

USA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED

JUL 2 2001

DAVID W. DANIEL, CLERK
US DISTRICT COURT
E. DIST. NO. CAR

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TERRY BANKERT,)
)
 Defendant.)
 _____)

Case No. 5:99-CV-348-BR(3)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JYMCO DEVELOPMENT, INC. d/b/a)
 WHITLEY HOMES, and JIMMY RAY)
 WHITLEY,)
)
 Defendants.)
 _____)

Case No. 5:99-CV-577-BR(2)

CONSENT ORDER

The United States brought suit in these consolidated actions alleging that Defendants Terry Bankert, Jimmy Ray Whitley and Jymco Development, Inc. (d/b/a Whitley Homes) violated the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. §§ 3601-19, by discriminating on the basis of race. The Complaint alleges that Defendants unlawfully discriminated against Cary and Kimberly Bruton, and Isaac Woods and Unlimited Financial Resources, by making housing unavailable, imposing different terms and conditions on the sale of housing, and making

discriminatory statements, because of Mr. Woods' race. The defendants deny all material allegations of the Complaint, and specifically deny the use of any racially derogatory comments toward the Complainant Woods or Unlimited Financial Resources. Defendants have also produced for inspection copies of their customer files for the calendar years 1995 through 1999. Defendants assert that those records demonstrate their compliance with the Fair Housing Act.

In order to avoid protracted and costly litigation, the parties have agreed that this controversy should be resolved without further litigation. Therefore, without a trial or adjudication on the merits, the parties have consented to the entry of this Order, as indicated by the signatures of counsel at the end of this document.

I. COMPLIANCE WITH THE FAIR HOUSING ACT

Defendants agree to comply with all of the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619.¹

II. MONETARY RELIEF

It is FURTHER ORDERED, ADJUDGED AND DECREED that within five (5) days of the execution of this Order by counsel for the parties, Defendants shall pay a sum agreed upon by the parties as full compensatory damages to Cary and Kimberly Bruton, Isaac

¹This provision, like all other provisions of this Consent Order, is ordered by the Court and is enforceable by contempt.

Woods and Unlimited Financial Resources arising out of this litigation.

Defendants shall send a certified or cashier's check made out to Cary and Kimberly Bruton in the agreed upon amount, and shall send a certified or cashier's check made out to Isaac Woods and Unlimited Financial Resources in the agreed upon amount, to the undersigned Assistant United States Attorney for the Eastern District of North Carolina, 310 New Bern Avenue, 8th Floor, Raleigh, North Carolina 27601.

Prior to the United States releasing these checks to Cary and Kimberly Bruton, Isaac Woods and Unlimited Financial Resources, the United States shall obtain and forward to Defendants an executed Release substantially similar to Appendix A signifying that the amounts received pursuant to this Consent Order constitute full settlement of any claims that Cary and Kimberly Bruton, Isaac Woods and Unlimited Financial Resources may have related to the subject matter of this lawsuit.

III. TRAINING AND CERTIFICATION

It is FURTHER ORDERED that Defendants shall inform persons involved in the selling or leasing of any units owned or operated by Defendants (including any persons who subsequently become involved in the Defendants' sale or leasing process) of the provisions of this Order, Defendants' nondiscrimination obligations under this Order, and the Fair Housing Act, as

amended. Defendants shall, within ten (10) days of the date of entry of this Order, provide each such person with a copy of this Order and shall instruct each such person of his or her obligations under this Order. For all persons who subsequently become involved in Defendants' sale or leasing process, such documents and instruction shall be provided no later than five (5) days after their involvement begins.

