

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
WAYNE COUNTY HOUSING)
AUTHORITY, JILL MASTERSON,)
and DANNA SUTTON,)
)
Defendants.)
_____)

Civil Action No.: 09-141-WDS

CONSENT ORDER

On February 20, 2009, the United States instituted this action against the Wayne County Housing Authority, Jill Masterson, and Danna Sutton, on behalf of Angela Scherer and Brian Scherer, pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

This action was brought pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.* (“the Act”). The complaint alleged that Defendants tried to discourage Mr. and Mrs. Scherer, who are white, from renting their property in Fairfield, Illinois, to an African-American woman, and that Ms. Masterson and Ms. Sutton made racially discriminatory statements to Mr. and Mrs. Scherer, in violation of Sections 804(b) and (c) and 818 of the Act, 42 U.S.C. § 3604(b) and (c) and § 3617.¹

Defendants filed an answer, denying that they had engaged in any prohibited conduct and objecting to an award of damages or any other relief.

¹ Mrs. Scherer filed an administrative complaint, and Mr. Scherer joined in an amended complaint, with the United States Department of Housing and Urban Development (“HUD”) raising these allegations under Title VI and Title VIII. The Title VI allegations were resolved by a Voluntary Compliance Agreement (“VCA”) between HUD and the Wayne County Housing Authority on March 19, 2009. A copy of the VCA is attached as Exhibit A.

The United States, the Wayne County Housing Authority, Ms. Masterson, Ms. Sutton, and Mr. and Mrs. Scherer desire to avoid the cost and uncertainty of protracted litigation and agree that this dispute should be resolved without the necessity of further proceedings or trial. Therefore, the parties have waived a hearing and the entry of findings of fact and conclusions of law and have agreed to the entry of this Consent Order, as indicated by the signatures appearing below.

Therefore, it is hereby ORDERED, ADJUDGED, and DECREED:

I. INJUNCTIVE RELIEF

Defendants, and any agents, employees, successors, and persons in active concert or participation with them are enjoined from:

A. Discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race or color, in violation of 42 U.S.C. § 3604(b);

B. Making, printing, or publishing one or more notices, statements, or advertisements, with respect to the sale or rental of a dwelling that indicate a preference, limitation, or discrimination based on race or color, in violation of 42 U.S.C. § 3604(c); and

C. Coercing, intimidating, threatening or interfering with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under the Fair Housing Act, in violation of 42 U.S.C. § 3617.

II. NOTIFICATION TO PUBLIC OF NONDISCRIMINATION POLICIES

Within ten (10) days of the Court's entry of this Consent Order, Defendants shall take the following steps to notify the public of their nondiscriminatory policies:

A. Pursuant to 24 C.F.R. Part 110, post and prominently display a Fair Housing

poster at the office(s) of the Wayne County Housing Authority and at any other place of business where Defendants conduct rental activity and/or have personal contact with rental applicants.

B. Include the words “Equal Housing Opportunity” and/or the Fair Housing logo in any advertising conducted by Defendants in newspapers, telephone directories, radio, television or other media, and on all billboards, signs, pamphlets, brochures, and other promotional literature. The words and/or logo should be prominently placed and easily legible.

III. RECORD KEEPING AND MONITORING

A. During the term of this Consent Order, Defendants shall preserve all records pertaining to their obligations under this Consent Order. Upon reasonable notice to Defendants’ counsel, representatives of the United States Department of Justice shall be permitted to inspect and copy all such records at reasonable times in order to monitor compliance with this Consent Order.

B. During the term of this Consent Order, Defendants shall give counsel for the United States written notice within fifteen (15) days of receipt of any written or oral complaint against Defendants regarding discrimination on the basis of race, and a description of the resolution of any such complaint within fifteen (15) days of resolution. If the complaint is written, Defendants shall provide a copy of it with the notice; if the complaint is oral, Defendants shall include a written summary of it with the notice. The notice shall include the full details of the complaint, including the complainant’s name, address, and telephone number. Defendants shall also promptly provide counsel for the United States with all information it may request concerning any such complaint and its actual or attempted resolution.

IV. COMPLIANCE TESTING

A. The United States may take steps to monitor Defendants’ compliance with this

Consent Order including, but not limited to, conducting fair housing tests at any office in which Defendants conduct rental activities.

