

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,

v.

WINDSOR GARDENS ASSOCIATION,

Respondent.

HUDALJ 10-M-169-FH/18

August 6, 2010

APPROVAL OF INITIAL DECISION AND CONSENT ORDER

By Motion dated August 4, 2010, counsel for HUD, on behalf of the parties, moves for issuance of a proposed INITIAL DECISION AND CONSENT ORDER (attached), which bears signatures of the parties and, by its terms, settles the issues in the above-captioned case.¹ The proposed order, incorporating the parties' settlement agreement, appears to be in the public interest.

Accordingly, the scheduled hearing in this matter is cancelled and the proposed INITIAL DECISION AND CONSENT ORDER is approved. It is issued this date by signature of the presiding Administrative Law Judge.


J. Jeremiah Mahoney
Administrative Law Judge

Attachment: a/s

¹ By Revised Motion on August 5, 2010, a revised Initial Decision and Consent Order with minor technical corrections was submitted with concurrence of all parties. The revised version is attached hereto.

**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,)	
)	HUD ALJ No. 10-M-169-FH/18
v.)	FHEO No. 08-07-0229-8
)	
Windsor Gardens Association,)	
)	
Respondent.)	
)	
)	

INITIAL DECISION AND CONSENT ORDER

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about July 19, 2007, the complainant, Kim Kendrick, the then Assistant Secretary for Fair Housing and Equal Opportunity of the U.S. Department of Housing and Urban Development ("Complainant") filed verified complaints with the United States Department of Housing and Urban Development (the "HUD Complaint"), alleging that Respondent Windsor Gardens Association ("Respondent") violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (the "Act"), by discriminating against the public because of familial status and making discriminatory statements in violation of 42 U.S.C. §3604.

HUD determined that there was reasonable cause to believe that discriminatory housing practices had occurred in this case based on familial status and by the making, printing or publishing or causing to be made, printed or published discriminatory statements in violation of Sections 3604(a) and (c) of the Act. On July 9, 2010, the Charging Party issued a Charge of Discrimination (the "Charge") pursuant to a Determination of Reasonable Cause that the Act had been violated. 42 U.S.C. §§ 3604(a) and 3604(c).

Respondent denies that it violated the Act as alleged in the Charge, but agrees to settle the claims in the underlying action in order to avoid the additional cost and expense by entering into this Initial Decision and Consent Order ("Consent Order"). The entry of this Consent Order shall not be deemed as an admission of fault or liability by Respondent.

II. GENERAL PROVISIONS

1. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaint. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it.
2. The parties acknowledge that the terms set forth herein are contractual and not merely a recital of the parties' intentions. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations hereunder.
3. The parties agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the parties' signatures on separate pages of this Consent Order, with the original executed Signature Pages to be attached to the body of the Consent Order to constitute one document.
4. The signature of the parties to this Consent Order may be executed by way of facsimile transmission and shall be deemed to be an executed and admissible Consent Order for all purposes as may be necessary under the terms of this Consent Order.
5. The parties agree the Charging Party will file a Motion for Issuance of Initial Decision and Consent Order, and the Initial Decision and Consent Order, after it is executed by all of the appropriate parties.
6. The parties acknowledge this Consent Order will become the final agency decision thirty (30) calendar days from the date it is issued by the HUD Administrative Law Judge (HUD ALJ) or earlier, if affirmed by the Secretary within that time. 24 C.F.R. § 180.680(b)(2) (2010).
7. This Consent Order is binding upon Respondent Windsor Gardens Association, its employees, successors, agents, assigns and all others in active concert with them in the operation of the subject property. This Consent Order is full settlement of all claims by the Complainant, in any way related to the allegations set forth in the subject Charge of Discrimination.
8. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other complaints involving Respondent Windsor Gardens Association made pursuant to the Act, or any other complaints within HUD's jurisdiction.
9. Respondent's decision to agree to settle the claims in the underlying action is made in contemplation of the expenses associated with litigating this action through hearing and the uncertainty connected with litigation, and it is not to be interpreted as an admission of fault or liability under the Act.

