

**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 Complainant)	
Metropolitan St. Louis Equal Housing)	
Opportunity Council,)	
)	
Charging Party,)	HUDALJ: 12-JM-071-FH-31
)	
v.)	FHEO No.: 07-11-0533-8
)	
H & H Development Group, Inc.;)	February 24, 2014
Larry D. Nelson; McBride & Son)	
Contracting Co., Inc., d/b/a Builder's Bloc;)	
Fribis Engineering, Inc.; and Pine Creek)	
Engineering, Inc.)	
)	
Respondents.)	
)	

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On September 28, 2012, the U.S. Department of Housing and Urban Development ("HUD," "Secretary," "Department," or "Charging Party") commenced this action by issuing a Charge of Discrimination ("Charge") on behalf of Complainant Metropolitan St. Louis Equal Housing Opportunity Council ("Complainant EHOC") against Respondents H & H Development Group, Inc. ("Respondent H & H"); Larry D. Nelson ("Respondent Nelson"); McBride & Son Contracting Co., Inc., d/b/a Builder's Bloc ("Respondent Builder's Bloc"); Fribis Engineering, Inc. ("Respondent Fribis"); and Pine Creek Engineering, Inc. ("Respondent Pine Creek"). The Charge alleged the Respondents violated the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (2014) (the "Act"), based on disability¹ by failing to design and construct the subject property in compliance with 42 U.S.C. §§ 3604(f)(2)(A) and (3)(C). On November 20, 2012, HUD amended the Charge ("First Amended Charge") to clarify several of the factual allegations.

¹ This Initial Decision and Consent Order will use "disability" in the place of "handicap," the term which appears in the Fair Housing Act. The terms have the same legal meaning.

Valle Creek Condominiums, the subject property, is located in Pevely, Missouri.² The subject property consists of one (1) three (3) story building containing a total of thirty-six (36) condominium units with no elevators. There are twelve (12) units on each floor and three (3) breezeways with stairwells providing access to the units. The twelve (12) ground floor units are designated as units 100 through 111.

The subject property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20. The twelve (12) ground floor units are “covered multifamily dwellings” as defined by the Act. 42 U.S.C. § 3604(f)(7); 24 C.F.R. § 100.201. The subject property’s public and common use areas are also covered by the Act. 42 U.S.C. § 3604(f)(3)(C)(i); 24 C.F.R. §§ 100.201 and 100.205(c)(1). The subject property’s public and common use areas include the building entrances, sidewalks, parking areas, curb ramps, trash dumpsters, mailbox units, a clubhouse and a swimming pool.

Complainant EHOC is a private, not-for-profit fair housing enforcement agency located in St. Louis, Missouri. Complainant EHOC’s mission is to ensure equal access to housing and places of public accommodation for all people. Complainant EHOC seeks to further its mission through education, counseling, investigation and enforcement activities. On or about September 28, 2010, Complainant EHOC conducted an accessibility survey of the subject property, and subsequently filed a fair housing complaint with HUD on April 11, 2011.

Respondent H & H was the owner, developer and general contractor for the subject property. Respondent H & H was incorporated in the state of Missouri, but was administratively dissolved by the Missouri Secretary of State on October 17, 2011, for failing to maintain a registered agent. Respondent H & H and the subject property are currently under a Missouri state court receivership initiated by Truman Bank, but now held by Simmons First National Bank. The state court appointed John Holborow, president of Holborow Builders Group, LLC., to serve as the Receiver of Respondent H & H and the subject property. Mr. Holborow is not professionally or personally liable for any duties or obligations attributed to Respondent H & H under this Initial Decision and Consent Order.

Respondent Larry D. Nelson is a licensed architect in the state of Missouri. Respondent Nelson prepared plans for the current thirty-six (36) unit building, and a never built twenty-four (24) unit building, of the subject property. Respondent Nelson also prepared a set of plans for the subject property’s clubhouse, which was already partially constructed at the time based off of an earlier set of plans not prepared by Respondent Nelson.

