

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

and)

NATIONAL FAIR HOUSING)
ALLIANCE, INC.,)

Plaintiff/Intervenor,)

v.)

COLDWELL BANKER BULLARD)
REALTY COMPANY INC.,)

COLDWELL BANKER JOE T. LANE)
REALTY INC., and RODNEY LEE)

FOREMAN,)

Defendants.)

CIVIL ACTION

FILE NO. 1:08-CV-3427-MHS

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 real estate agent Rodney Lee Foreman (“Foreman”) discriminated on the basis of race or color in violation of §§ 3604(a) and 3604(c) of the Fair Housing Act, in the sale of dwellings in and around

Jonesboro, Georgia. The United States further alleges that the real estate company with which Foreman was associated at the time, Coldwell Banker Joe T. Lane Realty, Inc. (“Lane Realty”), is vicariously liable for Foreman’s actions based upon the doctrine of respondeat superior. Finally, the United States alleges that Coldwell Banker Bullard Realty, Inc. (“Bullard Realty”) is responsible for Lane Realty’s obligations because Bullard Realty purchased Lane Realty’s assets and therefore is responsible for Lane Realty’s obligations in this regard pursuant to the doctrine of successor liability. Besides alleging that Bullard Realty is a successor in interest, the United States is not alleging that Bullard Realty itself engaged in discrimination on the basis of race or color in violation of the Fair Housing Act.

2. This action was brought by the United States on behalf of the National Fair Housing Alliance (“NFHA” or “Complainant”) pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3612(o). NFHA subsequently intervened in this litigation and is currently an active party herein. From October 2003 through August 2004, NFHA conducted tests using “testers” to compare the treatment afforded by Foreman and Lane Realty to prospective home buyers who were of different races or colors.
3. As a result of its testing, on April 13, 2005, NFHA filed a timely

complaint, later amended, with the United States Department of Housing and Urban Development (“HUD”), alleging that Foreman and Lane Realty had discriminated on the basis of race or color.

4. On July 22, 2005, HUD’s General Deputy Assistant Secretary for Fair Housing and Equal Opportunity filed a timely HUD complaint, pursuant to the Fair Housing Act, alleging discrimination on the basis of race or color.
5. HUD conducted and completed an investigation of the complaints, determined that reasonable cause existed to believe that discriminatory housing practices had occurred, and on September 19, 2008, issued a Charge of Discrimination. On October 7, 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).
6. On September 20, 2007, Bullard Realty entered into a Business Asset Purchase and Sales Agreement with Lane Realty.
7. The United States’ first amended complaint in this action alleges that Defendant Foreman steered white testers towards areas that are predominately white and away from areas that are predominately African-American because of race or color, in violation of the FHA. The United

States further alleges that, when showing homes, Defendant Foreman made discriminatory statements to the white testers.

8. The United States' first amended complaint alleges that Defendant Foreman acted as salesperson for Lane Realty from at least October 2003 through August 2005.
9. The United States alleges that Defendant Bullard Realty is responsible for Lane Realty's obligations in this case pursuant to the doctrine of successor liability. Lane Realty is no longer in the real estate business.
10. Bullard Realty asserts that it opposes all forms of discrimination and supports the Fair Housing Act's purpose of affording all persons the opportunity to purchase homes without regard to race, color, or other classifications protected by the Act.
11. The United States and Defendants agree that in order to avoid protracted and costly litigation, this controversy should be resolved without a trial or evidentiary hearing. Therefore, the Parties consent to the entry of this Consent Order.

It is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL INJUNCTION

12. Defendant Foreman and Defendant Lane Realty 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 or color, in violation of 42 U.S.C. § 3604(a);
 - b. Making statements with respect to the sale of a dwelling that indicate a preference, limitation, or discrimination based on race or color, in violation of 42 U.S.C. § 3604(c);
 - c. Discouraging the purchase of a dwelling because of race or color, by exaggerating drawbacks or failing to inform any person of desirable features, in violation of 24 C.F.R. § 100.70(c)(2) and 42 U.S.C. § 3604(a); and
 - d. Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents because of race or color, in violation of 24 C.F.R. § 100.70(c)(3) and 42 U.S.C. §

3604(a).

13. Defendant Bullard Realty agrees to keep taking steps to ensure that the company and its real estate agents comply with the Fair Housing Act, 42 U.S.C. §§3601-3619, and specifically agrees that it will not engage in the activities described above in paragraph 12. Bullard Realty asserts that compliance with the Fair Housing Act is and always has been its company policy.

