

Attachment

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of
Housing and Urban Development,

Charging Party,

on behalf of
BillieJo Baity and
Housing Opportunities Made Equal

v.

Judith Serio, and
RE/MAX North

Respondents.

HUDALJ 10-E-136-FH/13

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On May 18, 2009, BillieJo Baity and Housing Opportunities Made Equal (HOME) filed verified complaints with the United States Department of Housing and Urban Development (HUD), alleging that RE/MAX North Associate Broker Judith Serio (Respondent Serio or Ms. Serio) made statements with respect to a rental property indicating a preference, limitation, or discrimination on the basis of familial status, in violation of the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (Act). HOME also alleged that Ms. Serio refused to rent an apartment to one of its testers based on familial status in violation of the Act.

In particular, Complainant Baity alleged that on or about January 6, 2009, Ms. Serio had telephoned her and left a recorded message, stating that the apartment she viewed and applied for was rented to another applicant and that the owner had been ill and “not in the shape to deal with children.” HOME alleged that Ms. Serio had told one of its testers that the apartment she was interested in viewing was owned by an elderly woman who was not happy about having children live there.

After conducting an investigation of the complaints, HUD commenced this action on May 18, 2010 by issuing a Charge of Discrimination (Charge) on behalf of Complainants, pursuant to Section 810 (g) (1) and (2) of the Act. Respondents have requested two extensions to answer the Charge, which were granted by this tribunal, in order to facilitate settlement discussions.

The parties agree to settle and resolve the pending Charge without the necessity of a hearing before an Administrative Law Judge or adjudication on the merits, and without Respondents admitting fault or liability. Complainants agree that the provisions in Section IV, entitled Relief for Complainants will constitute Complainants' entire relief. Therefore, as indicated by the signatures at the end of this document, the parties have consented to the entry of this Consent Order (Order).

II. ADMINISTRATION

The Order is entered into pursuant to section 812 (g) (3) of the Act and the regulations codified at 24 CFR § 180.450, and shall become final upon expiration of thirty days or affirmance by the Secretary within that time. *See* 42 U.S.C. § 3612 (h); 24 C.F.R. §§ 180.450, 180.670(b) (3), 180.675, 180.680(b) (2).

The signatures of the parties to the Order constitute a waiver of any right to withdraw their consent during the thirty day Secretarial review period and a waiver of any right to challenge the validity of this Order at any time.

The Order shall remain in effect for a period of two years following the date it becomes final, pursuant to 42 U.S.C. § 3612 (h) and 24 CFR § 180.680. The United States Court of Appeals has jurisdiction to enforce this Order, if necessary. *See* 42 U.S.C. § 3612 (j) and (m).

III. WAIVER AND RELEASE

In consideration for the execution of this Initial Decision and Consent Order, the parties hereby release all causes of action, demands and claims, including attorney fees, presently known or unknown, arising out of the subject matter of FHEO Complaints No. 02-09-0659-8 and 02-09-0660-8.

IV. RELIEF FOR COMPLAINANTS

It is ORDERED that Respondents shall:

- (1) Pay Complainant Baity the amount of \$8,000.00 in full and complete settlement and satisfaction of this Charge, within 30 days after this Order becomes a final agency decision¹. The share of this settlement payment allocable to Respondent RE/MAX North is \$250.00, with the remainder being allocable to Respondent Serio. If the parties or complainants publicize this settlement, they shall accurately report the amount of payment that is allocable to each Respondent. This full amount shall be paid by certified or cashier's check or money order, payable to Ms. BillieJo Baity and sent in care of Jennifer Metzger, Esq., to H.O.M.E, 700 Main Street, Buffalo, NY 14202, who will then deliver it to Ms. Baity. Ms. Metzger shall send a copy of the payment to Lorena Alvarado, HUD Attorney Advisor, Room 3237, 26 Federal Plaza, New York, NY, 10278, to verify receipt.

¹ Pursuant to 24 C.F.R. §180.680 (b) (1).

- (2) Pay Complainant H.O.M.E. the amount of \$2,500.00 in full and complete settlement and satisfaction of this Charge, within 30 days after this consent order becomes a final agency decision. The share of this settlement payment allocable to Respondent RE/MAX North is \$250.00, with the remainder to be allocable to Respondent Serio. If the parties or complainants publicize this settlement, they shall accurately report the amount of payment that is allocable to each Respondent. This full amount shall be paid by certified or cashier's check or money order, payable to Housing Opportunity Made Equal and sent in care of Jennifer Metzger, Esq., H.O.M.E., 700 Main Street, Buffalo, NY 14202. Ms. Metzger shall send a copy of the payment to Lorena Alvarado, HUD Attorney Advisor, Room 3237, 26 Federal Plaza, New York, NY, 10278, to verify receipt.

V. RELIEF IN THE PUBLIC INTEREST

It is FURTHER ORDERED that:

(1) Prohibition Against Discrimination

Respondent Serio and Respondent RE/MAX North, its agents, employees, successors and assigns, and all other persons in active concert or participation with them, in the management or operation of Respondent shall not:

- A. refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin;
- B. discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin;
- C. make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination; nor;
- D. retaliate, coerce, intimidate or interfere with any individual because of their exercise or enjoyment of any right granted or protected by the Fair Housing Act.

