

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
v.)	CASE NO. 2:08-CV-00573-MEF-SRW
)	
MATTHEW BAHR, <i>et al.</i> ,)	
)	
DEFENDANTS.)	
_____)	

**CONSENT DECREE BETWEEN PLAINTIFF UNITED STATES
AND DEFENDANT WOODY FRANKLIN, SR.**

The parties hereby consent to the entry of this Consent Decree. Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. SCOPE OF CONSENT DECREE

1. The provisions of this Consent Decree shall apply to Woody Franklin, Sr., his employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with him.
2. This Consent Decree constitutes a full and final resolution of all claims of violation of the Fair Housing Act that the United States brought or could have brought in this action related to Defendant Franklin’s ownership and/or management of real property in Montgomery, AL.

II. FACTUAL BACKGROUND

3. 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 Act Amendments of 1988, 42 U.S.C. §§ 3601 *et seq.* The United States alleges that Defendant Jamarlo K. Gumbaytay, aka Laurence Lamar d/b/a Elite Enterprises Consultant Group (hereinafter

“Gumbaytay”) engaged in discrimination on the basis of sex in violation of the Fair Housing Act in connection with rental dwelling units he managed on behalf of Defendant Franklin and others (hereinafter “the owner Defendants”) in and around Montgomery, Alabama. Specifically, the United States alleges that Defendant Gumbaytay, in violation of 42 U.S.C. §§ 3604 (a), (b), (c) and 3617, subjected female tenants and prospective tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct is alleged to have included, but is not limited to, unwanted verbal sexual advances; unwanted touching; entering the apartments of female tenants without permission or notice; granting and denying tangible housing benefits based on sex; and taking adverse action against female tenants when they refused or objected to sexual advances.

4. The United States further alleges that the owner Defendants, including Defendant Franklin, are vicariously liable for the above-described discriminatory conduct because Defendant Gumbaytay engaged in such acts while acting within the scope of his employment and/or agency with the owner Defendants.

5. Defendant Franklin represents that he currently owns the following properties in Alabama: 803 North Pass Road, Montgomery, AL 36110, 3526 Doris circle, Montgomery, AL 36105, 6269 Eric Lane, Montgomery, AL 36116, 846 North Gap Loop, Montgomery, AL 36116, 6149 Cherry Hill Road, Montgomery, AL 36116., 4509 Lilly Lane, Montgomery, AL 36116, and 2419 Cherry Street, Montgomery, AL 36116.

6. The United States alleges that the Defendants’ conduct constituted a pattern or practice of discrimination and/or a denial of rights to a group of persons that raises an issue of general public importance. *See* 42 U.S.C. § 3614(a).

7. Defendant Franklin denies the allegations made by the United States and further denies that he violated the Fair Housing Act, or is in any way liable under the Fair Housing Act.

8. To avoid the risks and burdens of litigation, Defendant Franklin has entered into this Consent Decree to resolve voluntarily the claims asserted by the United States. The decision to pay any monies was made solely by the liability carrier of Defendant Franklin in order to avoid any future fees, costs, or expenses in connection with the defense of this suit and shall not be construed as an admission of liability.

III. INJUNCTION

9. Defendant Franklin, his agents, employees, successors, and all persons currently in active concert or participation with him, are hereby enjoined from:

- a. Denying or otherwise making unavailable housing to any person because of sex;
- b. Discriminating against any person in the terms, conditions or privileges of renting a dwelling, or in the provision of services or facilities in connection therewith, because of sex;
- c. Making statements with respect to the rental of a dwelling that indicate 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 her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of any right granted by 42 U.S.C. §§ 3603 -3606.

IV. NON-DISCRIMINATION POLICIES AND PROCEDURES

10. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, or within fifteen (15) days of resuming the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin shall take the following actions:

- a. Implement the Nondiscrimination Policies and Procedures attached as Appendix A to this Decree. Provide all current tenants with copies of the Nondiscrimination Policies and Procedures. Provide all future tenants with a copy of the Nondiscrimination Policies and Procedures within fifteen (15) days of each tenant's signing a lease.
- b. Provide a copy of this Decree and Appendix A to all current and future agents, contractors, or employees involved in showing, renting, operating, or managing any residential real property, and secure a signed statement from each acknowledging that he or she has received and read the Decree and the Nondiscrimination Policies and Procedures, has had the opportunity to have questions answered about the Decree and Nondiscrimination Policies and Procedures, and agrees to abide by the relevant provisions of the Decree and Nondiscrimination Policies and Procedures. This statement shall be in the form set forth in Appendix B. This statement shall be obtained from future agents, contractors, or employees within 15 days of their hiring or promotion.

