

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, on behalf of the National Fair)	
Housing Alliance,)	
)	
Charging Party,)	HUD ALJ No. 11-F-020-FH-7
)	FHEO No. 09-09-0082-8
v.)	
)	4/6/11 AR
David Johnson,)	
)	
Respondent.)	
)	
)	

INITIAL DECISION AND CONSENT ORDER

I. Background

On October 21, 2008, the National Fair Housing Alliance ("Complainant" or "NFHA") filed a timely complaint with the United States Department of Housing and Urban Development ("HUD" or the "Department"), alleging that Respondent¹ violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the "Act"), by printing, publishing, or causing to be made, printed, or published an advertisement online with respect to the rental of a dwelling that indicates a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination in violation of 42 U.S.C. § 3604(c).

On December 16, 2009, Complainant amended the complaint to specifically name Respondent David Johnson ("Respondent"), the real estate broker who posted the advertisement, and Kelly R. Lee, the identified owner of the subject property. The Department attempted to serve a notice of the amended complaint on Kelly R. Lee by certified mail, but was unsuccessful.² On January 19, 2011, Complainant amended the complaint to remove Kelly R. Lee.

¹ Complainant identified Respondent as "hous-456791927@craigslist.org, Carnegie & W Horizon Ridge, Las Vegas, NV" in the October 21, 2008 complaint.

² Notwithstanding the Department's initial telephone contact with Ms. Lee, the Department's subsequent efforts to locate and serve Ms. Lee were unsuccessful.

On February 25, 2011, following an investigation of the complaint and a determination that reasonable cause exists to believe that a discriminatory housing practice occurred, the Charging Party issued a Charge of Discrimination ("Charge"). On May 4, 2011, the parties filed a Joint Motion to Stay Proceedings because the parties reached an agreement in principle as to the terms of settlement. On May 5, 2011, Administrative Law Judge Alexander Fernández granted the Stay of Proceedings. The parties, as indicated by the signatures at the end of this document, have consented to the entry of this Initial Decision and Consent Order.

The following facts are undisputed by the parties:

- i) At all times relevant to the Charge, Complainant NFHA was a not-for-profit consortium of private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States.
- ii) At all times relevant to the Charge, Respondent David Johnson was a licensed real estate broker for Refined Rentals, LLC, in Las Vegas, Nevada.
- iii) At all times relevant to the entry of this Initial Decision and Consent Order, Respondent no longer practiced as a licensed real estate broker.
- iv) At all times relevant to the entry of this Initial Decision and Consent Order, Refined Rentals, LLC was dissolved.
- v) At all times relevant to the Charge, Kelly R. Lee owned the property located at 2521 Breezy Cove Avenue, Henderson, Nevada 89052. ("Subject Property"). The Subject Property is a two-story, single family house with five bedrooms and four bathrooms

II. General Provisions

- 1. By the signing of this Initial Decision and Consent Order, the parties agree that the Charging Party will file the Initial Decision and Consent Order with HUD's Office of Administrative Law Judges requesting its approval and issuance pursuant to 24 C.F.R. § 180.450.
- 2. The parties acknowledge that this Initial Decision and Consent Order is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Initial Decision and Consent Order.

3. It is understood that Respondent denies any violation of law, and that this Initial Decision and Consent Order does not constitute an admission by the Respondent.
4. This Initial Decision and Consent Order will become effective and final thirty (30) days after it is issued by the HUD Administrative Law Judge or upon affirmance by the Secretary within that time. *See* 24 C.F.R. §§ 180.450 and 180.680(b).
5. The term of this Initial Decision and Consent Order shall be three (3) years from its effective date.
6. This Initial Decision and Consent Order does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondent made pursuant to the Act, or any other complaint within the Department's jurisdiction for events not arising out of or formed under the basis for this Initial Decision and Consent Order.
7. This Initial Decision and Consent Order is binding upon the U.S. Department of Housing and Urban Development, the Complainant and their successors and assigns, and the Respondent and his agents, heirs, successors and assigns.
8. No amendment to, modification of, or waiver of any provision of this Initial Decision and Consent Order shall be effective unless all of the following provisions are met: (a) all signatories or their successors to the Initial Decision and Consent Order agree in writing to the amendment, modification or waiver; and (b) the amendment, modification or waiver is in writing.
9. The parties agree that, in the interest of concluding this matter, this Initial Decision and Consent Order may be executed by the parties' signatures on separate pages. The separate signed pages will be attached to the body of the Initial Decision and Consent Order to constitute one document. To avoid delay, the parties agree that signature pages received via Portable Document Format ("PDF") and/or facsimile will be considered official provided that the original copy of the signature page is forwarded to Counsel for the Department (U.S. Department of Housing and Urban Development, Office of Counsel, Region IX, 600 Harrison Street, 3rd Floor, San Francisco, CA 94107-1300) immediately upon its signing. Both the original, PDF and faxed signature pages will be retained in the official case file.
10. In exchange for Respondent's compliance with the provisions of this Initial Decision and Consent Order, the Complainant hereby forever waives, releases and covenants not to sue the Department, Respondent,

their heirs, executors, 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 HUDALJ Case No. 11-F-020-FH-7 and FHEO Case No. 09-09-0082-8 or which could have been filed in any action or suit arising from said subject matter.

11. In exchange for Complainant's compliance with the provisions of this Initial Decision and Consent Order, the Respondent hereby forever waives, releases and covenants not to sue the Department, the Complainant, their heirs, executors, 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 HUDALJ Case No. 11-F-020-FH-7 and FHEO Case No. 09-09-0082-8 or which could have been filed in any action or suit arising from said subject matter.

