

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

LCW FAMILY LIMITED PARTNERHSIP;)
LCW MANAGEMENT CORPORATION;)
GREGORY NELSON; and NANCY)
WALLACE.)

Defendants.)

8:13 CV 00350

CONSENT ORDER

I. INTRODUCTION

1. The United States filed this action on November 25, 2013, on behalf of Freddie Penrose, pursuant to the Fair Housing Act, 42 U.S.C. §§ 3612(o) and 3614(a). Freddie Penrose moved to intervene in the case, and his Motion to Intervene was granted on March 25, 2014.

2. The United States, in its Complaint, alleges that Defendants LCW Family Limited Partnership, LCW Management Corporation, Gregory Nelson, and Nancy Wallace, denied Mr. Penrose a reasonable accommodation for his assistance animal by issuing an oral and written lease violation and informing Mr. Penrose that he must remove the assistance animal or face eviction, in violation of 42 U.S.C. § 3604(f)(2) and (f)(3)(B), and 42 U.S.C. § 3617. The United States also alleges that Defendants' no pets policy makes housing unavailable to persons with disabilities, in violation of 42 U.S.C. § 3604(f)(1), and that Defendants' conduct constitutes a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, or a denial to a group of persons of rights granted by the Fair Housing Act that raises an issues of general public importance, in violation of 42 U.S.C. § 3614(a). Defendants deny these allegations.

3. In an effort to avoid costly litigation, the parties have voluntarily agreed, as indicated by the signatures below, to resolve the United States' and Freddie Penrose's claims against Defendants without the necessity of a hearing on the merits and without admission of liability or wrongdoing on the part of Defendants.

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, are hereby 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); and;
- 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.

III. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS

5. No later than sixty (60) 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 include information substantially similar to that contained in Attachment A.

6. Within fourteen (14) days of Defendants' counsel receiving written notice of the United States' approval of the proposed policy, Defendants shall formally 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. Notice shall be sent via first-class mail, postage prepaid, to each tenant of the property.

No later than fourteen (14) days after adoption of the New Policy, Defendants shall publicly post the New Policy in the main office at each rental property that they own and/or manage.

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.

8. No later than fourteen (14) days after adoption of the New Policy, Defendants shall apprise their Office & Leasing Manager and any employees, agents, or any other persons

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 # 175-45-65, 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) Laurie A. Kelly, Assistant United States Attorney, U.S. Attorney's Office, 1620 Dodge Street, Suite 1400, Omaha, NE 68102-1506.

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 the Office & Leasing Manager and any such employee, agent, or other person with a copy of this Consent Order. The Office & Leasing Manager and any 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.

9. During the term of this Consent Order, any new Office & Leasing Manager or 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, within fourteen (14) days of 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 fourteen (14) days following their first day of employment.

IV. MANDATORY EDUCATION AND TRAINING

10. Within ninety (90) days of the entry of this Consent Order, Defendants' Office & Leasing Manager and their employees and agents responsible for the rental or management of units owned and/or managed by Defendants who work more than twenty (20) hours per month shall attend, at Defendants' expense, a training program regarding the Fair Housing Act, including its disability discrimination provisions, not to exceed eight (8) hours. 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.

11. 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.

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," 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. During the term of this Order, Defendants shall notify and provide documentation to the United States of the following events within thirty (30) days of their occurrence:

- a. The adoption of the New Policy;
- b. The written notice to residents required in Paragraph 6;
- c. The posting of the New Policy required in Paragraph 7;
- d. The execution of Attachment B, including original signed copies;
- e. The training attended pursuant to Paragraph 11, including the certification required in Paragraph 12;
- f. Any change to Defendants' rules or practices affecting the keeping of assistance animals at the rental properties they own and/or manage;
- g. 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
- h. 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 of not less than seven (7) days, to

inspect and copy at reasonable times any and all records related to Defendants' obligations under this Order.

VII. RELIEF FOR FREDDIE PENROSE

16. No later than sixty (60) days after the date of entry of this Consent Order, Defendants shall pay the total sum of eight thousand dollars (\$8,000.00) in monetary damages to Freddie Penrose by delivering one check, payable to Mr. Penrose, to counsel for Mr. Penrose.

17. As a prerequisite to receiving such payment, Mr. Penrose shall execute and deliver to counsel for Mr. Penrose a release of claims. Counsel for Mr. Penrose shall deliver the original signed release form to counsel for Defendants.

VIII. CIVIL PENALTY

18. No later than thirty (30) days after the date of entry of this Consent Order, Defendants shall pay a total of one thousand dollars (\$1,000) to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C). The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

IX. JURISDICTION, SCOPE, AND DURATION

19. 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).

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

21. 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.

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

23. 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.

