

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS**

The Secretary, United States )  
Department of Housing and Urban )  
Development, on behalf of Heidi Ketterman, )

Charging Party, )

and )

Heidi Ketterman, )

Complainant-Intervenor, )

v. )

Gerald Peterson, d/b/a Jay's Hilltop Rentals, )

Respondent. )

HUD ALJ No. 12-JM-061-FH-21  
FHEO Nos. 05-12-0159-8

**INITIAL DECISION AND CONSENT ORDER**

**I. JURISDICTION**

This matter arose from a complaint of disability discrimination filed by Complainant Heidi Ketterman ("Complainant") on October 22, 2011 pursuant to the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601, *et seq.* (hereinafter the "Act"). On September 17, 2012, the Charging Party issued a Charge of Discrimination (hereinafter "Charge") against Respondent Gerald Peterson ("Respondent"), alleging that Respondent committed a discriminatory housing practice in violation of 42 U.S.C. §§ 3604 (f)(2) and (c) of the Act.

**II. BACKGROUND**

On or about September 17, 2012, the Secretary of the U.S. Department of Housing and Urban Development (hereinafter "the Department" or "HUD") commenced this action on behalf of Complainant, an aggrieved person as defined by 42 U.S.C. § 3602(i), pursuant to Section 810(g)(1) and (2) of the Act, as amended, 42 U.S.C. § 3610(g)(1) and (2).

The Charge alleged that on October 22, 2011, Respondent and his property manager, Richard Black, visited Complainant's unit located at 404 N.E. 8<sup>th</sup> Avenue, Grand Rapids, Minnesota, a mixed use multifamily rental property owned by Respondent ("subject property").<sup>1</sup> According to

<sup>1</sup> The subject property also has an alternate address, 817 N.E. 4<sup>th</sup> Street, Grand Rapids, Minnesota.

the Charge, when Respondent mentioned to Complainant that he heard Complainant had a pet, which was prohibited by the lease agreement Complainant responded that the cat she had was not a pet but an emotional support animal that helps with her disability, and showed him a note from her therapist recommending a support animal; Respondent, however, refused to accept the note or express acceptance of her reasonable accommodation request, and stated that Complainant could keep her cat if she paid an extra security deposit. The Charge further alleged that when Complainant insisted that she had a right to the animal under anti-discrimination laws and "HUD rules," Respondent expressed a strong disagreement. Finally, the Charge alleged that after that incident, neither Respondent nor Richard Black made any communication to Complainant indicating they would allow her to keep her cat or otherwise mention what she had to do for them to officially allow the cat in the subject property. Complainant filed her complaint with HUD on the very day of the incident, October 22, 2011.

Respondent admits that he did not accept the note offered by Complainant, that he mentioned she could keep her cat if she placed an extra security deposit, and that he did not express acceptance of Complainant's reasonable accommodation request. Respondent, however, alleges that he did not deny Complainant's reasonable accommodation request because she was allowed to stay in the subject property and he made no effort to remove her or her cat or otherwise subject to any adverse actions.

In order to avoid uncertain and costly litigation, Respondent has agreed to resolve the above-captioned case with the Charging Party and Complainant without the need for a hearing or adjudication of the merits or damages. Other than as stated herein, the parties recognize and agree that this Consent Order is the compromise of disputed claims and that the consideration accepted and paid hereunder is not intended to, nor shall it be construed by anyone to, be an admission of liability by or on behalf of Respondent, by whom all such liability is expressly denied. Respondent and Complainant, after having given careful consideration to the issue, have consented to the entry of this Initial Decision and Consent Order (hereinafter "Consent Order"), as indicated by the signatures of the parties and counsel below. The parties agree that the Charging Party shall file with the Office of Administrative Law Judges a Motion for Entry of an Initial Decision and Consent Order, along with this Initial Decision and Consent Order, after this document is executed by all parties.