III. Injunctive Relief

12. Respondent, his agents and all other persons in active concert with him are hereby enjoined from:
 - a. Discriminating on the basis of familial status in violation of 42 U.S.C. § 3604(c) by printing, publishing, or causing to be made, printed, or published advertisements with respect to the rental or sale of a dwelling that indicate a preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination;
 - b. Coercing, intimidating, threatening or interfering with persons in the exercise or enjoyment of their right to seek fair housing, or on account of their having exercised or enjoyed their right to seek fair housing pursuant the Act; and/or
 - c. Retaliating against any person because that person has made a complaint, testified, assisted or participated in any manner in this proceeding.
13. Respondent acknowledges that any subsequent retaliation or discrimination against the Complainant constitutes both a material breach of this Initial Decision and Consent Order, and a separate and discreet statutory violation of the Act not covered by this Initial Decision and Consent Order.

IV. Damages for Complainant

14. In exchange for the waivers and releases described in this Initial Decision and Consent Order, Respondent agrees to take the following actions and will provide the Department with written certification that these requirements have been met:

i) Respondent agrees to pay the amount of \$500.00 (FIVE HUNDRED DOLLARS AND 00/100) in the form of two separate \$250.00 (TWO HUNDRED AND FIFTY DOLLARS AND 00/100) checks payable to National Fair Housing Alliance. Respondent will mail the first check directly to the Complainant by certified mail at the following address within ten (10) days of the effective date of this Initial Decision and Consent Order:

National Fair Housing Alliance
Attn: Shanna Smith, President & CEO,
& Anne V. Houghtaling, Director of Enforcement
1101 Vermont Avenue, NW, Suite 710
Washington, DC 20005

Respondent will mail the second check directly to the Complainant by certified mail at the above address within ninety (90) days of the effective date of this Initial Decision and Consent Order

ii) A copy of the checks shall be forwarded respectively within ten (10) days and ninety (90) days of the effective date of this Initial Decision and Consent Order to the U.S. Department of Housing and Urban Development, Office of Counsel, Region IX, 600 Harrison Street, 3rd Floor, San Francisco, CA 94107-1300.

V. Relief in the Public Interest

15. Within sixty (60) days of the effective date of this Initial Decision and Consent Order, Respondent shall read the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.*, as well as its implementing regulations at 24 C.F.R. Part 100. Respondent shall certify in a letter to the Department that he has read the Act and its implementing regulations and shall mail the certification letter to the Department (U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Attention: Conciliation Review, 600 Harrison Street, 2nd Floor, San Francisco, CA 94107-1300) within ten (10) days of reading the Act and its implementing regulations.

16. Respondent agrees that if Respondent engages in the practice of real estate within two (2) years of the effective date of this Initial Decision and

Consent Order, Respondent will attend four (4) hours of fair housing training within ninety (90) days of engaging in such practice. Respondent shall pay for any cost of the training. The training shall be conducted by a reputable fair housing organization. A notarized certificate of completion including the attendee's name, date and description of the training course shall be forwarded to the Department (U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Attention: Conciliation Review, 600 Harrison Street, 2nd Floor, San Francisco, CA 94107-1300) within ten (10) days of completion of the training.

VI. Monitoring and Compliance

17. The Department shall determine compliance with the terms of this Initial Decision and Consent Order. During the term of this Initial Decision and Consent Order, HUD may review compliance with this Initial Decision and Consent Order. As part of such review, HUD may examine witnesses and copy pertinent records. Respondent agrees to provide his full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Initial Decision and Consent Order.
18. Upon a breach of any provision of this Initial Decision and Consent Order, the United States may petition the appropriate United States Court of Appeals for the enforcement of this Initial Decision and Consent Order and for appropriate relief in accordance with 42 U.S.C. § 3612(j).

VII. Reporting and Record Keeping

19. This Initial Decision and Consent Order contains specific actions that are required of the Complainant and Respondent. These actions must be completed within the specified time frames, and satisfactory completion must be verified by the Department. It is understood that this Initial Decision and Consent Order will serve as the basic notice of the required contents of and deadlines for progress reports. Failure to provide documentation of compliance with the terms of this Initial Decision and Consent Order constitutes breach of this Initial Decision and Consent Order.
20. As directed by this Initial Decision and Consent Order, all required certifications and documentation of compliance must be submitted to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Attention: Conciliation Review
600 Harrison Street, 2nd Floor
San Francisco, CA 94107-1300

VIII. Integration

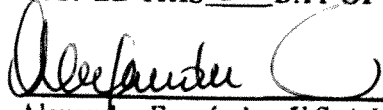
23. This Initial Decision and Consent Order memorializes and constitutes the entire agreement and understanding between the parties and supersedes and replaces all prior negotiations, proposed agreements and agreements between the parties, whether written or unwritten. The parties acknowledge that no person or entity, nor an agent or attorney of any person or entity, has made any promises, representations, or warranties whatsoever, express or implied, which are not expressly contained in this Initial Decision and Consent Order, and the parties further acknowledge that they have not executed this Initial Decision and Consent Order in reliance upon any collateral promise, representation, warranty, or in reliance upon any belief as to any fact or matter not expressly recited in this Initial Decision and Consent Order

IX. Administration

24. The signatures of the parties to this Initial Decision and Consent Order constitute a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612(p) and 24 C.F.R. § 180.705.

Accepted and Issued Pursuant to 24 C.F.R. § 180.450.

SIGNED THIS 6th DAY OF JUNE, 2011.


Alexander Fernández, U.S. Administrative Law Judge

X. Signatures

The parties below have read this Initial Decision and Consent Order and have willingly signed it with a full understanding of the rights it confers and the responsibilities it imposes on them.

FOR COMPLAINANT:


Shanna Smith, NFHA President & CEO

May 19, 2011
Date