24. 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.

X. COSTS OF LITIGATION

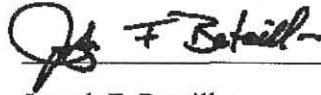
25. All parties shall be responsible for their own attorney's fees and costs associated with this action.

XI. TERMINATION OF LITIGATION HOLD

26. 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 30 day of July, 2014.



Joseph F. Bataillon
DISTRICT COURT JUDGE

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

For the United States:

Dated: 7/29/2014

DEBORAH R. GILG
United States Attorney
District of Nebraska

s/ Laurie A. Kelly
LAURIE A. KELLY, MA Bar 557575
Assistant United States Attorney
U.S Attorney's Office
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Tel: (402) 661-3700
Fax: (402) 661-3081
Email: laurie.kelly@usdoj.gov

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

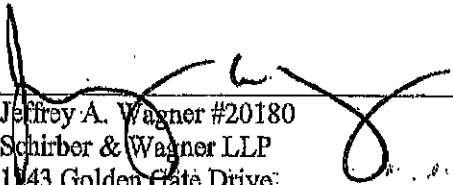
s/ Steven H. Rosenbaum
STEVEN H. ROSENBAUM
Chief, Housing and Civil
Enforcement Section


SAMEENA SHINA MAJEED
Deputy Chief
BETH FRANK
Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Northwestern Building, 7th Floor
Washington, D.C. 20530
Phone: (202) 305-8196
Fax: (202) 514-1116

For Intervenor Freddie Penrose:

Dated: July 29, 2014


BY:


Jeffrey A. Wagner #20180
Schirber & Wagner LLP
1143 Golden Gate Drive
Papillion, NE 68046
(402) 592-2800
jeff@schirberandwagner.com

**For Defendants LCW Family Limited Partnership, LCW Management Corporation,
Gregory Nelson, and Nancy Wallace:**

Dated: July 24, 2014

BY:


Kathryn A. Dittrick, #23513
Sarah L. McGill, #24790
Emily J. Wischnowski, #25101
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102
(402) 341-6000
kdittrick@fraserstryker.com
smcgill@fraserstryker.com
ewischnowski@fraserstryker.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. LCW Family Limited Partnership, LCW Management Corporation, Gregory Nelson and Nancy Wallace (collectively referred to as "Lake Candlewood") 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 Lake Candlewood's 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 Lake Candlewood's policies, and Assistance Animals will be governed by this policy and not Lake Candlewood's pet policy. Lake Candlewood recognizes the importance of Assistance Animals and is dedicated to ensuring that residents of the rental units at Lake Candlewood may keep Assistance Animals in their units.

If a resident with a disability requests a reasonable accommodation for an Assistance Animal, Lake Candlewood will 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 Lake Candlewood 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, Lake Candlewood may require a written statement from a health or social service professional² indicating:

- i. That the applicant has a disability (as defined by the federal Fair Housing Act), and
- ii. That the animal would provide emotional support or other assistance that would alleviate one or more symptoms or effects of the disability.

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.

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, Lake Candlewood 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, Lake Candlewood may require compliance with either of the two preceding paragraphs, but not both.

Any resident who requests a reasonable accommodation for an Assistance Animal must provide documentation that the Assistance Animal is current on all shots and vaccinations. The size and reasonableness of the animal permitted will be assessed on a case by case basis. The Assistance Animal must be properly licensed and must have a microchip or wear a collar and licensing tag, according to current city of Omaha ordinances. Any resident who requests a reasonable accommodation for an Assistance Animal must follow all applicable laws, regulations, and ordinances regarding domestic animals.

Lake Candlewood 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 Lake Candlewood; or
- iv. That the resident or health or social service professional be required to obtain notarization for any document related to the reasonable accommodation request. Moreover, Lake Candlewood 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, Lake Candlewood 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 Lake Candlewood 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, Lake Candlewood has 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, Lake Candlewood or their designee will provide assistance or will fill out the form based on an oral request. Lake Candlewood has 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, Lake Candlewood will provide a response within fifteen business days. Prior to denying a request, Lake Candlewood 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. Lake Candlewood 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 15 business 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 Nancy Wallace at the Leasing Office for assistance.

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 Nancy Wallace 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 in order to 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.

10. Please attach proof that the Assistance Animal requested is current on all shots and vaccinations and is properly licensed and has a microchip or wears a collar and licensing tag, in accordance with current city of Omaha ordinances.

Signature of person making request

Date

Signature of person with disability (*if different
from above*)

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 District of Nebraska in *United States v. LCW Family Limited Partnership, LCW Management Corporation, Gregory Nelson and Nancy Wallace*, Civil Action No. 8:13CV00350 (D. NE.). 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)