

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,)	
)	CIVIL ACTION NO. 3:13-cv-166 (Groh)
Plaintiff)	
)	
v.)	
)	CONSENT ORDER
THE WHITACRES, LLC and)	
JAMES WHITACRE)	
)	
)	
Defendants.)	
_____)	

I. INTRODUCTION

1. In an effort to avoid costly litigation, the parties have voluntarily agreed, as indicated by the signatures below, to resolve the United States' claims against Defendants The Whitacres, LLC and James Whitacre without the necessity of a hearing on the merits and without admission of any liability or wrongdoing on the part of Defendants.

2. The United States filed this action on November 14, 2013, on behalf of Nathan and Tara Farley (hereinafter "the Farleys"), pursuant to the Fair Housing Act, 42 U.S.C. §§ 3612(o) and 3614(a).

3. The United States, in its Complaint, alleges that Defendants The Whitacres, LLC and James Whitacre denied Mr. Farley a reasonable accommodation for his assistance animal by refusing to acknowledge his request for a reasonable accommodation, in violation of 42 U.S.C. § 3604(f)(2) and (f)(3)(B), and that Defendants retaliated against Mr. Farley for making such request, in violation of 42 U.S.C. § 3617. The United States also alleges that Defendants made statements indicating a preference or limitation for the use of assistance animals, in violation of

42 U.S.C. § 3604(C), and discriminated in the terms, conditions, and privileges of rental by selectively enforcing non-payment of rent rules against Mr. Farley, in violation of 42 U.S.C. 3604(f)(2). The Defendants, in their Answer, deny any such acts of wrongdoing or violations of the law.

Wherefore, it is ORDERED, ADJUDGED and DECREED:

II. INJUNCTION

4. Defendants, their agents, employees, and all other persons in active concert or participation with them, hereby agree that they are enjoined from:
 - a. Discriminating in the rental, or otherwise making unavailable or denying, a dwelling to any renter because of a disability, in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminating against persons in the terms, conditions, or privileges of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2);
 - c. Refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B);
 - d. Coercing, intimidating, threatening, or interfering with persons in the exercise of enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise of enjoyment of, any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617; and

- e. Making, printing, or publishing, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on handicap, in violation of 42 U.S.C. § 3604(c).

III. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS

5. No later than thirty (30) days after the date of entry of this Consent Order, Defendants shall submit for approval to the United States¹ a proposed reasonable accommodation policy. The proposed policy shall, at a minimum, include the information contained in Attachment A.

6. Within fourteen (14) days of the United States' approval of the proposed policy, Defendants shall adopt the policy ("the New Policy") and notify in writing all residents of the rental units that they own and/or manage of the adoption and implementation of the New Policy by posting same at their office in a conspicuous location. Notice shall be posted on the common mailbox, at the lockbox location, inside the rental office, and outside the rental office on the community bulletin board.

7. The New Policy, once approved, shall supersede all existing policies, procedures, and resolutions concerning or affecting approval of reasonable accommodations, including but not limited to approval of assistance animals.

¹ Copies of all correspondence required to be sent to the United States under the provisions of this Order shall be sent to the following:

(1) Chief, Housing and Civil Enforcement Section, U.S. Department of Justice, Attn: DJ # 175-83-19, at one of the following addresses:

Regular U.S. Mail: 950 Pennsylvania Avenue, N.W. – NWB
Washington, D.C. 20530

Overnight Mail: 1800 G Street, N.W.
Washington, D.C. 20006

(2) Helen Altmeyer, Assistant United States Attorney, U.S. Attorney's Office, Suite 3000
1125 Chapline Street, Wheeling, WV 26003.

IV. MANDATORY EDUCATION AND TRAINING

8. Within ninety (90) days of the entry of this Consent Order, Defendants and their employees and agents shall attend, at Defendants' expense, a training program regarding the Fair Housing Act, including its disability discrimination provisions. The training shall be conducted by a qualified third party, approved in advance by the United States, and unconnected to Defendants, their employees, agents, or counsel. The Defendants must use all reasonable efforts to locate a trainer who can provide an in-person training. In the event such a trainer cannot be located, the training may be completed by video with prior approval of the United States.

