

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 FAIR HOUSING OF THE DAKOTAS,)
)
 Intervenor)
)
 v.)
)
 VAN RADEN PROPERTIES, INC.,)
 AND VAN RADEN HOMES, INC.)
)
 Defendants.)
)
)
 _____)

Civil No. 08-5873 PJS/RLE

CONSENT DECREE

I. INTRODUCTION

On October 29, 2008, the United States of America (“United States”) filed this action on behalf of complainant Fair Housing of the Dakotas (“FHD”) against defendants Van Raden Properties, Inc., and Van Raden Homes, Inc., (“defendants”) to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (“the Fair Housing Act” or “the FHA”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* The United States brought this complaint following a Determination of Reasonable Cause and Charge of Discrimination issued by the Secretary of Housing and Urban Development and a timely notice of election filed by Van Raden Properties, Inc. See 42 U.S.C. § 3612(o). On February 18, 2009, FHD filed a complaint in

intervention against defendants alleging violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

By their answers, defendants deny that they violated the terms of the FHA and further deny the existence of a separate corporate entity named Van Raden Homes, Inc.

The United States and FHD allege that defendants discriminated on the basis of disability and violated the Fair Housing Act, 42 U.S.C. §§ 3604(c) and (f)(1)-(3), by discriminating in the rental of a dwelling and in the terms and conditions of the rental on the basis of disability, by refusing to make reasonable accommodations in policies and practices, and by publishing or advertising the rental with limitations based on disability. Intervenor also alleges that defendants engaged in a pattern or practice of discrimination on the basis of disability in the operation of their dwellings. Plaintiff and the intervenor seek an order declaring defendants' policies and practices discriminatory, enjoining defendants from further discriminatory actions, and awarding damages. Defendants deny these claims.

The parties agree that, in the interest of conserving time and expense, this matter should be resolved without further litigation. Therefore, as indicated by the signatures below, the parties agree to the entry of this Consent Decree. The parties acknowledge that resolution of this matter is not to be construed as an admission of liability by defendants and may not be deemed findings of fact or conclusions of law by the Court. This Consent Decree constitutes full resolution of the United States' and intervenor's claims that defendants discriminated as alleged in the complaint and the complaint in intervention.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. GENERAL INJUNCTION

1. Despite their assertions that they did not discriminate on the basis of disability as alleged in the Complaint, 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 a renter because of disability in violation of 42 U.S.C. § 3604(f)(1).
 - B. Discriminating in the terms, conditions or privileges of rental of a dwelling to a renter because of disability in violation of 42 U.S.C. § 3604(f)(2).
 - C. Discriminating on the basis of disability in violation of 42 U.S.C. § 3604(f)(3)(B) by failing to make reasonable accommodations in rules, policies, practices, or services, when such reasonable accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling; and
 - D. Discriminating on the basis of disability by making, printing or publishing a notice, statement or advertisement for the rental of a dwelling that indicates a preference, limitation or discrimination based on disability, or an intention to make such a preference, limitation or discrimination in violation of 42 U.S.C. § 3604(c).

III. AFFIRMATIVE RELIEF

2. In September, 2008, defendants revised their written policy to remove a preference for assistance animals of a certain size. No later than 30 days after the date of entry of this Consent Decree, defendants shall again revise their written policy to eliminate any preference for certain breeds of assistance animals permitted in their Rental Properties¹ for residents with disabilities, as defined in 42 U.S.C. § 3602(h),² who require the use of assistance animals in their rental property and on the premises; provided, however, that defendants' policy may bar animals with a history of aggressive or violent behavior. In addition, within 30 days of the date of entry of this Consent Decree, defendants shall remove any question from the assistance animal request form to be completed by a licensed health professional asking whether the licensed health professional is willing to testify in court regarding a patient's need for such an animal.

A. For the purposes of this section:

- i. An "assistance animal" means an animal that does work or performs tasks for the benefit of a person with a physical disability or that ameliorates the effects of a mental or emotional disability, and
- ii. A "licensed health professional" means a person licensed by a public regulatory authority to provide medical care, therapy or counseling to

¹ The term "Rental Properties" refers to all residential, rental properties owned and managed by the defendants. A list is attached hereto as Attachment A.

² Although the FHA refers to the protected class as persons with "handicaps," the term "disabilities" is synonymous and generally preferred. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

persons with mental or emotional disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers.