V. RELIEF FOR ANGELA SCHERER AND BRIAN SCHERER

A. Defendants will pay the total sum of Eight Thousand, Seven Hundred and Fifty Dollars (\$8,750) in settlement of the case, by one (1) check for Four Thousand, Three Hundred and Seventy-Five Dollars (\$4,375) made payable to Angela Scherer, and one (1) check for Four Thousand, Three Hundred and Seventy-Five Dollars (\$4,375) made payable to Brian Scherer. The payment shall be made within thirty (30) days of the Court's entry of this Consent Order. The checks shall be sent, via Federal Express, c/o Holly C. Lincoln, United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 1800 G Street, N.W., Suite 7013, Washington, D.C. 20006, for her to forward to Mr. and Mrs. Scherer.

VI. COURT JURISDICTION, SCOPE AND TERM OF CONSENT ORDER

A. The parties have consented to the entry of this Consent Order as indicated by the signatures below. To this end, 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).

B. This Consent Order is effective immediately upon its entry by the Court.

C. The entry of this Consent Order will terminate this case. The Court will retain jurisdiction, in order to enforce the terms of this Consent Order, for a period of three (3) years after the entry of the Order.

D. The United States may move the Court to extend the duration of this Consent Order if it determines that Defendants have violated one or more terms of the Order or if the interests of justice otherwise require.

E. The United States, the Wayne County Housing Authority, Ms. Masterson, Ms. Sutton, and Mr. and Mrs. Scherer 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 of a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise to act in violation of 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 attorneys' fees that may have been occasioned by Defendants' violation or failure to perform.

F. Each party to this Consent Order shall bear its own costs and attorney's fees associated with this action.

G. This Consent Order may be signed by the parties in counterparts.

DATED: MARCH 11, 2010

s/ WILLIAM D. STIEHL
UNITED STATES DISTRICT JUDGE

The terms of this Consent Order have been agreed to by the parties, as indicated by the signatures of counsel below, and the parties request the entry of this Consent Order:

FOR THE UNITED STATES:

A. COURTNEY COX
United States Attorney

THOMAS E. PEREZ
Assistant Attorney General
STEVEN H. ROSENBAUM
Chief, Housing and Civil Enforcement
Section
TIMOTHY J. MORAN
Deputy Chief

/s/ Nathan E. Wyatt (with consent)
NATHAN E. WYATT
Assistant United States Attorney
Southern District of Illinois
Nine Executive Drive
Fairview Heights, IL 62208
Tel.: (618) 628-3749
Fax: (618) 622-3811
Email: Nathan.Wyatt@usdoj.gov

/s/ Holly C. Lincoln
HOLLY C. LINCOLN
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement
Section - G Street
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Tel.: (202) 514-0553
Fax: (202) 514-1116
Email: Holly.Lincoln@usdoj.gov

FOR DEFENDANTS:

/s/ James F. Best (with consent)
JAMES F. BEST, Attorney
ALLIE M. BURNET, Attorney
Best, Vanderlaan & Harrington
25 E. Washington Street, Suite 210
Chicago, Illinois 60602
Telephone: (312) 819-1100
Fax: (312) 819-8062
E-mail: Jbest@bestfirm.com

Exhibit A

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT**

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

VOLUNTARY COMPLIANCE AGREEMENT

between

The United States Department of Housing and Urban Development

and

**Wayne County Housing Authority
(Recipient)**

**Approved by the FHEO Regional Director on behalf of the United States
Department of Housing and Urban Development**

HUD CASE NUMBER: 05-08-0787-6

A. PARTIES AND SUBJECT PROPERTY

Recipient

Wayne County Housing Authority
303 N. 1st Street
Fairfield, IL 62837

Subject Property

310 S.E. 3rd Street
Fairfield, IL 62837

B. BACKGROUND

On or about March 31, 2008, Angela and Brian Scherer, filed complaints with the United States Department of Housing and Urban Development ("Department" or "HUD") alleging that Wayne County Housing Authority ("WCHA" or "Recipient"), Jill Masterson, individually and as the executive director of WCHA, and Danna Sutton, individually and as the assistant director of WCHA, violated the Fair Housing Act as amended in 1998, 42 U.S.C. § 3601 *et seq.* (the "Act"). WCHA is a public housing authority that receives federal financial assistance through an Annual Contributions Contract with HUD. WCHA uses this funding, in part, to finance the Section 8 voucher program. Because WCHA is a recipient of federal financial assistance, a complaint was also filed under Title VI of the Civil Rights Act of 1964 ("Title VI"), Case Number 05-08-0787-6. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

HUD's Office of Fair Housing and Equal Opportunity conducted a fair housing investigation and found violations of both Title VI and Title VIII. On January 20, 2009, HUD's Office of Regional Counsel issued a Charge of Discrimination against WCHA, Jill Masterson and Danna Sutton alleging violations of Sections 3604(c) and 3617 of the Act. Shortly thereafter, HUD's Office of Administrative Law Judges issued a notice of election and, on February 20, 2009, the Civil Rights Division of the U.S. Department of Justice filed a complaint in the United States District Court for the Southern District of Illinois against WCHA, Jill Masterson and Danna Sutton (Civil Action No. 09-141-WDS) alleging violations of 42 U.S.C. §§ 3604(b), 3604(c) and 3617.