Each Defendant and any persons currently involved in the sale or leasing of units owned or operated by Defendants shall, by November 1, 2001, attend training regarding the requirements of the Fair Housing Act, as amended. Each person who subsequently becomes involved in the sale or leasing of units owned or operated by Defendants during the duration of this Order shall attend such training within thirty (30) days after their involvement begins. Such training shall be conducted by the North Carolina Fair Housing Center in Raleigh, North Carolina, or any other course approved by the United States.² and Defendants

²In order to obtain such approval, Defendants will submit a written request to the Chief of the Civil Division of the United States Attorney for the Eastern District of North Carolina, 310 New Bern Avenue, 8th Floor, Raleigh, North Carolina 27601. The request shall include information on the qualifications of the instructor to train on the Fair Housing Act and a course outline describing the matters to be covered in such training.

To the extent that Defendants and/or their agents have obtained training since January 1, 2001 which they believe complies with this requirement, Defendants may submit the same information pursuant to the procedure set forth in the paragraph above and request that this training be approved as full

shall bear the cost of said training. Within ten (10) days after attending such training, each Defendant and each person required by this section to undergo training shall sign a certification, under penalty of perjury, stating that they have been instructed regarding the Fair Housing Act, as amended, and understand the requirements of the Act.

IV. ADVERTISING AND OUTREACH

It is FURTHER ORDERED that Defendants shall inform the public that all units owned, sold or managed by Defendants are available on a non-discriminatory basis. This shall be accomplished by:

A. Conducting all advertising for the sale or rental of such units in accordance with the provisions of the HUD advertising guidelines, which formerly appeared at 24 C.F.R. Part 109 (1989)³ (a copy of which is attached as Appendix B). The fair housing logo and slogan shall appear in all advertising for residential property owned, sold or managed by Defendants and on all brochures, handouts, stationery, forms, and other writings that are routinely used to communicate with purchasers, prospective purchasers, tenants, prospective tenants, or applicants concerning any aspect of the sale or lease of units or _____ compliance with this Section of the Consent Order.

³ These guidelines no longer appear in C.F.R. because they were removed therefrom in 1996 in an effort to streamline the regulations. They were nevertheless retained by HUD.

are routinely provided by Defendants to the public. Such logo and slogan shall be prominently placed and legible;⁴

B. Including in any broadcast advertising a statement that Defendants adhere to the principle of equal housing opportunity and do not discriminate in the sale or leasing of units; and

C. Posting in a prominent location on the grounds of any residential rental or sales office owned or managed by Defendants a sign no smaller than 11 inches by 14 inches, which indicates that all units are available for lease or purchase on a nondiscriminatory basis (a poster which comports with HUD regulations set forth in 24 C.F.R. Part 110, a copy of which is appended to this Order as Appendix C, will satisfy this requirement).

V. RECORD KEEPING AND INSPECTION OF RECORDS

It is FURTHER ORDERED that for a period of one year and six

⁴Defendant Terry Bankert represents that he is currently a commission salesman for a home manufacturer, working out of his home, and selling materials to building contractors. Accordingly, he may comply with the provisions of Section IV of this Consent Order by including in any documents or other tangible items by which he solicits business the fair housing logo described in Section IV, subsection A, above. Should Defendant Bankert return to sales or rental of residential housing to purchasers or renters at any time during the term of this Consent Order, he shall send written notification within thirty (30) days to the Chief, Housing and Civil Enforcement Section, U.S. Department of Justice, P.O. Box 65998, Washington, D.C. 20035-5998. He shall also, immediately upon his return to residential rental or sales immediately be subject to all of the provisions of Section IV of this Consent Order.

months from the date of entry of this Consent Order and continuing for the duration of this Order, Defendants shall preserve all written credit applications received for sale or rental of any units sold, owned or managed by Defendants and all records that are the source of or contain any of the information pertinent to Defendants' obligations under this Consent Order.⁵

Further, for a period of one year and six months from the date of entry of this Consent Order and continuing for the duration of this Order, Defendants shall create and/or maintain the following records:

A. A Sign In Sheet, which shall contain the date of inquiry, the name, address, and telephone number of persons who come into one of the offices of Whitley Homes to inquire about homes or lots for sale or rent. Defendants' agents and/or sales staff will ask any such inquirer to fill out the Sign In Sheet. However, if the inquirer does not voluntarily provide information, the agent or sales person's request that the inquirer fill out the Sign In Sheet shall satisfy Defendant's