Respondent Builder’s Bloc provided trade subcontracting services and that participated substantially in the construction of the subject property, by performing concrete and foundation work including the breezeways and patios, flat work and carpentry work using the design plans and/or field modifications provided by Respondent H & H. Respondent Builder’s Bloc is incorporated in the state of Missouri.

² While the subject property is legally located in the city of Pevely, Missouri, the property has the following mailing address: 8011 Valle Creek Parkway, Barnhart, Missouri 63012.

Respondent Fribis was the civil engineer that provided the site plans and design details for the subject property. Respondent Fribis is incorporated in the state of Missouri.

Respondent Pine Creek was a mechanical and electrical engineer subconsultant to Respondent Nelson that provided the electrical, plumbing, heating, ventilation and air conditioning systems design for the subject property. Respondent Pine Creek was incorporated in the state of Missouri, but was administratively dissolved by the Missouri Secretary of State on July 18, 2007, for failing to file an annual report.

Respondents Builder's Bloc, Fribis, Nelson and Pine Creek expressly deny any violation of the Act as alleged in the First Amended Charge. However, in order to avoid the additional cost and expense of litigation, Respondents Builder's Bloc, Fribis, Nelson and Pine Creek agree to settle the claims in the underlying action 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 Respondents Builder's Bloc, Fribis, Nelson and Pine Creek, which they continue to deny and refute.

II. GENERAL PROVISIONS

1. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed Charge and First Amended Charge. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it.
2. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations hereunder. The parties acknowledge that the terms set forth herein are contractual and not merely a recital of the parties' intentions.
3. This Consent Order is binding upon HUD, Complainant EHOC, and Respondents Builder's Bloc, Fribis, Nelson and Pine Creek, their employees, heirs, successors, agents, assigns and all others in active concert with them. In the event the subject property is transferred or sold prior to full performance of all the provisions of this Consent Order, Respondents Builder's Bloc, Fribis, Nelson and Pine Creek agree to fulfill their obligations noted in this Consent Order until full performance of the provisions.
4. Pursuant to 24 C.F.R. § 180.680(a), the parties understand that this Consent Order shall be a public document.
5. This Consent Order contains specific actions that are required of Respondents Builder's Bloc, Fribis, Nelson and Pine Creek. These actions must be completed within the specified timeframes, and satisfactory completion must be verified by the Department.

III. MUTUAL RELEASE

6. In consideration of the execution of this Consent Order, HUD hereby forever waives, releases, and covenants not to sue Complainant EHOC or Respondents Builder's Bloc, Fribis, Nelson and Pine Creek, their heirs, executors, assigns, agents, employees, or attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject property or subject matter of HUDALJ 12-JM-071-FH-31/ FHEO Case No. 07-11-0533-8, or which could have been filed in any action or suit arising from said subject matter.
7. In consideration of the execution of this Consent Order, Complainant EHOC hereby forever waives, releases, and covenants not to sue HUD or Respondents Builder's Bloc, Fribis, Nelson and Pine Creek, their heirs, executors, assigns, agents, employees, or attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject property or subject matter of HUDALJ 12-JM-071-FH-31/ FHEO Case No. 07-11-0533-8, or which could have been filed in any action or suit arising from said subject matter.
8. In consideration of the execution of this Consent Order, Respondents Builder's Bloc, Fribis, Nelson and Pine Creek hereby forever waive, release, and covenant not to sue HUD or Complainant EHOC, their heirs, executors, assigns, agents, employees, or attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject property or subject matter of HUDALJ 12-JM-071-FH-31/ FHEO Case No. 07-11-0533-8, or which could have been filed in any action or suit arising from said subject matter.