This Voluntary Compliance Agreement ("Agreement") addresses the subject complaint under Title VI of the Civil Rights Act of 1964. The resolution of the Title VI case against WCHA shall have no impact on the pending Title VIII litigation.

Based upon the evidence obtained during the course of its investigations of the subject complaints, the Department issued a finding of non-compliance with the non-discrimination requirements of Title VI, and also issued a Charge of Discrimination under Title VIII. Specifically, the Department found that Recipient initially failed the housing inspection of a rental property owned by Complainants, located in Fairfield, Illinois, and that its agents made discriminatory statements to Angela and Brian Scherer, in an effort to dissuade Complainants from renting to an African-American Section 8 Housing Choice voucher holder.

C. EFFECTIVE DATE

1. This Agreement shall become effective on the date on which it is approved by the Director, Fair Housing and Equal Opportunity ("FHEO"), Chicago Regional Office of HUD. The term of this Agreement shall be two (2) years from the effective date of this Agreement.

D. GENERAL PROVISIONS

2. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaints filed in accordance with Title VI, HUD Case Number 05-08-0787-6. The Recipient affirms that it has read and fully understands the terms set forth herein. The Recipient has not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
3. Recipient acknowledges that it has an affirmative duty not to discriminate, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under Title VI or Title VIII.
4. This Agreement, after it has been approved by the FHEO Regional Director, or his or her designee, is binding upon Recipient, its board members, employees, heirs, executors, successors, assigns and all others in active concert with it.
5. It is understood that upon approval of this Agreement by the FHEO Regional Director, or his or her designee, it is a public document.
6. This Agreement does not, in any way, limit or restrict the Department's authority to investigate any other complaint involving Recipient made pursuant to Title VI or Title VIII, or any other complaint within the Department's jurisdiction.
7. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Regional Director.

E. RELIEF IN THE PUBLIC INTEREST

8. Recipient agrees to take the following actions in the public interest in order to fully comply with Title VI:
 - a) Suspension of Employment
 1. Within sixty (60) days of the effective date of this Agreement, Recipient will implement employment suspensions in accordance with this subsection.
 2. Recipient shall suspend the employment of Assistant Director Danna Sutton, without compensation, for a period of at least forty (45) days.
 - i. In the alternative to the suspension of Assistant Director Danna Sutton provided in Paragraph E (8)(a)(1) set forth above, the Recipient may certify within sixty (60) days of the effective date of this Agreement that Sutton has submitted her resignation and Recipient has accepted that resignation. Recipient shall not consider Sutton for re-employment for a two-year period from the effective date of this Agreement.
 - b) Recipient shall suspend the employment of Executive Director Jill Masterson, without compensation, for a period of at least thirty (30) days.
 - c) Recipient may stagger the suspensions of Jill Masterson and Danna Sutton in order to ensure the continuity of Recipient WCHA's operations.
 - d) The suspensions must be served within 6 months of the effective date of this Agreement.
 - e) Within thirty (30) days of the effective date of this Agreement, Recipient shall implement a written policy that requires its employees to complete the program form titled, "Zero-Income Checklist," in accordance with the form's instructions and program regulations, for program applicants or current program participants who are required to submit said form. Recipient's employees shall explain to program participants that the Zero-Income Checklist regards the program participants' current expenditures. Program participants are expected to provide Recipient with all necessary information to complete the Zero-Income Checklist. Recipient staff shall use the Employment Income Verification System ("EIV") to verify program participants' income.
 - f) Within thirty (30) days of the effective date of this Agreement, Recipient shall implement a written policy that requires its employees to provide program voucher-holders with a written record of the Total Contract Rent as stated on

Recipient's form titled, "Rent Calculation," upon the issuance of said program vouchers.