- c. Include in any and all advertising conducted for any residential real property—whether in newspapers, telephone directories, radio, television or other media, billboards, signs (including at the entrance to the property), pamphlets, brochures or other promotional literature—either a fair housing logo, the words “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.

The words or logo should be legible and prominently placed.

11. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, or within fifteen (15) days of resuming the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin shall take the following actions:

- a. Implement the Nondiscrimination Policies and Procedures attached as Appendix A to this Decree. Provide all current tenants with copies of the Nondiscrimination Policies and Procedures. Provide all future tenants with a copy of the Nondiscrimination Policies and Procedures within fifteen (15) days of each tenant’s signing a lease.
- b. Provide a copy of this Decree and Appendix A to all current and future agents, contractors, or employees involved in showing, renting, operating, or managing any residential real property, and secure a signed statement from each

acknowledging that he or she has received and read the Decree and the Nondiscrimination Policies and Procedures, has had the opportunity to have questions answered about the Decree and Nondiscrimination Policies and Procedures, and agrees to abide by the relevant provisions of the Decree and Nondiscrimination Policies and Procedures. This statement shall be in the form set forth in Appendix B. This statement shall be obtained from future agents, contractors, or employees within 15 days of their hiring or promotion.

- c. Include in any and all advertising conducted for any residential real property—whether in newspapers, telephone directories, radio, television or other media, billboards, signs (including at the entrance to the property), pamphlets, brochures or other promotional literature—either a fair housing logo, the words “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.

The words or logo should be legible and prominently placed.

V. RECORD KEEPING AND REPORTING REQUIREMENTS

12. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, or within fifteen (15) days of resuming the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin shall preserve all rental applications, leases, rental roll ledgers, eviction notices, occupancy lists,

and other similar business records. Upon reasonable notice, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times. Upon request by the United States, Defendant Franklin shall provide copies of such documents and any other information reasonably related to compliance with this Consent Decree that is requested by the United States.¹

13. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin shall, six months after entry of the decree and every six months thereafter, send the United States a list of all tenants at any residential real property in which he has any ownership, equitable, or leasehold interest or management responsibilities. This obligation shall cease upon written notification by the Defendant to the United States that Defendant Franklin no longer owns any residential rental properties, but in the event that Defendant Franklin subsequently purchases rental property in Alabama, the obligations set forth herein will once again be required.

14. Defendant Franklin shall notify the United States in writing, within 15 days of engaging in the residential rental of property in Alabama with respect to which he has or acquires any ownership, equitable, or leasehold interest or management responsibilities.

15. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, or resumes the

1. All documents or other communications required by this Consent Decree to be sent to counsel for the United States shall be sent by commercial (non-USPS) overnight delivery service addressed as follows: 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 175-2-80, or as otherwise directed by the United States. Facsimile transmissions shall be sent to (202) 514-1116.

residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin shall notify counsel for the United States, in writing, within 15 days of receipt of any written or oral complaint against him or his agents, contractors, or employees regarding discrimination in housing based on sex and/or sexual harassment. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. If the complaint is written, Defendant Franklin shall provide the United States a copy with the notification. If the complaint is oral, Defendant Franklin shall provide a written summary of the complaint. Defendant Franklin 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 any resolution of such complaint.

VI. MANDATORY TRAINING

16. To the extent that Defendant Franklin continues sixty (60) days after the entry of this Decree to engage in the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, or within fifteen (15) days of resuming the residential rental of property in Alabama with respect to which he has any ownership, equitable, or leasehold interest or management responsibilities, Defendant Franklin and all of his agents, contractors, or employees involved in showing, renting, operating, or managing any such property shall, within 180 days from the date of entry of this Decree, or within thirty (30) days of acquiring an ownership, equitable, or leasehold interest in such property, undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of sex. The training shall be conducted by an independent qualified third party, not

connected to the Defendant or defense counsel, and approved in advance by the United States, and any expenses associated with this training shall be borne by Defendant Franklin. Defendant Franklin shall obtain from the trainer certifications of attendance, in a form acceptable to the United States, executed by each individual who received the training confirming their attendance. This confirmation shall include the name of the course, the date the course was taken, and the length of the course and/or the time in which it was completed.