III. INVESTIGATIVE FINDINGS

10. Complainant Kim Kendrick was the Assistant Secretary for Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development. Pursuant to the authority granted to the Assistant Secretary under 42 U.S.C. §3610, Complainant Kendrick, on behalf of the Secretary of the U.S. Department of Housing and Urban Development, filed a HUD complaint alleging discrimination based on familial status.
11. The subject property, Windsor Gardens, is a "Common Interest Community" located at 595 South Clinton Street, Denver, Colorado 80247. The subject property consists of 84 buildings with approximately 2,690 condominium units and more than 3,000 residents.
12. Respondent is a Colorado nonprofit corporation established to operate and manage the subject property. At all times relevant to the Charge, Respondent was responsible for the operation, maintenance, and management of the subject property, including responsibility for the subject property's rules, bylaws, restrictions, and policies.
13. At all times relevant to the Charge, Respondent's operational and governing documents and policies prohibited residency of children under the age of 17 at the subject property.
14. The original 1962 condominium declarations for the subject property were amended, restated, and consolidated into a certain "Amended and Restated Condominium Declaration for Windsor Gardens" ("Amended and Restated Declaration") recorded in the real estate records of the City and County of Denver, Colorado, on March 27, 2002.
15. Article 5.3 of the Amended and Restated Declarations, "Age, Use, and Occupancy Restriction," stated: "Windsor Gardens is an independent living community for active adults. Each Unit shall at all times be occupied and used by a person not less than fifty (50) years of age; provided, however, that any resident children occupying the Unit shall not be below the age of seventeen (17)."
16. Between March 27, 2002 and December 27, 2009, the "Amended and Restated Declarations" was amended once on March 1, 2004, to repeal Article 3, Section 3.6(h) regarding working capital reserve, which amendment was approved by members holding a majority of the total Association vote (at least 1,345 members). Another amendment to the Amended and Restated Declaration was recorded in on April 30, 2009, which amendment authorized an owner to combine two units and required approval of only the Board and the owner combining the two units. The Association failed to amend Article 5.3 "Age, Use, and Occupancy Restrictions."
17. On or about December 28, 2009, but subsequent to the filing of the HUD Complaint, Respondent amended Article 5.3 of its Amended and Restated Condominium Declaration to read:

Windsor Gardens is an age restricted independent living community for active adults primarily 55 years of age or older. The Condominium shall

be operated in compliance with all applicable Federal and State laws regarding housing for older persons. No person under 17 years of age may occupy a unit. The Board may establish policies and procedures from time to time as necessary to maintain Windsor Gardens' status as an age restricted community under Federal and State laws and such policies and procedures as may be desirable to further address occupancy of units.

18. From at least March 27, 2002, through December 27, 2009, Article 5.3 of Respondent's Amended and Restated Condominium Declaration, "Age, Use, and Occupancy Restriction" stated: "Windsor Gardens is an independent living community for active adults. Each Unit shall at all times be occupied and used by a person not less than fifty (50) years of age; provided, however, that any resident children occupying the Unit shall not be below the age of seventeen (17)."
19. From at least December 2006 until December 2009, Respondent's Community Rental Policy restricted rental occupancy to heads of household at least 50 years of age and over without resident children under the age of 17. The rental policy stated in part: "Age and Occupancy restriction. No apartment shall be rented to another unless the head of household regularly residing in the unit is 50 years of age or over and no children under the age of 17 will be living in the unit."
20. Prior to the filing of the HUD Complaint, Respondent actively marketed the subject property for persons over the age of 50. Respondent's marketing portfolio and print literature consistently contained language that indicated a preference, limitation, or discrimination based upon familial status.

IV. ACTIONS IN THE PUBLIC INTEREST

21. Mandatory Education and Training:

- (a) Within ninety (90) calendar days of the effective date of this Consent Order, Respondent agrees that all members of its office staff and Community Center staff who interact with its homeowners and members of the general public on behalf of Respondent will attend two (2) hours of Fair Housing Training pertaining to their obligations under the Federal Fair Housing Act and applicable state and local non-discrimination laws. The Fair Housing Training is to be conducted by HUD's Office of Fair Housing and Equal Opportunity or other appropriate state or local agency or facility approved by HUD. If Respondent wants to engage a trainer other than HUD, then written approval of the trainer must be solicited and obtained from the FHEO Regional Director (address below) at least thirty (30) calendar days prior to the commencement of the training.
- (b) Respondent also agrees that time will be set aside at a board meeting of the Respondent within sixty (60) days following each election of the Board for a fair housing briefing to keep the Board apprised of fair housing issues. This briefing

may be provided by the Board's legal counsel or other appropriate state or local agency or facility approved by HUD.