- g) Recognizing its obligation to affirmatively further fair housing, within sixty (60) days of the effective date of this Agreement, Recipient shall submit to the Department, for its review and consideration, an Analysis of Impediments ("AI") to fair housing choice, in accordance with the requirements set forth at 24 C.F.R. § 903.7(o)(3). Recipient agrees that the AI shall: (1) examine its programs or proposed programs; (2) identify any impediments to fair housing choice within those programs; (3) address those impediments in a reasonable fashion in view of the resources available; (4) require and identify how Recipient will work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that requires the PHA's involvement; and (5) require Recipient to maintain records reflecting these analyses and actions.
- h) Upon approval by the Department, the AI shall be incorporated into Recipient's Annual Plan. Recipient is encouraged to seek guidance from the Department in meeting this requirement. If Recipient uses a consultant to carry out its obligations under this paragraph, the Department must approve the selection of such consultant.
- i) Within sixty (60) days of the effective date of this Agreement, Recipient shall submit to the Department, for its review and consideration, an Affirmative Fair Housing Marketing Plan, in accordance with the requirements set forth in 24 C.F.R. § 200.600, Subpart M. Recipient is encouraged to seek guidance from the Department in meeting this requirement. If Recipient uses a consultant to carry out its obligations under this paragraph, the Department must approve the selection of such consultant.
- j) Within thirty (30) days of the effective date of this Agreement, Recipient shall provide HUD with a copy of the agenda from the fair housing training that its employees received from Nan McKay Consultants. If after the Department reviews the aforementioned training agenda and approves the training as sufficient in training Recipient's employees, HUD will not require additional training of Recipient's employees. If HUD determines that the training was deficient, Recipient agrees to contract with a HUD-approved entity to provide Recipient's staff with additional fair housing training. Recipient agrees that within sixty (60) days of the effective date of this Agreement, Recipient shall contract with a HUD-approved entity to provide at least four (4) hours of fair housing training for Recipient's board of directors and, if still needed, Recipient's employees.
- k) Within thirty (30) days of the effective date of this Agreement, Recipient shall cause an additional employee to be certified on the EIV.

1) Upon execution of this Agreement, Recipient shall submit semi-annual reports to the Department for a period of two (2) years. The semi-annual reports shall include the following information:

1. Current waiting lists for all federally-funded programs, (if applicable);
2. Information pertaining to all program applicants, including application date, applicant name, address, telephone number, race/ethnicity, and dates and reasons for cancellation or rejection (if applicable);
3. Information pertaining to participants in its Housing Choice Voucher Program, including voucher issuance date, lease date, tenant name, leased address, telephone number, race/ethnicity,¹ number of dependents, number of qualified bedrooms, number of leased bedrooms, zero-income status, total annual income, utility allowance, rent to owner, tenant rent, HAP amount, utility reimbursement or allowance amount, landlord name and telephone number, HQS inspection date, HQS inspection result, HQS re-inspection date and result (if applicable); and
4. Information pertaining to participants in its Public Housing Program, including lease date, tenant name, leased address, race/ethnicity, total annual income, adjusted annual income, rent to owner, tenant rent.

F. MONITORING

9. Recipient agrees and understands that pursuant to a situation that reasonably so warrants, the Secretary may review compliance with this Agreement. As a part of such review, the Secretary may reasonably require written reports and/or photographs concerning compliance, may inspect the premises, interview staff, and examine and copy pertinent records of Recipient at any reasonable time between the effective date of this Agreement and two (2) years from said date.
10. The Department shall determine whether Recipient has complied with the terms of this Agreement. If the Department determines at any point during the two-year term of this Agreement that there has been noncompliance with one or more provisions, the Department shall provide the Recipient with written notice and a description of the noncompliance. The notice shall also provide Recipient two month's time to affect compliance or otherwise explain why Recipient believes there is no noncompliance.

¹ Such information shall be contingent on the applicant identifying his or her race/ethnicity on the program application. Recipient is not required to include such information in the semi-annual report if the information is not provided by the applicant.

G. REPORTING AND RECORDKEEPING

- 11. Within thirty (30) days after the completion of the respective employment suspensions of Danna Sutton and Jill Masterson, Recipient shall submit to the Department written certification of same.
- 12. Within thirty (30) days of the effective date of this Agreement, Recipient shall submit to the Department copies of the written policies required by Paragraphs E (8) (b) and (c) of this Agreement.
- 13. Within one-hundred eighty (180) days of the effective date of this Agreement, Recipient shall submit to the Department proof or certification of training attendance, as required by Paragraph E (8)(g) and (h) of this Agreement.
- 14. All required certifications, reports, and/or documentation of compliance must be submitted to:

U.S. Department of Housing & Urban Development
Barbara Knox, Director
Region V, Office of Fair Housing and Equal Opportunity
77 W. Jackson Blvd. Room 2101
Chicago, IL 60604

H. CONSEQUENCES OF BREACH


- 15. Failure to carry out the terms of this Agreement may result in the suspension or termination of, or refusal to grant or to continue federal financial assistance, or other actions authorized by law.

I. SIGNATURES


On behalf of Recipient

5/15/09
Date

J. APPROVAL


Director, FHEO Region V

5/19/09
Date