### **III. ACTIONS IN THE PUBLIC INTEREST**

#### **A. Injunction from Discrimination**

1. It is hereby ORDERED that during the effective period of this Consent Order, Respondent and his heirs, executors, assigns, agents, employees, guardians, and successors, and all other persons in active concert or participation with him in the ownership or operation of the subject property and any other properties owned or managed by him (collectively, "Agents"), are permanently enjoined from discrimination against any person on the basis of disability, in any aspect of rental of a dwelling, pursuant to Section 3604 (f), (c) and Section 3617 of the Act. Respondent hereinafter promises and agrees to comply with all the provisions of the Act relevant to the subject property and any other properties owned and/or

managed by him. Respondent agrees that he will rent the subject property and any other properties owned and/or managed by him to qualified occupants on a non-discriminatory basis as required by the federal Fair Housing Act, regardless of the need for reasonable accommodation.

2. Respondent and his Agents are hereby enjoined, with respect to rental of dwellings, from:
  - a. Making unavailable or denying a dwelling unit to any person because of disability, or refusing or failing to provide or offer information about a dwelling unit or showing or renting a dwelling unit to any person because of disability.
  - b. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling unit, or in the provision of services or facilities in connection therewith, because of disability, including failing to engage in an interactive process in connection with rental inquiry or an accommodation request, or denying an accommodation request except as permitted under the Fair Housing Act.
  - c. Making, statement with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based upon disability, including requiring extra security deposit for allowing a service or a support animal or stating that mental or emotional disabilities are not legitimate or real in the context of rental or reasonable accommodation request.
  - d. Representing to any person, because of disability, service animal or support animal, that any dwelling unit is not available for inspection or rental when such dwelling unit is, in fact, so available, or evicting a tenant for making a reasonable accommodation request or for having a support animal that is reasonable and necessary to ameliorate the effects of his or her disability.
  - e. Coercing, intimidating, threatening, interfering with, or retaliating against any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act.

**B. Adoption and Implementation of Non-Discrimination Policy**

1. Within five (5) days after the date of entry of this Consent Order, Respondent shall notify in writing all residents of residential rental properties owned or operated by Respondent and/or his Agents that any rules prohibiting pets will not be enforced against service animals or support animals that provide services related to disability and that residents with disabilities may make reasonable accommodation requests to Respondent and/or his Agents.
2. Within thirty (30) days after the date of entry of this Consent Order, Respondent shall prominently post in the lobby of the subject property a fair housing sign no smaller than ten (10) inches by fourteen (14) inches indicating that Respondent operates and manages the subject property on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part

110 will satisfy this requirement. Respondent shall submit photographs showing that the fair housing poster has been posted along with a written declaration under penalty of perjury that Respondent has posted the posters in the requisite location.

3. Within ten (10) days after the date of entry of this Consent Order, Respondent shall adopt a Reasonable Accommodation Policy and Assistance Animal Policy. Those policies must be maintained by Respondent and provided to tenants and applicants without being requested or posted in a visible manner in a common area of the rental properties owned or operated by Respondent and/or his Agents throughout the effective period of this Consent Order. If Respondent and/or his Agents need a written verification of disability or relationship between disability and accommodation requested, Respondent shall utilize a Reasonable Accommodation/Modification Request Verification. A copy of the Reasonable Accommodation Policy, Assistance Animal Policy and Reasonable Accommodation/Modification Request Verification (collectively, "policy documents") should be sent to HUD after they are adopted, and HUD may reject the policy documents. While this Order is in effect, Respondent and/or his Agents must notify HUD before altering, modifying, or otherwise changing the language of the policy documents, and HUD may reject those changes.
4. While this Order is in effect, Respondent and/or his Agents must report to HUD any reasonable accommodation requests made to them and any application filed by a person representing he/she is disabled, as well as the action they took in response to those requests and applications within sixty (60) days of the request or application, or fifteen (15) days of the final action, whichever is earlier. The report must provide the latest contact information of the relevant resident or applicant.
5. As soon as practicable, but not later than three (3) months after the entry of this Consent Order, Respondent will send to HUD proof that residents have received copies of policy documents or that the policy documents have been posted in a visible place in a common area.