(2) Fair Housing Training

Within 90 days of the effective date of this Order, Ms. Serio and RE/MAX North real estate brokers and salespersons who have not taken an approved New York State continuing education course in fair housing within the past 12 calendar months, shall attend fair housing training conducted by HOME. Respondents are solely responsible for payment and costs related to the fair housing training. The training shall include but not be limited to Title VIII of the

Civil Rights Act of 1968, and the Fair Housing Amendments Act of 1988.

Within ten days of completion of the training, Respondent Serio, individually, and Margaret (Peg) Eisenhower, Owner, for Respondent RE/MAX North, shall submit a certification of compliance with this provision, to Lorena Alvarado, HUD Attorney Advisor, Room 3237, U.S. Department of housing and Urban Development, 26 Federal Plaza, New York, NY, 10278.

(3) Affirmative Actions

Respondents agree to take to the following affirmative actions:

- A. Respondent Serio shall provide HUD with a list of all properties in Erie County for which she is acting as a rental agent.
- B. If it has not already done so, Respondent RE/MAX North shall begin displaying a Fair Housing poster, which complies with the requirements set forth at 24 C.F.R. Part 110. Furthermore, Respondent RE/MAX North shall include the phrase "Equal Opportunity Housing" on all its advertisements and promotional materials, and on all written materials that it provides to clients or the general public. Alternatively, Respondent may use the fair housing logo or the abbreviation "EOH" for single column classified ads using abbreviated words and not containing pictures.
- C. Respondent RE/MAX North shall formulate a written tenant selection policy which complies with all applicable fair housing laws and submit it to HUD for review within 30 days from the effective date of this Order. Should RE/MAX change this policy within two years of this agreement, it agrees to provide a copy of the new policy within thirty days of its adoption to HUD.
- D. Respondent RE/MAX North shall draft a written application form that complies with all applicable fair housing laws and submit it to HUD for review within 30 days of the effective date of this Order. Respondent shall retain all submitted applications, whether successful or not, for a period of two years and make the submitted application forms available for inspection, if requested by HUD.

All written submissions shall be sent to Lorena Alvarado, HUD Attorney Advisor, Room 3237, U.S. Department of Housing and Urban Development, 26 Federal Plaza, New York, NY, 10278. HUD will make these submissions available to Complainant HOME upon request.

VI. CIVIL PENALTY

In consideration of the provisions made in the public interest, HUD shall waive civil penalties against Respondents subject to its compliance with said provisions.

This Order does not constitute a decision or finding that either Respondent, or its agents, employees, successors or assigns have engaged in any discriminatory housing practices, and by

signing this document, Respondents do not admit any violation of the Fair Housing Act or any other applicable state or local fair housing law.

VII. REMEDIES FOR BREACH

HUD shall determine compliance with the terms of this Order. Upon a breach of any provision the United States reserves its right for the enforcement of the final decision in accordance with 42 U.S.C. §3612(j). In the event the breach involves the provisions made in the public interest, HUD may seek civil penalties be imposed in the maximum amount allowed by law.

VIII. AGREEMENT OF THE PARTIES


Complainant Ms. BilleJo Baity has had benefit of legal assistance from HOME's legal representative, Jennifer Metzger, Esq. and Complainant HOME has had the benefit of Counsel. Respondents have had the benefit of private Counsel. All parties have read this Consent Order and willingly sign it below with a full understanding of the rights it confers and responsibilities it imposes on them.

Approved:

Complainants:

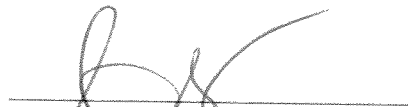

BillieJo Baity

9/2/10
Date


Housing Opportunities Made Equal
By: Scott W. Gehl, Executive Director

9/3/10
Date

For the Complainants:


Jennifer Metzger, Esq.
Housing Opportunities Made Equal
700 Main Street
Buffalo, NY 14202

9/3/10
Date

Respondents:

Judith Serio
Judith Serio

8/26/10
Date

Margaret Eisenhower
RE/MAX North
By: Margaret (Peg) Eisenhower, Broker

8/26/10
Date

For the Respondent:
L'Abbate, Balkan, Colavita & Contini, L.L.P.

Peter Contini
Peter Contini, Esq.
1001 Franklin Avenue
Garden City, NY 11530

8/27/10
Date

Regional Counsel:

John J. Cahill
John J. Cahill, Esq.
Regional Counsel
New York/New Jersey Office
U.S. Department of Housing
and Urban Development
26 Federal Plaza, New York, NY 10278

9/7/10
Date

HUD Trial Attorney:


Lorena Alvarado
Lorena Alvarado, Esq.

9/7/10
Date

IV. ORDER OF THE COURT

The hearing in this matter was to be scheduled after Respondents filed their Answers by August 23, 2010, but the parties notified the Court on June 16, 2010 and, again, on July 16, 2010 that the parties were engaging in settlement negotiations and desired to reach an amicable resolution of this case. The parties had agreed in principle to settlement terms on July 19, 2010, and commenced memorializing the agreement in an Initial Decision and Consent Order. On August 25, 2010, the Secretary, through his counsel, informed the Court's staff that a final draft of the Consent Order was ready for the parties' signature and would be forwarded to the Court shortly. On September 8, 2010, the parties forwarded to the Court a draft of the foregoing Order, incorporating the terms of their settlement agreement and indicated their agreement by signing the settlement agreement. Counsel had no further matters to raise and the Court indicated that the agreement appeared to be in the public interest. All parties having signed, their agreement (incorporated in the foregoing Initial Decision and Consent Order) is accepted.

So Ordered, this 20th day of September 2010



Hon. Susan L. Biro
Chief Administrative Law Judge