- B. The policy is conditioned on the fact that the resident has requested an assistance animal based on his or her disability.
- C. In the case of an assistance animal that ameliorates the effects of a mental or emotional disability, the policy is conditioned upon the need for documentation with a statement from a licensed health professional indicating:
 - i. That the applicant has a mental or emotional disability, and
 - ii. That the designated animal would ameliorate the effects of the disability.
- D. In the case of an assistance animal that does work or performs tasks for the benefit of a person with a physical disability, the policy is conditioned upon the need for documentation:
 - i. That the animal has been individually trained to do work or perform tasks for the benefit of an individual with a disability, or
 - ii. That the animal, despite lack of individual training, is able to do work or perform tasks for the benefit of an individual with a disability.
- E. In the case of an assistance animal which both ameliorates the effects of a mental or emotional disability and does work or performs tasks for the benefit of a person with a physical disability, the policy may require compliance with either paragraph 2(C) or 2(D), above, but not both.
- F. The policy is not conditioned upon compliance with any of the following

requirements:

- i. In the case of an assistance animal that ameliorates the effects of a mental or emotional disability, that the animal have been trained or have a certification of its efficacy,
 - ii. That the resident pay any fee, deposit, or other charge for keeping the assistance animal, except that the resident may be required to pay fees charged to other residents who do not have an assistance animal, such as fees for repair of damages caused by the assistance animal or fees for clean up of animal waste if the resident fails to clean up after the assistance animal.
 - iii. That the animal be any particular weight or breed, or
 - iv. That the resident obtain any extra insurance that is not required of all other residents.
3. Not later than 10 days after adoption of such a policy, defendants shall post a copy of the policy, referred to in paragraph 2 above, at every common area of any building in which there is a common area of any building in which defendants own, manage or maintain Rental Property. As to other Rental Property, defendant shall post a copy of the policy on the common notice area, if any, of any Rental Property in which there is a common notice area.
 4. No later than 10 days after the adoption of the policy referenced in paragraph 2, defendants shall apprise each of their employees, agents, or any other persons who have responsibility for the management of their Rental Properties of such persons' obligations under the policy referred to in paragraph 2 above and under the Fair Housing Act, 42 U.S.C. §§ 3601-19.

Within 10 days of their employment, new employees, agents or others who have responsibility for management of defendants' Rental Properties shall be similarly informed of their obligations under the policy and the Fair Housing Act.

5. Within 30 days of the entry of this Consent Decree and as required by 24 C.F.R. § 110, defendants shall post and prominently display, in each and every location where activity related to the management or rental of defendants' Rental Properties occurs, a poster no smaller than 11 inches by 14 inches that indicates that all dwellings are available for rent on a nondiscriminatory basis. The poster(s) shall comply with the requirements set out in 24 C.F.R. Part 110.
6. Within 30 days of the entry of this Consent Decree, in all advertising conducted by the defendants related to their Rental Properties in newspapers, telephone directories, radio or other media, and on all signs, pamphlets, brochures, and other promotional literature, defendants shall include either the words "Equal Housing Opportunity," the fair housing logo, and/or the following sentence:

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 shall be prominently placed and easily legible.

IV. MANDATORY EDUCATION AND TRAINING

7. Defendants shall continue their current practice of having at least one of their managers attend a training program at least once every two years regarding the disability discrimination provisions of federal, state, and local fair housing laws conducted by a

qualified third party, unconnected to defendants or their employees, agents, or counsel. Defendants also shall continue their current practice of passing along information obtained at fair housing training sessions at the resident manager meetings.

V. REPORTING AND RECORD-KEEPING REQUIREMENTS

8. Within 120 days of the entry of this Consent Decree, defendants shall notify the United States in writing of the completion of all the matters set forth in the Affirmative Relief section of this Consent Decree, including the requirements to revise the assistance animal policy and the licensed medical professional form, to post the revised assistance animal policy and signage required by 24 C.F.R. Part 110, to reference fair housing in advertisements, and to notify employees, agents and others with managerial responsibility of the revised assistance animal policy and the Fair Housing Act. The report shall include copies of the revised assistance animal policy, the revised request for information from a licensed health professional and the signage required under 24 C.F.R. Part 110.
9. Defendants shall, no later than 30 days after occurrence and for the duration of the Consent Decree, provide to the United States notification and documentation of the following events:³
 - A. Any change in defendants' rules or practices affecting the keeping of assistance animals by residents in defendants' Rental Properties; and
 - B. Any written complaint, or oral complaint accompanied by the documentation set forth in Paragraphs 2(C) and (D) above, against the defendants regarding

³ All notifications required by this Consent Decree to be sent to the United States or counsel for the United States shall be addressed to the United States Attorney's Office, Attn. Mary Tripler, AUSA, 600 U.S. Courthouse, 300 South 4th Street, Minneapolis, MN 55415.

discrimination on the basis of disability, or conduct prohibited by 42 U.S.C. § 3617, 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. The defendants shall also promptly provide the United States information concerning the complaint's resolution.

10. For the duration of this Consent Decree, defendants shall preserve all records relating to the following:
 - A. Complaints against them or their agents or employees of discrimination in housing on the basis of disability; and
 - B. The receipt and processing of requests for reasonable accommodation of assistance animals by residents of defendants.
11. Upon reasonable notice to defendants, the United States shall be permitted to inspect and copy any of defendants' records relating to compliance with the terms of this Consent Decree, provided, however, that the United States shall endeavor to minimize any inconvenience and administrative burden to the defendants from such inspections.