#### **C. Training**

1. Within four (4) months of the entry of this Consent Order, any Agent of Respondent engaged in, rental and/or management activities, including a property manager or legal guardian, must attend fair housing training conducted by a qualified person or agency, acceptable to HUD, concerning their responsibilities under federal fair housing laws, regulations and ordinances. Respondent may contact HUD Attorney Sol Kim at (312) 913-8019 for assistance in locating an acceptable agency for training purposes. Respondent shall provide copies of the Consent Order to all such employees and agents in advance of the training. Respondent is responsible for any and all costs associated with such fair housing training. While this Consent Order is effective, in case a new Agent is hired, employed, appointed to engage in sale, rental and/or management activities or otherwise becomes involved in such activities, that new Agent must be also trained under this Provision within two (2) months of his or her hiring, employment, appointment or involvement.

Respondents and each employee and/or agent identified above shall provide a certificate of completion to HUD, in the same or similar form as that attached hereto as "Attachment A," evidencing that they have successfully completed the course. Within thirty (30) days of completion of such training course, the certificate of completion shall be completed and mailed to HUD by regular mail.

#### **D. Report and Notification to HUD**

All required notifications, reports, requests for approvals and documentations of compliance must be submitted to HUD as follows, unless otherwise indicated:

Courtney Minor, Regional Counsel, Region V  
U.S. Department of Housing and Urban Development  
77 West Jackson Boulevard, Room 2617  
Chicago, Illinois 60604-3507

#### **IV. SPECIFIC RELIEF**

In exchange for the Complainant's and Charging Party's agreement to dismiss this Charge and the waiver, settlement, satisfaction and dismissal of any and all fair housing claims arising out of, or in connected with, the instant action, by the Charging Party and Complainant, Respondent shall:

- A. Respondent shall not engage in active fulltime management of the subject property and shall delegate day to day operation and management responsibilities of the subject property to his Agent.
- B. Pay to Complainant the sum of \$10,000 on or before January 4, 2013 as full settlement of Complainant's damages arising out of the allegations presented in the Charge. The \$10,000 payment shall be in the form of two cashier's checks made payable in the amount of \$ 3,334.20 (three thousand three hundred thirty four dollars and twenty cents) to "Cummins and Cummins" and in the amount of \$ 6,665.80 (six thousand six hundred sixty five dollars and eighty cents) to "Heidi Ketterman." The check to "Cummins and Cummins" must be overnighted (postmarked by January 4, 2013) to the following address:

JUSTIN CUMMINS  
Cummins & Cummins  
1245 International Centre  
902 Second Avenue South  
Minneapolis, MN 55402

The check to "Heidi Ketterman" must be made available in the rental office of the subject property before 12:00 p.m. (noon) on January 4, 2013 for Complainant or her son to pick up.

A copy of the aforementioned checks must be mailed to HUD.

- C. Failure to mail the above cashier's check to "Cummins and Cummins" by January 4, 2013, or failure to make the cashier's check to "Heidi Ketterman" available on or before January 4, 2013 will each constitute a breach of this Consent Order, except with Complainant's prior written consent. If Respondent breaches this Consent Order by failing to make a payment in a timely manner, Respondent will be also responsible for interest on the amount owed at 5% annum, which shall accrue until Complainant receives the payment in full. Additionally, Respondent will be responsible for any costs and attorney fees that Complainant incurs in collecting such payments.
- D. Due to the foregoing payments, HUD agrees to waive any and all civil penalties assessable by the Government as to Respondent.
- E. During the effective period of this Consent Order, Complainant or her son shall not be subject to adverse action or treated differently than other tenants by the reason of her pursuit of fair housing rights, including this proceeding. Respondent and/or his Agents will not subject Complainant or her son to harassment or provide a negative reference by the reason of a disability, emotional support animal, or the present litigation. If Respondent and/or his Agents take such an action, that will be considered a breach of this Consent Order. Additionally, Complainant or her son may file a separate retaliation claim under 42 U.S.C. § 3617. The foregoing restriction does not apply to normal rent increases, reasonable deduction of security deposit based on legitimate and documented damage to the subject property, or non-renewal based on legitimate business needs or material lease violations, including nonpayment of rent.
- F. Respondent and/or his Agents shall not penalize Complainant or her son if they terminate Complainant's lease early or Complainant withdraws from her co-tenancy early.
- G. In exchange for the financial and affirmative relief provided by Respondent in this Consent Order, Complainant agrees to the dismissal of the Charge of Discrimination against Respondent.