VII. MONETARY DAMAGES FOR AGGRIEVED PERSONS

17. Within ten (10) days of the date of this Consent Decree, Defendant Franklin, through his insurance carrier, shall pay to the United States NINE THOUSAND AND FIVE HUNDRED DOLLARS (\$9,500) into a monetary damages fund for persons whom the United States has identified as aggrieved persons within the meaning of the Fair Housing Act. Payment into this fund shall be made within fifteen (15) days of the date of the entry of this Consent Decree by delivering to counsel for the United States a check made payable to the United States Treasury. Defendant shall deliver this payment to counsel for the United States, via overnight mail, at the address listed in footnote 1, above.

18. The monetary damages fund shall be distributed to aggrieved persons in amounts to be determined by the United States and approved by the Court. Within sixty (60) days of the resolution of all of its claims in this case, the United States shall submit a proposed distribution of the monetary damages fund to the Court for approval, and identify the aggrieved persons and the amount of damages that the United States concludes should be paid to each. Defendant Franklin waive the right to challenge the United States' proposed distribution. However, no money from the fund shall be distributed to an aggrieved person unless he/she has executed and delivered to the

United States the release attached to this Consent Decree as Appendix C. Should any aggrieved person refuse to execute the release attached as Appendix C, his or her share of the monetary damages fund will be distributed, in the United States' discretion, among the aggrieved persons who executed releases.

19. The monetary damages amounts required to be paid pursuant to paragraph 17, above, are debts for the United States' claims, which Franklin denies, of willful and malicious injury by Defendant Franklin within the meaning of 11 U.S.C. § 523(a)(6). Defendant Franklin shall not seek to discharge any part of its debts under paragraph 17 of this Decree in bankruptcy.

20. Interest shall accrue on any sums that are not paid within the times mandated by paragraph 17, as provided in 28 U.S.C. § 1961.

VIII. CIVIL PENALTY

21. Within ten (10) days after the date of the entry of this Consent Decree, Defendant Franklin shall cause to be issued by his insurance carrier a check or money order in the amount of FIVE HUNDRED DOLLARS (\$500), payable to the United States Treasury in settlement of the United States' claim, which Franklin denies, for a civil penalty to vindicate the public interest pursuant to 42 U.S.C.

§ 3614(d)(1)(C). Defendant Franklin shall deliver these payments to counsel for the United States, via overnight mail, at the address listed in footnote 1, above.

22. In the event that Defendant Franklin or his agents or 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).

23. The civil penalty payments referenced in paragraph 21 are debts for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C. § 523(a)(7), and are not compensation for actual pecuniary loss. Defendant Franklin shall not seek to discharge any part of those debts in bankruptcy.

24. Interest shall accrue on any sums that are not paid within the time mandated by paragraph 21, as provided in 28 U.S.C. § 1961.

IX. ENFORCEMENT

25. The parties to this Consent Decree 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 the United States contends that there has been a failure by Defendant Franklin, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree, or in the event of any other act violating any provision of this Consent Decree, 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 or non-performance of such acts or deeming such acts to have been performed, and an award of any damages, costs, and attorneys' fees which may have been occasioned by the Defendant's non-actions or actions, or the Defendant's violation or failure to perform.

X. COSTS OF LITIGATION

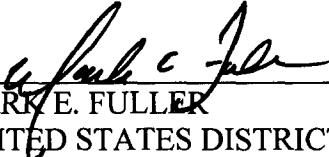
26. All parties shall be responsible for their own attorney's fees and court costs, except as provided in paragraph 25, above.

XI. DURATION

27. This Consent Decree shall be in effect for a period of five years from the effective date. The United States' Complaint against Defendant Franklin is dismissed with prejudice except that the Court shall retain jurisdiction for the duration of this Consent Decree to enforce its terms. Any time limits for performance imposed by this Consent Decree may be extended by mutual, written agreement of the United States and the party to whom the extension shall apply. The United States may move the Court to extend the duration of the Consent Decree against Defendant Franklin if Defendant Franklin violates one or more provisions of the Decree, or in the interests of justice. The expiration of the Consent Decree shall not extinguish or otherwise affect Defendant Franklin's debt for any unpaid portion of the monetary judgments in paragraphs 17 and 21, including any accrued interest. Nor shall the expiration of the Consent Decree extinguish or otherwise affect the United States' ability to collect such unpaid sums.

IT IS SO ORDERED:

This 5th day of July, 2011.