III. INJUNCTIVE RELIEF AGAINST RODNEY LEE FOREMAN

14. Defendant Foreman is a licensed real estate agent who provides real estate services in and around Jonesboro, Georgia. He is no longer associated with Defendant Lane Realty.
15. Within ten (10) days of entry of this Consent Order, Defendant Foreman 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 Foreman becomes employed by or otherwise affiliated with a different agency(s) providing real estate 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).

16. Within twenty (20) days of the notification to any agency pursuant to paragraph 15, Defendant Foreman 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.
17. Within twenty (20) days of entry of this Consent Order, Defendant Foreman must prominently display at the office or offices where Defendant Foreman 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.
18. Defendant Foreman must include the words "Equal Housing Opportunity" and the fair housing logo in all advertising that Defendant Foreman conducts after entry of this Consent Order, even if the advertisement does not mention Defendant Foreman by name, including advertisements on any website owned or operated by Defendant Foreman that he uses to advertise or promote his real estate services; in print advertising, including in newspapers, magazines, flyers, 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 Foreman to advertise in any of these media, but does require compliance with this provision whenever Defendant Foreman so advertises. For purposes of this requirement, an advertisement is considered to be conducted by Defendant Foreman if Foreman 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 Foreman is employed or otherwise affiliated.

19. Within thirty (30) days of entry of this Consent Order, Defendant Foreman must undergo training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race, color, 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 Foreman. Defendant Foreman 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

20. Within thirty (30) days of the entry of this Order, Defendants Bullard Realty and Foreman shall pay the Complainant a combined total of \$160,000 for monetary damages and for fees and expenses associated with this litigation, including attorney fees. The Defendants shall pay said money by sending to the United States checks totaling \$160,000 which are made payable to the National Fair Housing Alliance. Upon receipt of the check, the United States shall send 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

21. Defendant Bullard Realty agrees that it will continue taking steps to ensure that the company and its real estate agents comply with the FHA and will notify the public that it does not tolerate discrimination as follows:
 - a. To the extent that Bullard Realty is not already performing in this manner, Bullard Realty agrees to 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. To the extent that Bullard Realty is not already performing in this manner, from the date of entry of this consent decree it agrees to include the words “Equal Housing Opportunity” and the fair housing logo in all advertising conducted by Defendant Bullard Realty, and/or its agents and employees, including on any website owned or operated by them; in print advertising, including in newspapers, magazines, flyers, pamphlets, handouts, telephone directories, brochures, and other written and promotional literature; and on the radio, 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 Bullard Realty to advertise in any of these media, but does require compliance with this provision whenever Defendant so advertises;
- c. Within thirty (30) days after the date of entry of this Consent Order, Defendants Foreman and Bullard Realty shall include the following phrase in all listing contracts, exclusive or nonexclusive, 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

22. Within thirty (30) days of the entry of this Consent Order, Defendant Bullard Realty will notify all agents and employees involved in showing, listing, selling, promoting or providing information about properties in the Atlanta metropolitan region, that Bullard Realty is committed to fair housing opportunities for all persons and remind all employees and agents that they are expected to fully and faithfully follow the requirements of the Fair Housing Act.
23. Within sixty (60) days from the date of entry of this Consent Order, Defendant Bullard Realty will provide in-person training on the Fair Housing Act to its agents and employees involved in showing, listing, selling, promoting, or providing information about properties in Atlanta with training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race, color, and national origin who have not already received such training within the year preceding the entry of this consent order. The training will 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 Bullard Realty.

VII. COMPLIANCE TESTING

24. The United States and NFHA may take steps to monitor the compliance by Defendant Foreman and Defendant Bullard Realty 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

25. Within ninety (90) days of the date of entry of this Consent Order, and thereafter on the first anniversary and sixty (60) days before the Order expires, Defendant Bullard Realty shall deliver to counsel for the United States¹ a report containing the following information about Bullard Realty's compliance efforts during the preceding reporting period.
- a. Attendance sheets of the training described in paragraph 23 and a list of all covered real estate agents who did not attend the training and

¹ 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 175-19-373, 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

when they are expected to receive training.