VI. COMPENSATION OF AGGRIEVED PERSON

12. Within 30 days after the date of entry of this Consent Decree, the defendants shall pay to FHD the sum of \$ 3,000 in full settlement of its claims for damages and attorneys' fees and costs. Such payment shall be by check, made payable to the Client Trust Account of Miller O'Brien Cummins, PLLP. Defendants shall send a copy of the check to the United States. Upon receipt of the check, counsel for FHD shall send to the defendants an executed release

of all claims, legal or equitable, that FHD might have against the defendants relating to the claims asserted in this lawsuit. The release of all claims shall be in the form attached hereto as Attachment B.

VII. COURT JURISDICTION, SCOPE, AND DURATION OF CONSENT ORDER

13. 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). This Consent Decree is effective immediately upon its entry by the Court.
14. The Court shall retain jurisdiction over this action and over the defendants for two years from the date of entry of this Consent Decree to enforce its terms, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice.
15. The parties 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 of a failure by defendants to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance with any provision thereof, plaintiff 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 attorney's fees which may have been occasioned by the violation or failure to perform.

IT IS SO ORDERED:

This 19th day of May, 2010.

s/Patrick J. Schiltz
PATRICK J. SCHILTZ
United States District Judge

s/ Ana H. Voss
B. TODD JONES
UNITED STATES ATTORNEY
BY: MARY TRIPPLER
Assistant United States Attorney
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Attorneys for Intervenor

Attachment A

Van Raden Properties, Inc.

**402 35th Avenue North
Fargo, ND 58102**

Phone: 218-233-2731

Fax: 701-232-8073

List of Residential Rental Properties Managed by Van Raden Properties, Inc.

1. Elm St. Apartments: 418 S. Elm St., Moorhead, MN 56560
2. Campus Aire Apartment: 906, 908 & 910 8th St. S., Moorhead, MN 56560
3. Trollwood Manor Apartments: 201 35th Ave., 3510, 3522, 3530 & 3540 2nd St. N., Fargo, ND 58102
4. Edgewood Courts Apartments: 3301 & 3315 Broadway N., Fargo, ND 58102
5. Eastmoor Apartments: 2616, 2720, 2626, 2712 & 2720 4th Ave N., Moorhead, MN 56560
6. Residential Duplexes: 3202 & 3204 10th Ave N., 906, 908, 910, 912, 914 & 916 32nd Ave. N., Fargo, ND 58102
7. Residential Duplexes: 115 & 117 35th Ave. N., 3213, 3215, 3223, 3225, 3231, 3233, 3301, 3303, 3307, 3309, 3511, 3513 and 3533 2nd St. N., Fargo, ND 58102
8. Edgewood Courts Manufactured Home Park, Fargo, ND
9. Park Lane Manufactured Home Park, Dilworth, MN
10. Park Manor Manufactured Home Park, Grand Forks, ND
11. Greystone Manor Apartments: 4243, 4247, 4251, 4255 & 5259 9th Ave Circle S, Fargo, ND 58103
12. Westmore Court Apartments: 1439, 1449, 1459, 1469, 1521, 1531, 1541 & 1551 35th St. S, Fargo, ND 58103
13. Southmoor Apartments: 2900, 2910, 2920, 2930, 2940, 2950 & 2960 17th St. S, Moorhead, MN 56560
14. Royal Apartments: 1212 2nd Ave S, Moorhead, MN 56560
15. Van's Court Apartments: 405 & 411 University Dr S, Fargo, ND 58103
16. Residential Duplexes: 3311, 3313, 3401 & 3403 2nd St. N, Fargo, ND 58102
17. Residential Duplex: 1602 & 1604 6th Ave N, Moorhead, MN 56560

Attachment B

RELEASE OF CLAIMS

In consideration of the payment of the sum of three thousand dollars (\$3,000), pursuant to the Consent Decree entered in United States v. Van Raden Properties, Inc., et al., Case No. 08-cv-5873 PJS/RLE, I, Kourtnay Hollingsworth, on behalf of Intervenor, Fair Housing of the Dakotas ("FHD"), hereby release the Defendants named in this action from any and all liability for any claims, legal or equitable, FHD may have against them arising out of the issues alleged in the Complaint in Intervention as of the date of the entry of that Consent Decree. I fully acknowledge and agree that this release of the Defendants shall be binding on FHD's representatives, successors, administrators, and assigns. 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:

FAIR HOUSING OF THE DAKOTAS

BY: 

ITS: Executive director

Kourtnay Hollingsworth
(Print Name)

409 Basin Avenue, Suite 2
(Address)

Bismarck, ND 58504
(Address Continued)