9. Defendants shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. The certificates shall include the name of the course, the date the course was taken, the subject matters covered in the course, and the length of the course and/or time within which the course was completed.

10. No later than fourteen (14) days after adoption of the New Policy, Defendants shall apprise their employees, agents, and any other persons responsible for the rental or management of units owned and/or managed by Defendants of their obligations under this Consent Order, including but not limited to the New Policy, and the Fair Housing Act, 42 U.S.C. §§ 3601-3631. Defendants shall furnish each such employee, agent, or other person with a copy of this Consent Order. Each employee, agent or other person covered by this Paragraph shall sign a statement in the form of Attachment B acknowledging that he or she has received, read, and understands this Consent Order, and declaring that he or she will perform his or her duties in accordance with this Consent Order and the Fair Housing Act, 42 U.S.C. §§ 3601-3631.

11. During the term of this Consent Order, new employees or agents who have responsibility related to renting or managing the units that Defendants own and/or manage shall

(a) be apprised of the contents of this Consent Order, including but not limited to the New Policy, and of their obligations under the Fair Housing Act, 42 U.S.C. §§ 3601-3631, when their employment or agency commences; (b) be provided copies of this Consent Order and the New Policy, and (c) execute the statement contained in Attachment B no later than five (5) days following their first day of employment.

V. NONDISCRIMINATION POLICIES

12. Within thirty (30) days of the date of entry of this Consent Order and throughout its term, Defendants shall post and prominently display within their rental office and in a prominent location on the premises of their rental properties a sign no smaller than ten (10) inches by fourteen (14) inches indicating that all units are available for sale or rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

13. Throughout the term of this Consent Order, Defendants shall ensure that any new advertising for the rental units that they own and/or manage in newspapers, in telephone directories, on radio, on television, on the internet, or in other media, and any signs, pamphlets, brochures, or other promotional literature include a fair housing logo, the phrase "Equal Housing Opportunity Provider," and/or the following sentences:

We are an Equal Opportunity Housing Provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability.

VI. REPORTING AND RECORD-KEEPING

14. Defendants shall notify and provide documentation to the United States of the following events within fourteen (14) days of their occurrence:

a. The adoption of the New Policy;

- b. The written notice to residents and location of posting required in Paragraph 6;
- c. The execution of Attachment B, including original signed copies;
- d. The training attended pursuant to Paragraph 8, including the certification required in Paragraph 9;
- e. Any change to Defendants' rules or practices affecting the keeping of assistance animals at the rental properties they own and/or manage;
- f. Any action taken by Defendants regarding a request by a resident or prospective resident to keep an assistance animal, including the resident's name, address, and telephone number, the details of the request, and what action Defendants have taken, such as granting or denying the request or seeking additional information, and, in the event that the request was not granted, the reason(s) why not; and
- g. Any written or oral complaint against Defendants regarding discrimination on the basis of disability, including a copy of the written complaint itself or a written summary of an oral complaint, and the name, address, and telephone number of the complainant. Defendants shall also promptly provide the United States with information concerning resolution of the complaint.

15. During the effective period of this Order, Defendants shall preserve all records relating to their obligations under this Consent Order. Representatives of the United States shall be permitted, upon providing reasonable notice to Defendants, to inspect and copy at reasonable times any and all records related to Defendants' obligations under this Order.

VII. RELIEF FOR THE FARLEYS

16. No later than thirty (30) days after the date of entry of this Consent Order, Defendants shall pay the total sum of ten thousand dollars (\$10,000) in monetary damages to Nathan and Tara Farley by delivering one check payable to Nathan and Tara Farley to counsel for the United States.