IV. RELIEF FOR THE COMPLAINANT

9. Within thirty (30) calendar days of the entry of this Consent Order, Respondent Nelson shall pay to Complainant EHOC the total sum of Two Thousand Eight Hundred Dollars (\$2,800.00) in full settlement of Complainant EHOC's claim for damages arising out of the allegations presented in the First Amended Charge. The payment shall be by certified or cashier's check, made payable to the Metropolitan St. Louis Equal Housing Opportunity Council and sent by certified or overnight mail (or similar method with delivery tracking and confirmation) to: Metropolitan St. Louis Equal Housing Opportunity Council, c/o Will Jordan, Executive Director, 1027 S. Vandeventer Avenue, 6th Floor, St. Louis, MO 63110.
10. Within thirty (30) calendar days of the entry of this Consent Order, Respondent Nelson shall pay the total sum of Thirty-Two Thousand Two Hundred Dollars (\$32,200.00) to a Retrofit Fund. The payment shall be by certified or cashier's check, made payable to the Valle Creek Condominiums Retrofit Fund. The payment shall be paid into an interest bearing account at a financial institution pursuant to written instructions to be provided by HUD. The payment will serve as full settlement of the damages arising out of the allegations presented in the First Amended Charge as to Respondents Nelson and Pine Creek, and they shall have no further financial obligation under this Consent Order,

except for the payment referenced in Paragraph 9 above. To the extent the monies deposited by Respondents Nelson and Pine Creek into the Valle Creek Condominiums Retrofit Fund are not sufficient to pay for all of the necessary corrective actions required to bring the subject property into compliance with the Act, HUD and Complainant EHOC hereby forever waive, release, and covenant not to sue Respondents Nelson and Pine Creek for any such deficiency in the Valle Creek Condominiums Retrofit Fund.

11. Monies deposited in the Valle Creek Condominiums Retrofit Fund shall be used to pay for the costs of the corrective actions that are necessary in the covered multifamily dwellings and the public and common use areas of the subject property. The corrective actions shall comply with the Fair Housing Act, the Fair Housing Accessibility Guidelines, and the American National Standard ANSI A117.1-1986, but completing the corrective actions shall not be the responsibility of Respondents Nelson and/or Pine Creek.
12. Monies deposited in the Valle Creek Condominiums Retrofit Fund will also be used to pay for the services of a fund administrator to establish and administer the Valle Creek Condominiums Retrofit Fund. HUD shall designate a fund administrator³ to establish and administer the Valle Creek Condominiums Retrofit Fund. The Valle Creek Condominiums Retrofit Fund shall be administered pursuant to a contract between the fund administrator and HUD. The contract shall include a list of the specific corrective actions to be completed at the subject property.
13. As soon as reasonably possible after entry of this Consent Order, but in any event, not more than twelve (12) months after entry of this Consent Order, Respondent Builder's Bloc, at its own expense, shall undertake and complete the corrective actions in the public and common use areas as set forth in Exhibit A.
14. Respondent Builder's Bloc will contact and coordinate with the Receiver for the subject property on the date(s) and time(s) of Respondent Builder's Bloc's proposed visit(s) to the subject property to start and complete the corrective actions as set forth in Exhibit A. The Receiver shall not deny reasonable access for planning or construction necessary to complete the corrective actions.
15. Within ten (10) calendar days of completing the corrective actions as set forth in Exhibit A, Respondent Builder's Bloc shall notify and certify in writing to counsel for HUD that the corrective actions have been completed in compliance with this Consent Order.
16. Within sixty (60) calendar days of HUD's receipt of notification and certification from Respondent Builder's Bloc of the completion of the corrective actions, HUD representatives will inspect the corrective actions completed by Respondent Builder's Bloc at the subject property to determine compliance with the Consent Order.

³ John Holborow, the court appointed Receiver of the subject property, has tentatively agreed to serve as the fund administrator of the Valle Creek Condominiums Retrofit Fund. Mr. Holborow can be reached at (314) 713-5225 or john.hbg@att.net.