- (c) Respondent shall prepare a packet of materials to be provided to all new members of its office staff and the Community Center staff who interact with its homeowners and members of the general public on behalf of Respondent who are hired after the mandatory training is provided that addresses their obligations under the Fair Housing Act. These materials will be provided to new staff on their first day of work at the subject property and will be explained to them by their supervisor. These materials will be provided to HUD for review and approval. Respondent shall make any changes to the materials, as directed by HUD.
- 22. Verification of Occupancy: Within thirty (30) calendar days of the effective date of this Consent Order, Respondent shall develop and then maintain policies and procedures to reliably document the age of all new occupants at the subject property through a reliable source as outlined in 24 C.F.R. § 100.307 (2010) to ensure that each of its occupied units are occupied by at least one person 55 years of age or older.
 - 23. Survey and Verification of Occupancy: Respondent shall conduct a survey, pursuant to 24 C.F.R. § 100.307(d)(7) (2010), to demonstrate through reliable means that at least 80% of the units are occupied by at least one person 55 years of age or older, at least once every two (2) years, with the next survey being completed by January 30, 2012.
 - 24. Notice of Fair Housing Rights: Within thirty (30) calendar days of the effective date of this Consent Order, Respondent will make readily available in its office to all visitors and homeowners the brochure provided by HUD entitled "Fair Housing – Equal Opportunity for All."
 - 25. Fair Housing Posters: Within twenty (20) calendar days of the effective date of this Consent Order, Respondent agrees to display a HUD Fair Housing poster, to be supplied by HUD, in a conspicuous location in the office of the subject property. The poster shall be displayed throughout the term of this Consent Order.
 - 26. Other Housing Discrimination Complaints: For a period of five (5) years from the effective date of this Consent Order, Respondent will notify HUD of any formal complaint filed against them with a local, state or federal agency regarding equal opportunity or discrimination in housing within ten (10) days of any such complaint. Respondent will provide a copy of the complaint with the notification to HUD. The notification will include the full details of the complaint, including the complainant's name, address, and telephone number. Respondent will also promptly provide HUD with all information it may request concerning any such complaint and its actual or attempted resolution.

V. CIVIL PENALTY

27. Within thirty (30) days after the effective date of this Consent Order, Respondent shall pay a total of twenty-three thousand dollars (\$23,000.00) as a civil penalty, pursuant to 24 C.F. R. § 180.671 (2010). This payment must be in the form of a certified or cashier's check payable to the U.S. Department of Housing & Urban Development. The check should be sent to:

Bank of America
PO Box 277303
Atlanta, GA 30384

Accompanying the check must be a cover letter from Respondent indicating that the check is for the civil penalty. The check and cover letter must reference both the FHEO and HUD ALJ case numbers. Respondent must send a copy of the check and cover letter to the HUD attorney handling the case at the same time the check and cover letter are sent to the Bank of America.

VI. MUTUAL RELEASE

28. In consideration of the execution of this Consent Order, and other good and valuable consideration, Complainant hereby forever waives, releases, and covenants not to sue Respondent, its successors, assigns, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, with respect to the Complaint arising out of the subject matter of HUD Case Number 08-07-0229-8.
29. In consideration of the execution of this Consent Order, Respondent hereby forever waives, releases, and covenants not to sue HUD, its successors, assigns, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 08-07-0229-8 or which could have been filed in any action or suit arising from said subject matter.

VII. NON-RETALIATION

30. Respondent acknowledges it has an affirmative duty not to discriminate under the Act, 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 the Act. Respondent further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Consent Order, and a statutory violation of the Act.

