	\$5,000.00
Estate of Ms. Tammy Heim	\$5,000.00
Ms. Debbie Ackerman	\$2,500.00
Ms. Cindy Neeson	\$2,500.00
Ms. June Ackley	\$2,500.00

Appendix C

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the parties' agreement to the terms of the Consent Order they entered into in the case of *United States v. Nieman, et al.* as approved by the United States District Court for the Northern District of Iowa, and in consideration for the payment of \$ _____, I, _____, do hereby fully release and forever discharge Michael Nieman, J.S. Property Management, L.C., and Elders, Inc. (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 from any and all claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have had against any of them for any of the Defendants' actions or statements related to those claims through the date of the entry of the Consent Order.

Executed this _____ day of _____, 201_.

Signature

Print Name

Home Address

Home Address Continued