17. Within thirty (30) calendar days of the inspection by HUD, the Department will notify Respondent Builder's Bloc in writing whether the corrective actions are in compliance with this Consent Order. If Respondent Builder's Bloc's corrective actions comply with the Consent Order, Respondent Builder's Bloc will be in full settlement of the claims in the First Amended Charge. If Respondent Builder's Bloc's corrective actions do not comply with this Consent Order, HUD will notify Respondent Builder's Bloc of any deficiencies and provide Respondent Builder's Bloc sixty (60) calendar days to remedy any deficiencies to comply with the Consent Order.

V. ACTIONS IN THE PUBLIC INTEREST

18. Respondents Builder's Bloc, Fribis, Nelson and Pine Creek shall not:
 - a. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or the provision of services or facilities in connection with such dwelling, because of disability. 42 U.S.C. § 3604(f)(2) (2014).
 - b. Design and/or construct covered multifamily dwellings in such a manner that fails to comply with the following requirements of the Act: (i) the public use and common use portions of such dwellings are readily accessible to and usable by disabled persons; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (iii) all premises within such dwellings contain the following features of adaptive design: I) an accessible route into and through the dwelling; II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; III) reinforcements in bathroom walls to allow later installation of grab bars; and IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C) (2014).
19. Respondent Nelson has previously certified in writing to HUD's counsel's satisfaction that he has completed a minimum of eight (8) hours of training within the last year pertaining to fair housing and accessibility.⁴
20. Within one hundred and eighty days (180) calendar days of the entry of this Consent Order, Respondents Builder's Bloc and Pine Creek shall ensure their employees who have supervisory responsibility for the design and/or construction of covered multifamily dwellings have a copy of, personally review and are familiar with the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* (2014) and the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (Mar. 6, 1991).

⁴ Counsel for Respondent Nelson sent the required training certification on July 22, 2013, to counsel for HUD, satisfying this portion of the Consent Order.

21. Within one hundred and eighty days (180) calendar days of the entry of this Consent Order, Eugene Fribis of Respondent Fribis shall attend a minimum of eight (8) hours of Fair Housing training pertaining to his obligations under the Fair Housing Act, including compliance with the Act's design and construction requirements. Mr. Fribis may meet the eight (8) hours of Fair Housing training requirement by attending free training conducted by HUD's St. Louis Office of Fair Housing and Equal Opportunity (FHEO), or relevant training offered by a state or local government agency, a for-profit or non-profit entity, or on-line courses. Mr. Fribis may contact the Director of the St. Louis FHEO⁵ to discuss a mutually agreeable date, time and place for the training offered by FHEO. Approval to attend relevant Fair Housing training not offered by FHEO must be solicited and obtained in writing from the FHEO Regional Director (address below) at least thirty (30) days prior to the commencement of the training. Upon successful completion of the eight (8) hours of training conducted by FHEO, Mr. Fribis will sign a certification of completion indicating that his training requirement under the Consent Order is completed.

VI. REPORTING AND RECORDKEEPING

22. Pursuant to Paragraph 9 of this Consent Order, within ten (10) calendar days of the check's delivery to Complainant EHOC, Respondent Nelson shall send a copy of the certified or cashier's check made payable to the Metropolitan St. Louis Equal Housing Opportunity Council and the mailing receipt tracking receipt, to the attention of Alphonso L. Eason, Trial Attorney, at the address below.
23. Pursuant to Paragraph 10 of this Consent Order and written instructions to be provided by HUD, Respondent Nelson shall send a copy of the certified or cashier's check made payable to the Valle Creek Condominiums Retrofit Fund, and the mailing receipt tracking receipt, to the attention of Alphonso L. Eason, Trial Attorney, at the address below.
24. Pursuant to Paragraph 15 of this Consent Order, within ten (10) days of completing the corrective actions at the subject property, Respondent Builder's Bloc shall notify and certify in writing to counsel for HUD that the corrective actions in Exhibit A are completed in compliance with this Consent Order.
25. Pursuant to Paragraph 19 of this Consent Order, counsel for HUD acknowledges he has previously received written certification that Respondent Nelson has completed the training requirement.
26. Pursuant to Paragraph 20 of this Consent Order, within two hundred and ten (210) calendar days of the entry of this Consent Order, Respondents Builder's Bloc and Pine Creek shall submit to counsel for HUD a written certification that the relevant employees have completed the required review of the Fair Housing Act, as amended, and the Fair Housing Accessibility Guidelines.