- b. Representative copies of standard advertising used by Defendant Bullard Realty during the reporting period sufficient to verify that such advertisement complies with paragraphs 18 and 21(b);
- c. Representative copies of Defendant Bullard Realty's standard listing contract and the home page of its website sufficient to show that these documents comply with paragraph 21(c);
- d. For the first 90 day report, photographs of the offices of Defendant Bullard Realty showing the fair housing signs, pursuant to paragraphs 18, and 21(a), and for subsequent reports, a sworn statement from Defendant Bullard Realty 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.

26. During the period in which this Consent Order is in effect, Defendant Bullard Realty 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

Consent Order requires transmission by facsimile, the communication shall also be sent via facsimile to (202) 514-1116.

access; all advertising literature; and all logs or records relating 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 or, upon request by the United States, Defendants shall provide copies of such documents.

27. During the period in which this Consent Order is in effect, Defendant Bullard Realty and Defendant Foreman shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against either Defendant, including Defendant Bullard Realty's agents or employees, regarding discrimination based on race, color, 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. ADDITIONAL INJUNCTIVE RELIEF AGAINST LANE REALTY

28. As of the date of this decree, Defendant Lane Realty is in default and has represented that it voluntarily surrendered its real estate broker's license, and that it is no longer providing real estate services in the State of Georgia or in any other state. In the event Defendant Lane Realty renews, applies, or reapplies for a real estate broker's license or otherwise seeks to provide real estate services in the State of Georgia or in any other state, it must: (1) notify counsel for the United States within 14 days of renewing, reinstating, or applying or reapplies for such a license or otherwise seeking to provide real estate services; and (2) comply with the terms of paragraphs 12, 21 - 28 of this Decree.

X. SCOPE AND DURATION OF CONSENT ORDER

29. The provisions of this Consent Order shall apply to Defendants Rodney Foreman, Bullard Realty, and Lane Realty, their officers, agents employees, successors and assigns, and all persons acting in active concert or participation with them. In the event that Defendant Bullard Realty seeks to transfer, sell or assign all or part of their interest in Bullard Realty, and the successor or assign intends to carry on the same or similar use, as a condition of sale, Defendant Bullard Realty shall obtain the written accession of the successor or assign to any obligations

remaining under this Consent Order for the remaining term of the Order.

30. This Consent Order shall remain in effect for two (2) years from its entry.

31. 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.

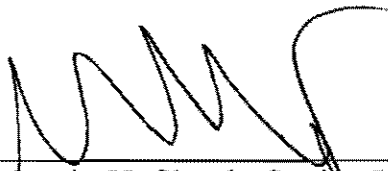
XI. REMEDIES FOR NON-COMPLIANCE

32. 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. 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.

XII. TIME FOR PERFORMANCE

33. 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.

IT IS SO ORDERED this 4 day of Feb, 2010.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

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

For the United States:

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/s/ Nicole J. De Sario
/s/ Robin L. Dull
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For Defendant Rodney Lee Foreman:

/s/ Daniel Byrne

DANIEL BYRNE

Ga. Bar No. 101300

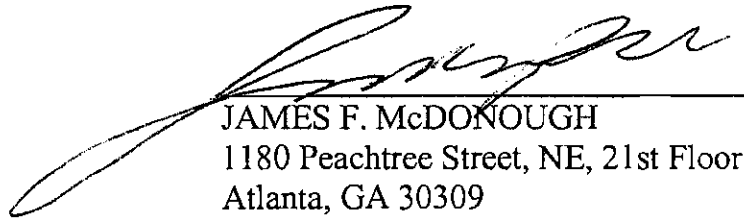
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For Defendant Coldwell Banker Joe T. Lane Realty, Inc.:

A handwritten signature in black ink, appearing to read 'James F. McDonough', is written over a horizontal line. The signature is fluid and cursive.

JAMES F. McDONOUGH

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Atlanta, GA 30309

jim.mcdonough@fr.com

Tel: 404-892-5005

Appendix A

FULL AND FINAL RELEASE OF CLAIMS

I, _____, on behalf of National Fair Housing Alliance (“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 Georgia on _____, 2009 in the case of United States v. Coldwell Banker Bullard Realty Company, Inc., et al. (“lawsuit”) and in consideration of the payment of _____ do fully, finally and forever release, discharge, and hold harmless Coldwell Banker Bullard Realty Company, Inc., Joe T. Lane Realty, Inc., and Rodney Lee Foreman (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 _____, 2010.

[Print Name]

[Signature]