17. As a prerequisite to receiving such payment, both Nathan and Tara Farley shall execute and deliver to counsel for the United States a release of all claims, legal or equitable, that they may have against Defendants relating to the claims asserted in this lawsuit. Such release shall take the form of Attachment C. Counsel for the United States shall deliver the original release form to counsel for Defendants.

X. JURISDICTION, SCOPE, AND DURATION

28. The parties stipulate, and the Court finds, that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

29. This Consent Decree is effective immediately upon its entry by the Court and shall remain in effect for three years from the date of entry.

30. This Court shall retain jurisdiction over this action for all purposes related to the enforcement of this Order throughout its term, after which the case shall be dismissed with prejudice.

31. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties.

32. The United States may move the Court to extend the period in which this Order is in effect if it believes that any Defendant has likely violated one or more terms of this Order or if the interests of justice otherwise require an extension.

33. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event that Defendants fail to perform in a timely manner any act required by this Order or act in violation of any provision of this Order, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts and an award of damages, costs, and reasonable attorney's fees that may have been occasioned by Defendants' violation or failure to perform.

XI. COSTS OF LITIGATION


34. All parties shall be responsible for their own attorney's fees and costs associated with this action.

XII. TERMINATION OF LITIGATION HOLD

35. The parties agree that, as of the date of the entry of this Order, litigation is not "reasonably foreseeable" concerning the matters described in Paragraphs 1-2. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in Paragraphs 1-2, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Consent Order.

IT IS SO ORDERED:

This 28th day of May, 2014.



GINA M. GROH
UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of this Consent Decree:

For the United States:

Dated: 4/29/14

WILLIAM J. IHLENFELD, II
United States Attorney
Northern District of West Virginia

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

/s/ Helen C. Altmeyer
HELEN C. ALTMAYER, W.Va. Bar No. 117
Assistant United States Attorney
Civil Division Chief
U.S Attorney's Office
Suite 3000
1125 Chapline Street,
Wheeling, WV 26003.
Phone: 304-234-0100
Facsimile: (304) 234-0112
Email: Helen.Altmeyer@usdoj.gov

/s/ Steven H. Rosenbaum
STEVEN H. ROSENBAUM
Chief, Housing and Civil
Enforcement Section

/s/ Samuel Hall
Sameena Majeed
Deputy Chief
SAMUEL HALL
(NY Bar No. 5217021)
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 353-4096
Facsimile: (202) 514-1116
Email: samuel.hall2@usdoj.gov

For Defendants The Whitacres, LLC and James Whitacre:

Dated: 4/28/14

s/ Susan R. Snowden

Susan R. Snowden

Counsel for Defendants

(W.Va. Bar No. 3644)

MARTIN & SEIBERT, L.C.

1453 Winchester Avenue

P.O. Box 1286

Martinsburg, West Virginia 25402-1286

Phone: (304) 262-3220

Fax: (304) 260-3377

Email: srsnowden@martinandseibert.com

ATTACHMENT A

Reasonable Accommodation Policy

The Federal Fair Housing Act and other state and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Defendants The Whitacres, LLC and James Whitacre are committed to granting reasonable accommodations when necessary to afford persons with disabilities the equal opportunity to use and enjoy a dwelling at the rental units that they own and/or manage.

Reasonable accommodations may include waiving or varying Defendants' rules or policies to allow a resident with a disability to keep an "Assistance Animal." An Assistance Animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that alleviates one or more symptoms or effects of a person's disability. The most common Assistance Animals are dogs, although other animals may qualify as assistance animals. Assistance Animals are not pets under Defendants' policies, and Assistance Animals will be governed by this policy and not Defendants' pet policy. Defendants recognize the importance of Assistance Animals and are dedicated to ensuring that residents of the rental units that Defendants own and/or manage may keep Assistance Animals in their units.