#### **V. COMPLIANCE AND MONITORING BY HUD**

Between the date of the entry of this Consent Order and three (3) years from said date, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations. As part of such review, HUD may, upon providing advance notice of said inspection, inspect the subject property, examine witnesses, and copy pertinent records of Respondent and/or his Agents. Respondents agree to provide their full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.

#### **VI. MUTUAL RELEASE**

In consideration of Respondent's payment to Complainant, compliance with the conditions and terms of this Consent Order and with all orders of this tribunal described herein, and for other good and valuable consideration, Complainant, her successors, assigns, agents, employees, and attorneys hereby forever waives, releases, and covenants not to sue Respondent or the Department, their successors, heirs, executors, assigns, agents, employees, or attorneys, including any subsequent owner of the subject property 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 ALJ No. 12-JM-061-FH-21, or which could have been filed in any action or suit arising from said subject matter by Complainant. This Consent Order does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondent and/or the subject property made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction.

In consideration of the execution of this Consent Order, and other good and valuable consideration, Respondent and his Agents hereby forever waive, release, and covenant not to sue the Department or Complainant or their officers, 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 ALJ No. 12-JM-061-FH-21 or which could have been filed in any action or suit arising from said subject matter.

## **VII. GENERAL PROVISIONS**

- A. The parties acknowledge that this Consent Order is a voluntary and full settlement of the Charge. No party has been coerced, intimidated, threatened, or in any way forced to become a party to the Consent Order. The parties affirmatively state that they have read and fully understand the significance of all the terms set forth herein.
- B. The parties and their counsel agree that, in the interest of prompt conclusion of this matter, the execution of this Consent Order by the parties may be accomplished by separate execution of consents (the original executed Consent and Signature Pages) to be attached to the body of this Consent Order to constitute one document.
- C. The signatures of the parties to this Consent Order may be executed by way of electronic mail and/or 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.
- D. The parties and their counsel agree that if the situation arises where a party to this agreement needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained by a written agreement bearing signatures of all of the parties.
- E. This Consent Order shall govern the conduct of the parties to it for a period of three (3) years following the date this Consent Order becomes final pursuant to 42 U.S.C. § 3612(h).

- F. The Consent Order is binding upon Complainant, Respondent and his Agents.
- G. It is understood that the Initial Decision and Consent Order shall be a public document.
- H. The signatures of the parties to this Consent Order further constitute a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612(p).

#### **VIII. DISMISSAL OF CHARGE**

In consideration of Respondent's payment to Complainant, compliance with the terms and conditions of this Consent Order, and all orders contained herein, the Charging Party and Complainant agree to the dismissal, without a formal determination of the allegations that Respondent injured Complainant by violating the Act. Therefore, the Charge against Respondent is hereby DISMISSED with prejudice. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order.

#### **IX. COMPLIANCE**

The dismissal herein shall not constitute an adjudication of a discriminatory housing practice pursuant to 24 C.F.R. § 180.671(a). Failure to satisfy the terms of this Consent Order is a breach of the Consent Order, which may be enforced in the United States Court of Appeals pursuant to 42 U.S.C. § 3612(j) and (m).

#### **X. CONSENT AND SIGNATURES**

The undersigned parties have read the foregoing Consent Order, HUD ALJ No. 12-JM-061-FH-21 and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes on them, as signified by their signature below:

**FOR COMPLAINANT:**

\_\_\_\_\_  
HEIDI KETTERMAN

Date: \_\_\_\_\_

**COUNSEL FOR COMPLAINANT:**

\_\_\_\_\_



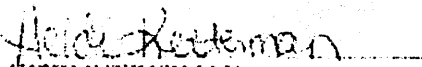
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**FOR COMPLAINANT:**

  
HEDI KETTERMAN

Date: 01-04-2013

**COUNSEL FOR COMPLAINANT:**

\_\_\_\_\_  
JUSTIN CUMMINS  
Cummins & Cummins  
1245 International Centre  
Minneapolis, MN 55402

Date: \_\_\_\_\_

**FOR RESPONDENT:**

\_\_\_\_\_  
GERALD PETERSON  
Signed by JEFF PETERSON as power of attorney for Gerald Peterson

**COUNSEL FOR RESPONDENT:**

\_\_\_\_\_  
GREG GILBERT  
11 E. Superior Street, Suite 563  
Duluth, Minnesota 55802

- F. The Consent Order is binding upon Complainant, Respondent and his Agents.
- G. It is understood that the Initial Decision and Consent Order shall be a public document.
- H. The signatures of the parties to this Consent Order further constitute a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612(p).