⁵ Ed Wartts is the current Director of the St. Louis Office of FHEO. Mr. Wartts can be reached at (314) 418-5411 or Eddie.L.Wartts@hud.gov.

27. Pursuant to Paragraph 21 of this Consent Order, within ten (10) calendar days of the completion of the training requirement, Eugene Fribis of Respondent Fribis shall forward to counsel for HUD a written certification that notes he has completed the training requirement.
28. Unless otherwise indicated, all required verifications, notifications or certifications of compliance with this Consent Order must be submitted to HUD, either by e-mail or regular mail, to all of the following people:

Betty Bottiger, Director
Region VII
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Gateway Tower II
400 State Avenue
Kansas City, KS 66101-2406
Email: Betty.Bottiger@hud.gov

Alphonso L. Eason, Trial Attorney
Office of Regional Counsel
U.S. Department of Housing and Urban Development
Gateway Tower II
400 State Avenue
Kansas City, KS 66101-2406
Email: Alphonso.L.Eason@hud.gov

VII. COMPLIANCE

29. During the term of this Consent Order, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations.
30. The parties shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Order.
31. Upon breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Eighth Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j).

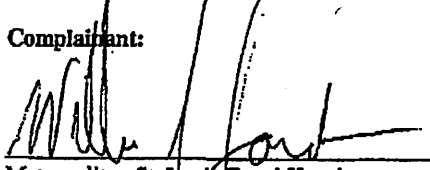
VIII. ADMINISTRATION

32. This Consent Order shall remain in effect for a period of two (2) years from its effective date or until compliance with all material terms on an individual basis as to each Respondent.

33. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. 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) (2013); 24 C.F.R. § 180.680(b)(2) (2014).
34. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30) day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at this time.
35. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other complaints involving Respondents, made pursuant to the Act, or any other complaints within HUD's jurisdiction. If the terms of the Consent Order are met, HUD agrees not to pursue any claims against Respondents Builder's Bloc, Fribis, Nelson or Pine Creek, related to the subject property arising out of the subject matter of the First Amended Charge.
36. The parties agree that if a party to this agreement needs an extension of time in order to satisfy a deadline provided in this Consent Order, such extension must be obtained in writing from counsel for HUD.
37. The signatures of the parties to this Consent Order constitute a waiver of any right to apply for attorney's fees or costs pursuant to 24 C.F.R. § 180.705. Each party is responsible for its own attorney's fees and costs.
38. 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 individual signature pages to be attached to the body of the Consent Order to constitute one document to be filed with the Office of Administrative Law Judges. Signatures of the parties to this Consent Order may be executed by way of facsimile or electronic transmission.

IX. AGREEMENT OF THE PARTIES

Complainant:


Metropolitan St. Louis Equal Housing
Opportunity Council
Executive Director

1-29-2014
Date

IX. AGREEMENT OF THE PARTIES

Respondent:

Eugene A. Fribis
Respondent Fribis
c/o Eugene Fribis

January 23, 2014
Date

Respondent's Representative:

Charles Dufour
Charles Dufour, Esq.

Jan 27, 2014
Date

IX. AGREEMENT OF THE PARTIES

Respondent:

Holborow Builders Group, LLC

John Holborow, Receiver

H & H Development Group, Inc.