If a resident with a disability requests a reasonable accommodation for an Assistance Animal, Defendants must determine whether the animal provides assistance needed by that resident to afford him or her an equal opportunity to use and enjoy the rental unit. Many times, both the disability and the assistance provided by the Assistance Animal is obvious – for example, a dog guiding an individual who is blind or has low vision, or a dog pulling the wheelchair of a person with a mobility impairment. If this is the case, no further inquiry will be made and Defendants will grant the resident the reasonable accommodation.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal that provides emotional support or other assistance that alleviates one or more symptoms or effects of the resident's disability, Defendants may require a written statement from a health or social service professional² indicating:

- i. That the applicant has a disability,³ and
- ii. That the animal would provide emotional support or other assistance that would

² "Health or social service professional" means a person who provides medical care, therapy, or counseling to persons with disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers.

³ Under the federal Fair Housing Act, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment.

alleviate one or more symptoms or effects of the disability.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal that does work or performs tasks for the benefit of a person with a disability, Defendants may require that the resident provide:

- i. A written statement from a health or social service professional indicating that the person has a disability, and
- ii. Information that the animal has been individually trained to do work or perform tasks that would alleviate one or more symptoms or effects of the disability, or information that the animal, despite lack of individual training, is able to do work or perform tasks that would alleviate one or more symptoms or effects of the disability.

In the case of an Assistance Animal that both provides emotional support or other assistance that alleviates one or more symptoms or effects of a disability and does work or performs tasks for the benefit of a person with a physical disability, Defendants may require compliance with either of the two preceding paragraphs, but not both.

Defendants will not require compliance with any of the following requirements:

- i. In the case of an Assistance Animal that provides emotional support or other assistance that alleviates one or more symptoms or effects of a disability, that the animal be trained as an emotional support animal or have a certification of its efficacy;
- ii. That the resident pay any fee, deposit, or other charge for keeping the animal, or obtain insurance as a condition of keeping the animal;
- iii. That the written statement from the resident's health or social service professional be completed on a form provided by Defendants; or
- iv. That the resident or health or social service professional be required to sign any document related to the reasonable accommodation request under penalty of perjury. Moreover, Defendants will not use the threat of court proceedings or any other measure to dissuade residents or health or social service professionals from making a reasonable accommodation request.

In processing requests for Assistance Animals, Defendants will take reasonable measures to protect the confidentiality of any information or documentation disclosed in connection with the requests. Such measures may include limiting access to such information to persons specifically designated to deal with requests for reasonable accommodations, who will disclose information only to the extent necessary to determine whether to grant the request, and keeping all written requests and accompanying documentation in a secure area to which only those designated persons have access, except as otherwise required by law.

It is the responsibility of a person with a disability to inform Defendants as to the need for an Assistance Animal, and to request a reasonable accommodation and provide any required documentation. A person with a disability may request a reasonable accommodation orally, but it will be more helpful to make it in writing. To that end, Defendants have adopted a "Form to Request An Assistance Animal" (attached to this Policy) which a person with a disability can use to make a reasonable accommodation request for an Assistance Animal.

If the applicant requires assistance in completing the form, Defendants or their designee will provide assistance or will fill out the form based on an oral request. Defendants have decided to use the form to record reasonable accommodation requests so that they obtain only the information necessary to make a reasonable accommodation decision and do not obtain confidential information that they do not need to make a reasonable accommodation decision.

Once a completed request with any required documentation is received, Defendants will provide a response within fourteen days. Prior to denying a request, Defendants will attempt to engage in an interactive process with the person making the request in which the parties discuss possible alternative accommodations that might effectively meet the person's disability-related needs. Defendants recognize that a person with a disability is generally in the best position to know whether or not a particular accommodation will be effective in meeting his or her needs. If a request is denied, an explanation for the denial will be included in the written notification of denial. If a person with a disability believes that a request has been denied unlawfully or that the response is delayed unreasonably, he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Washington, DC 20410
(800) 669-9777
<https://www5.hud.gov/Hud903/main/pagHUD903Form.jsp>

FORM TO REQUEST AN ASSISTANCE ANIMAL

The federal Fair Housing Act requires that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. We are committed to granting reasonable accommodations when necessary to afford persons with disabilities the equal opportunity to use and enjoy a dwelling at the apartments that we own and manage.