⁵As set forth in n.3 above, Defendant Terry Bankert is currently not involved in the direct sales or rental of residential housing to purchasers or renters. Accordingly, the provisions of this Section V and Sections VI and VII shall not apply to him unless he returns to the business of direct sales or rentals during the term of this Consent Order. If he should return to direct rental or sales, he shall notify the Chief of the Housing and Civil Enforcement Section as set forth in n.3, and shall immediately be subject to the provisions of this Section V and Section VI.

obligation under this provision of the Consent Order;

B. Should a potential purchaser or renter not voluntarily provide information about their race on their credit or other application, Defendant's agent and/or sales staff will indicate on the application form his or her good faith assessment of the applicant's race based upon visual observation.

C. Representative samples of all advertising used to promote dwellings owned or managed by Defendants, including the date and medium of communication in which such advertising was published or broadcast;

D. Defendants are not required under this Order to utilize a waiting-list procedure for applicants seeking units. However, if a waiting list is utilized at any time, full and complete records of all such lists and any use made of them shall be maintained; and

E. All other records or documents pertaining to the sale or leasing of units including, but not limited to, all submitted application forms (whether accepted or rejected), waiting lists, correspondence, results of credit or other reference checks, or notes.

It is FURTHER ORDERED that the United States shall have the right to inspect and have Defendants copy any of the records described above, as well as any other documents relevant to Defendants' compliance with this Consent Order, upon providing

reasonable notice to Defendants. The United States shall attempt to minimize any inconvenience to Defendants during the inspection and copying of such records.

VI. REPORTING REQUIREMENTS

It is FURTHER ORDERED that by November 1, 2001, Defendants shall provide to the United States a Certification of Training for each Defendant and for each person who subsequently becomes involved in the sale or leasing of units owned or managed by Defendants, as described in Section III, supra.

Further, every six months (commencing with the period beginning on the first day of the first full month after the date of entry of this Order) Defendants shall, no later than ten (10) days after the close of each period, provide to the United States a copy of the Sign In Sheets that have been maintained during that period, as well as representative samples of all advertising during that period, pursuant to Section V, supra. The documents required to be provided by Defendants to the United States under this section shall be sent to: Chief, Housing and Civil Enforcement Section, U.S. Department of Justice, P.O. Box 65998, Washington, D.C. 20035-5998.

VII. DURATION OF ORDER

It is FURTHER ORDERED that the duration of Defendants' obligations under Sections III, IV, V, VI, and VII, supra, shall be for a period of one year and six months from the date of entry


of this Order.

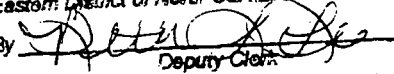
VIII. DISMISSAL

This case shall be dismissed forthwith, without prejudice to the rights of any party to bring this matter before the Court for enforcement of the provisions herein. The parties to this Order shall endeavor to resolve informally any differences that arise regarding interpretation of and compliance with the Order prior to bringing such matters to the Court for resolution.

It is so ORDERED, ADJUDGED, and DECREED this 30 day of

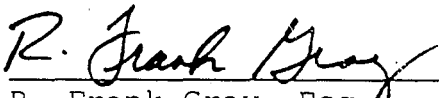
June, 2001.


Senior UNITED STATES DISTRICT JUDGE

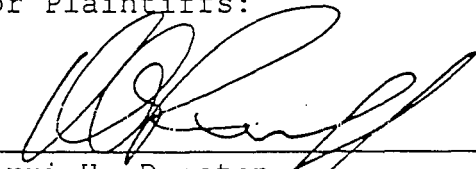
I certify the foregoing to be a true and correct copy of the original.
David W. Dantel, Clerk
United States District Court
Eastern District of North Carolina
By 
Deputy Clerk

Agreed to by the parties as indicated by the signatures of counsel below.

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