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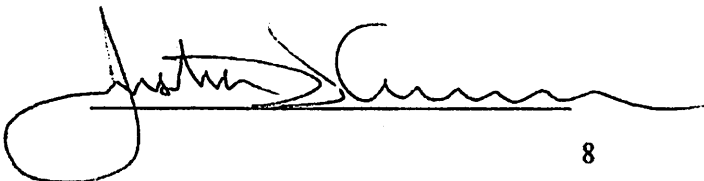
The undersigned parties have read the foregoing Consent Order, HUD ALJ No. 12-JM-061-FH-21 and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes on them, as signified by their signature below:

**FOR COMPLAINANT:**

\_\_\_\_\_  
HEIDI KETTERMAN

Date: \_\_\_\_\_

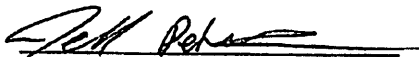
**COUNSEL FOR COMPLAINANT:**

  
\_\_\_\_\_

JUSTIN CUMMINS  
Cummins & Cummins  
1245 International Centre  
Minneapolis, MN 55402

Date: 1-4-13

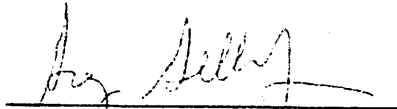
**FOR RESPONDENT:**



GERALD PETERSON

Signed by JEFF PETERSON as power of attorney for Gerald Peterson


**COUNSEL FOR RESPONDENT:**



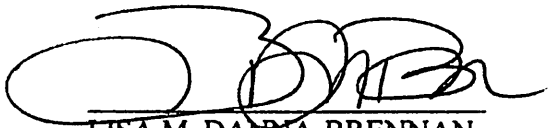
GREG GILBERT

11 E. Superior Street, Suite 563  
Duluth, Minnesota 55802

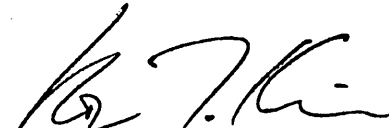
**COUNSEL FOR THE CHARGING PARTY  
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:**

  
COURTNEY MINOR  
Regional Counsel  
Region V

Date 1/4/13

  
LISA M. DANNA-BRENNAN  
Associate Regional Counsel for Litigation, Region V

Date 1/4/13

  
SOL KIM  
Trial Attorney

Date 1/4/13

  
DANA ROSENTHAL  
Trial Attorney  
U.S. Department of Housing  
and Urban Development  
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77 West Jackson Boulevard, #2617  
Chicago, Illinois 60604-3507  
(312) 353-6236, Ext. 2613  
FAX: (312) 886-4944

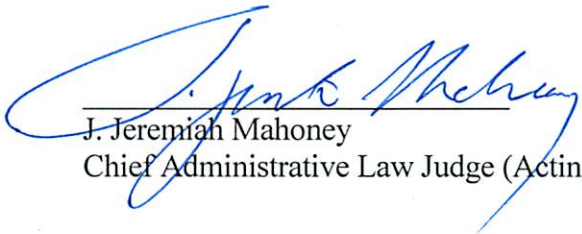
Date 1/4/13

## XI. ORDER OF THE COURT

This Consent Order is entered pursuant to the Fair Housing Act, 42 U.S.C. § 3612(g)(3), and shall become final upon the expiration of thirty (30) days or by confirmation of the Secretary within that time. See 42 U.S.C. § 3612(h). The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the 30 day Secretarial review period, and a waiver of any right to challenge the validity of this Consent Order at any time.

The scheduled hearing date in this matter was cancelled to accommodate proceedings with the settlement judge. On January 7, 2013, the parties forwarded to the Court the foregoing Order, incorporating the terms of their agreement. The Court, having read the agreement, finds that it appears to be in the public interest. All parties have given their consent as reflected by their signatures to the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and issued.

So **ORDERED**, this 8th day of January 2013.



J. Jeremiah Mahoney  
Chief Administrative Law Judge (Acting)