Under the Fair Housing Act, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Reasonable accommodations may include waiving or varying our rules or policies to allow a resident to keep an Assistance Animal. An Assistance Animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that alleviates one or more symptoms or effects of a person's disability.

If you or someone associated with you has a disability and you believe that there is a need for an Assistance Animal as a reasonable accommodation for the person with a disability to use and enjoy a dwelling unit at the apartment buildings that we own and manage, please complete this form and return it to us. Please check all items that apply and answer all questions. We will answer this request in writing within 14 days. All information provided to us in connection with this request will be kept confidential, except as otherwise required by law. If you require assistance in completing this form, please call us at [telephone number] for assistance or to make an oral request for a reasonable accommodation.

1. Do you require assistance filling out this form?

Yes No

If your answer is "Yes," and you do not have someone who can assist you, please ask [name and phone number] to assist you in filling out this form.

If your answer is "No," continue on to Question No. 2.

2. Today's Date: _____

3. I am (please check one):

The person who has a disability and is requesting an Assistance Animal. If so, continue to Question 4.

A person making a request on behalf of or assisting the person with a disability who needs an Assistance Animal. Please fill out the information below:

Name of person filling out form: _____

Address: _____

Telephone number: _____

Relationship to person needing Assistance Animal: _____

4. Name of person with a disability for whom a reasonable accommodation is being requested: _____

Phone number: _____

Address: _____

5. Is the person with a disability who is requesting an Assistance Animal doing so so that he or she can have an equal opportunity to use and enjoy their dwelling?

Yes No

6. Designate the species of animal for which you are making a reasonable accommodation request e.g., "dog," "cat," :

7. Provide the name and physical description (size, color, weight, any tag and/or license) of the animal for which you are making a reasonable accommodation request:

8. Does the animal for which you are making a reasonable accommodation request perform work or do tasks for you because of your disability?

Yes No (If "No," continue to Question 9)

If the answer is yes:

(a) provide a statement from a health or social service professional indicating that you have a disability (i.e. you have a physical or mental impairment that substantially limits one or more major life activities); and

(b) explain below how the animal has been trained to do work or perform tasks that alleviate one or more symptoms or effects of your disability or, if the animal lacks individual training, how the animal is able to do work or perform tasks that would alleviate one or more symptoms or effects of your disability:

You may provide any additional information or documentation of the training or work you describe above and attach it to this application.

9. If the animal for which you are making a reasonable accommodation request does not perform work or do tasks for you because of your disability, but provides emotional support or alleviates one or more symptoms or effects of your disability, please submit a statement from a health or social service professional stating that (a) you have a disability (i.e. you have a physical or mental impairment that substantially limits one or more major life activities); and (b) the animal would provide emotional support or other assistance that would alleviate one or more symptoms or effects of your disability and how the animal alleviates the symptoms or effects. Please attach such a statement to this application.

Signature of person making request

Date

Signature of person with disability

Date

TO BE COMPLETED BY MANAGEMENT

Form accepted by: _____

Date _____

Signature

ATTACHMENT B
Certification of Receipt of Consent Order

I certify that I have received a copy of the Consent Order entered by the United States District Court for the Northern District of West Virginia in *United States of America v. The Whitacres, LLC et al*, Case No. 3:13-CV-166 (N.D. W. Va.). I further certify that I have read and understand the Order, that any questions I had concerning the Order were answered, and that I understand that some or all of the Defendants may be sanctioned or penalized if I violate the Order.

(Signature)

(Printed name)

(Title)

(Date)

ATTACHMENT C
Release of Claims

In consideration of the Consent Order entered in *United States of America v. The Whitacres, LLC et al*, Case No. 3:13-CV-166 (N.D. W. Va.) and of the payment of the sum of \$10,000 to me pursuant to that Consent Order, I hereby release the Defendants named in this action from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the action. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated:

Signature

Signature

Printed Name

Printed Name

Date

Date