VIII. REPORTING AND RECORDKEEPING

31. Respondent shall forward to the FHEO Regional Director objective evidence of the successful completion of Fair Housing Training, including the names of all attendees of the training, in the form of a certificate or a letter from the entity conducting the training, within ten (10) calendar days of the completion of the training, as evidence of compliance with Paragraph 21 of this Consent Order and within ten (10) calendar days of any Fair Housing briefing of the Board, including the names of all attendees of the briefing.
32. Respondent shall forward to the FHEO Regional Director a copy of the Fair Housing materials to be provided to new office and Community Center staff pursuant to Paragraph 21 of this Consent Order within thirty (30) calendar days of the effective date of this Consent Order. Further, Respondent shall submit a written declaration under penalty of perjury to the FHEO Regional Director within thirty (30) calendar days of delivering these Fair Housing materials to each new office and Community Center employee that such materials have been delivered and explained to that new employee.
33. Pursuant to Paragraph 24 of this Consent Order, Respondent shall submit a declaration under penalty of perjury that it made the HUD brochure entitled "Fair Housing – Equal Opportunity for All" readily available to all current homeowners and visitors of Windsor Gardens, describing how and where the brochure is made available. The declaration shall be provided to the FHEO Regional Director within forty (40) calendar days of the effective date of this Consent Order.
34. Within thirty (30) calendar days of receipt of the required signage from HUD, Respondent shall submit a written declaration under penalty of perjury to the FHEO Regional Director that it has complied with Paragraph 25 of this Consent Order by displaying Fair Housing posters in the specified location.
35. Within thirty (30) days of the effective date of this Consent Order, Respondent shall submit a copy of the policies and procedures identified in Paragraph 22 to the FHEO Regional Director.
36. Respondent shall submit the survey completed pursuant to Paragraph 23 of this Consent Order to the FHEO Regional Director for review for compliance with the applicable regulation no later than thirty (30) calendar days from completion of the survey. HUD shall promptly inform Respondent of any deficiencies in the survey, and Respondent shall submit a corrected survey within the time period directed by HUD.
37. All required notifications, certifications, and documentation of compliance must be submitted to:

Evvy Meininger, FHEO Regional Director
Region VIII
Office of Fair Housing and Equal Opportunity

1670 Broadway Avenue, 23rd Floor
Denver, CO 80202

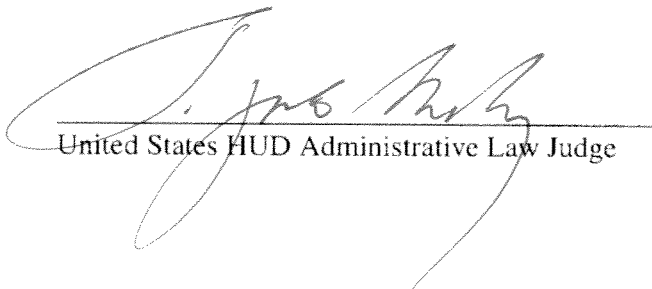
IX. COMPLIANCE

38. HUD shall determine compliance with the terms of this Consent Order.
39. During the term of this Consent Order, FHEO may review compliance with this Consent Order, subject to and in accordance with HUD regulations. As part of such review, FHEO may, upon providing advance notice of said inspection, inspect Respondent's property, examine witnesses, and copy pertinent records of Respondent.
40. Respondent agrees to provide its full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.
41. Upon a breach of any provision of this Consent Order, HUD may petition the United States Court of Appeals for the Tenth Circuit for the enforcement of the final decision and for appropriate temporary relief or a restraining order in accordance with 42 U.S.C. § 3612(j) (2010).

X. ADMINISTRATION

42. This Consent Order shall remain in effect for a period of five (5) years from its effective date.
43. For purposes of this Consent Order, the effective date of this Consent Order is the date that this Consent Order is signed by the HUD ALJ.
44. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) (2010) and 24 C.F.R. § 180.450 (2010). This Consent Order shall become final upon the expiration of thirty (30) calendar days from the date of its issuance or affirmance by the Secretary within that time. 42 U.S.C. § 3612(h) (2010); 24 C.F.R. § 180.680(b)(2) (2010).

Signed this 6th day of AUGUST, 2010.


United States HUD Administrative Law Judge