John Holborow, Receiver

not as an individual, but solely as President of

Holborow Builders Group, LLC.

Court Appointed Receiver for H & H Development
Group, Inc., and Lots 1 & 3 Holly Acres (Valle Creek
Condominiums)

1/24/2014

Date

IX. AGREEMENT OF THE PARTIES

Respondent:

By: John F. Eilermann, Jr.
McBride & Son Contracting Co., Inc. LLC*
d/b/a Builder's Bloc
By: John F. Eilermann, Jr., CEO

2/14/2014
Date

Respondent's Representative:

Theresa L. Kitay

2/14/2014

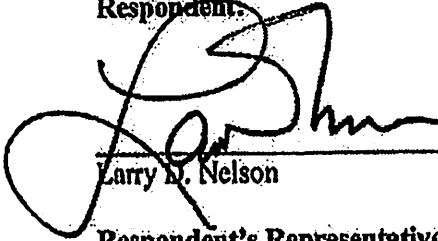
Theresa L. Kitay, Esq.

Date

* McBride & Son Contracting Co., Inc., d/b/a Builder's Bloc ("Builder's Bloc"), a named Respondent in this case, was incorporated in the state of Missouri at the time of the allegations and the filing of this litigation. On December 30, 2013, under the laws of the state of Missouri, Builder's Bloc converted from a corporation to a limited liability company, called McBride & Son Contracting, Co., LLC d/b/a Builder's Bloc ("Builder's Bloc"). The current entity for Builder's Bloc assumes the duties and obligations of the prior corporation under this Initial Decision and Consent Order.

IX. AGREEMENT OF THE PARTIES

Respondent:



Larry M. Nelson

1-21-14
Date

Respondent's Representative:

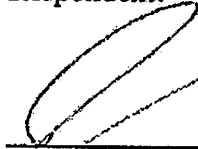
 # 43229 no

William S. Thomas, Esq.

1/30/14
Date

IX. AGREEMENT OF THE PARTIES

Respondent:

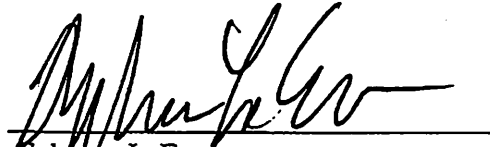
A handwritten signature, possibly reading "John Zekind", is written over a horizontal line.

Pine Creek Engineering, Inc.
c/o John Zekind, Registered Agent

2/3/14
Date

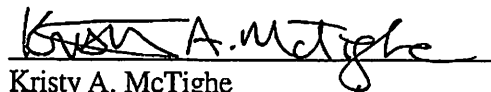
IX. AGREEMENT OF THE PARTIES

For the Secretary, United States Department of Housing and Urban Development



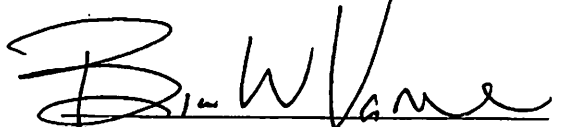
Alphonso L. Eason
Trial Attorney

February 21, 2014
Date



Kristy A. McTighe
Trial Attorney

2/21/14
Date



Bion W. Vance
Associate Regional Counsel, Region VII

2/21/2014
Date

X. ORDER OF THE COURT

The hearing in this matter was originally scheduled for February 26, 2013. On December 20, 2012, this Court temporarily cancelled the hearing and granted HUD's motion for a stay of proceedings. The Court granted HUD's subsequent requests for a further stay of proceedings.

On February 21, 2014, the parties filed a motion for entry of this Initial Decision and Consent Order, incorporating the terms of their settlement agreement. The Court, after reviewing the agreement finds that it appears to be in the public interest. All parties have given their consent and signed the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and issued.

So ORDERED, this 24 day of FEBRUARY, 2014.



J. Jeremiah Mahoney
Acting Chief Administrative Law Judge