MARK E. FULLER
UNITED STATES DISTRICT JUDGE

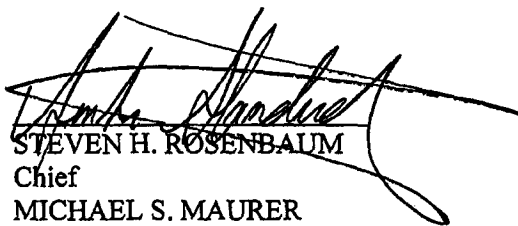
Respectfully submitted this 29 day of June, 2011.

For Plaintiff:

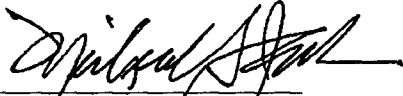
LEURA G. CANARY
United States Attorney

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JAMES J. DUBOIS
Assistant United States Attorney
Bar Number: GA 231445
131 Clayton Street
Montgomery, AL 36104
Tel.: (334) 223-7280
Fax: (334) 223-7560
james.dubois2@usdoj.gov


STEVEN H. ROSENBAUM
Chief
MICHAEL S. MAURER
Deputy Chief
AMBER R. STANDRIDGE
Bar Number: VA 73444
ROGER T. SEVERINO
Bar Number: DC 488685
SEAN R. KEVENEY
Bar Number: TX 24033862
Trial Attorneys
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.- G St.
Washington, DC 20530
Tel.: (202) 514-4713
Fax: (202) 514-1116
Roger.Severino@usdoj.gov
Amber.Standridge@usdoj.gov

For Defendant Woody Franklin, Sr.:

A handwritten signature in black ink, appearing to read "Mike Jackson", written over a horizontal line.

Mike Jackson
Beers, Anderson, Jackson, Patty & Fawal, P.C.
250 Commerce Street, Suite 100
Montgomery, AL 36104

APPENDIX A

NONDISCRIMINATION POLICY AND PROCEDURES

It is the policy of Woody Franklin, Sr. to comply with Title VIII of the Civil Rights Act of 1968 (commonly known as the Fair Housing Act) by ensuring that housing is available to all persons without regard to race, color, religion, national origin, disability, familial status or sex. This policy means, among other things, that Franklin, as well as all his agents or employees with the responsibility for renting, managing or administering any dwelling units must not discriminate on the basis of sex or otherwise engage in sexual harassment in any aspect of the rental of dwellings to qualified applicants or tenants. Such agents and employees must refrain from-

- a. Denying or otherwise making unavailable housing 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 statements 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 her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.

Any action taken by an agent or employee that results in unequal service, treatment or behavior to tenants on the basis of sex may constitute a violation of state and federal fair housing laws. Any tenant who believes that any of the above policies has been violated by any owner, agent or employee may contact the U.S. Department of Housing and Urban Development at 1-800-669-9777, the Central Alabama Fair Housing Center at 334-263-HOME or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.

APPENDIX B

**Employee/Agent Acknowledgment of Receiving and Reviewing Decree
and Nondiscrimination Policies and Procedures**

I have received a copy of the Consent Decree entered in *United States v. Bahr, et al.*, Case No. 2:08-CV-00573-MEF-SRW (M.D. Ala.). I have also received a copy of my employer's Nondiscrimination Policies and Procedures. The Consent Decree and the Nondiscrimination Policies and Procedures were explained to me by my employer, and all questions concerning these documents were answered. I have read and understood the Consent Decree and the Nondiscrimination Policies and Procedures.

DATE

EMPLOYEE/AGENT NAME (PRINT)

EMPLOYEE/AGENT SIGNATURE

APPENDIX C

Release

In consideration for the parties' agreement to the terms of the Consent Decree entered in *United States v. Bahr, et al.*, CASE NO. 2:08-CV-00573-MEF-SRW (M.D. Ala.), I hereby agree, to remise, release, and forever discharge any and all claims of any kind, nature or description whatsoever, related to the facts at issue in the litigation referenced above, or in any way related to that litigation, up to and including the date of execution of this release, that I may have against Defendant Franklin and his agents, employees, officers, members, heirs, executors, spouses, administrators, successors, insurers, and assigns.

I acknowledge and understand that, by signing this Release, I am waiving any right to pursue my own legal action against Defendant Franklin based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

This Release constitutes the entire agreement between Defendant Franklin and me, without exception or exclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 2011.

PRINT NAME