

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 Belinda  
Burgess and the Estate of Walter  
Burgess,

Charging Party,

v.

Montgomery County Housing  
Authority

Respondent

ALJ # 13-AF-0069-FH-002  
FHEO No. 03-11-0272-8

3/27/13  
AF

---

**INITIAL DECISION AND CONSENT ORDER**

**I. BACKGROUND**

This matter arose from a complaint of disability discrimination filed by Complainants Belinda Burgess and the Estate of Walter Burgess ("Complainants") with the United States Department of Housing and Urban Development (the "Department") pursuant to the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601, *et seq.* (the "Act"). Complainants alleged that Respondent Montgomery County Housing Authority ("Respondent") refused to provide them with a reasonable accommodation.

On December 20, 2012, the Charging Party issued a Charge of Discrimination ("Charge") against Respondent for violations of 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3), which prohibit discriminating in housing on the basis of disability and refusing to provide reasonable accommodations.

None of the parties involved in this matter elected to have their claims decided in a civil action. An administrative hearing has been scheduled for April 9, 2013. However, to avoid uncertain and costly litigation, the parties have agreed to resolve the above-captioned case without the need for a hearing. Respondent admits no fault or liability. The Department, Complainant, and Respondent have consented to the entry of this Initial Decision and Consent Order (hereinafter "Consent Order"), as indicated by the signature of the parties and their counsel below.

## **II. RELIEF IN THE PUBLIC INTEREST**

It is hereby understood and agreed that Respondent, its heirs, executors, assigns, agents, employees, and successors, and all other persons in active concert or participation with them in the ownership, operation or management of the subject property and any other properties owned or managed by them are permanently enjoined from discriminating against any person on the basis of disability, in any aspect of rental or sale of a dwelling, pursuant to §§ 3604(f)(1), (f)(2), and (f)(3) of the Act.

Respondent acknowledges that the Act makes it unlawful to:

1. Discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability<sup>1</sup> of: that buyer or renter; a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that buyer or renter.
2. Discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability of: that buyer or renter; a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that buyer or renter.
3. Refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling.

It is hereby understood and agreed that this provision does not deny MCHA the required due process under the applicable regulations. It is understood and agreed that HUD will not bring a claim for violation of this provision unless MCHA has been found, in an administrative proceeding or Civil Action, or after a full investigation by HUD, to have violated the Fair Housing Act.

## **III. SPECIFIC RELIEF**

In exchange for the Department's agreement to dismiss this Charge, and Complainants' agreement to release their claims against Respondent (as described in Sections IV and VIII of this Agreement):

- A. Respondent or its insurance company shall pay the total sum of \$22,134 to Complainants in the form of a certified check made payable to Belinda Burgess within fifteen (15) days of the effective date of this Consent Order, to be sent by Federal Express or Certified Mail to the following address:

---

<sup>1</sup> The term "disability" is used herein in place of, and has the same meaning as, the term "handicap" in the Act and its implementing regulations.

Belinda Burgess  
1636 Washington Avenue  
Willow Grove, PA 19090

- B. Within fifteen days of the date of the issuance of the certified check made payable to Belinda Burgess referenced in Section III.A of this Consent Order, Respondent shall send a copy of the check to HUD's Regional Counsel, via First Class Mail, at the following address:

Sheryl L. Johnson, Regional Counsel, Region III  
U.S. Department of Housing and Urban Development  
Office of the Regional Counsel  
The Wanamaker Building, 100 Penn Square East  
Philadelphia, Pennsylvania 19107

- C. Within three (3) months of the effective date of this Consent Order, Respondent shall insert in all published advertising regarding housing availability and in all newly printed copies of the Pre-Application form used by Respondent the fair housing logo described in HUD regulations at 24 C.F.R. § 110.25 (2013), and the following language:

**EQUAL HOUSING OPPORTUNITY:**

We Do Business in Accordance with the Fair Housing Act  
(The Civil Rights Act of 1968, as amended by the Fair Housing  
Amendments Act of 1988).

**IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY  
PERSON BECAUSE OF RACE, COLOR, RELIGION, SEX,  
HANDICAP, FAMILAL STATUS (HAVING ONE OR MORE  
CHILDREN), OR NATIONAL ORIGIN IN THE SALE OR  
RENTAL OF HOUSING OR RESIDENTIAL LOTS.**

- D. For a period of three (3) years from the effective date of the Consent Order, Respondent will provide to HUD on a quarterly basis reports identifying each reasonable accommodation request received by Respondent and what actions were taken in response to each request. The information shall be mailed to the Department, via First Class Mail, at the following address:

Melody Taylor-Blancher  
Office of Fair Housing and Equal Opportunity, Region III  
U.S. Department of Housing and Urban Development  
The Wanamaker Building, 100 Penn Square East  
Philadelphia, Pennsylvania 19107

#### **IV. MUTUAL RELEASE**

In consideration for Respondent's payment to Complainants, 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, the Department and Complainants Belinda Burgess and the Estate of Walter Burgess, their successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue Respondent, its successors, 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 HUD ALJ No. 13-AF-0069-FH-002, or which could have been filed in any action or suit arising from said subject matter; however, any claims or causes of action that accrue after the execution of this Consent Order are not subject to the releases as set forth in this paragraph. The releases set forth in this paragraph do not affect the rights and responsibilities of the Department and Respondent under the Voluntary Compliance Agreement signed today settling the Department's findings of noncompliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act based on the underlying facts of this case (FHEO Case Numbers 03-11-0272-4 and 03-11-0272-D).

In consideration for the execution of this Consent Order, and other good and valuable consideration, Respondent, its successors, assigns, agents, employees, and attorneys, including any subsequent owner of the subject property, hereby forever waive, release, and covenant not to sue the Department or Belinda Burgess or the Estate of Walter Burgess 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. 13-AF-0069-FH-002, or which could have been filed in any action or suit arising from said subject matter; however, any claims or causes of action that accrue after the execution of this Consent Order are not subject to the releases as set forth in this paragraph. The releases set forth in this paragraph do not affect the rights and responsibilities of the Department and Respondent under the Voluntary Compliance Agreement signed today settling the Department's findings of noncompliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act based on the underlying facts of this case (FHEO Case Numbers 03-11-0272-4 and 03-11-0272-D).

#### **V. 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 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 facsimile transmission or electronic transmission in PDF form 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 mutual agreement of the parties and all signatories, or their successors, in writing.
- 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. This Consent Order is binding upon Complainants, Respondent and its employees, heirs, successors, assigns, and all others working for or associated with Respondent who are involved in the operation of any residential rental property owned or operated by Respondent.
- G. It is understood that this Consent Order shall be a public document. However, it is agreed and understood that HUD will not issue any press release and/or mass publication relating to this Consent Order.
- H. Except as provided herein, the signatures of the parties to this Consent Order further constitute a waiver of any right to apply for additional attorney's fees or costs pursuant to 42 U.S.C. § 3612 (p) and 24 C.F.R. § 180.705 (2013).
- I. This 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 Fair Housing Act, or any other complaint within the Department's jurisdiction.

## **VI. MONITORING BY HUD**

Respondent agrees and understands that pursuant to a situation which reasonably so warrants, the Department, on request of Complainants or on its own motion, may review compliance with this Consent Order. As a part of such review, the Department may require written reports concerning compliance, may inspect, with reasonable notice, any and all residential rental properties owned or operated by Respondent, examine witnesses, and examine and copy pertinent records of Respondent at any reasonable time between the effective date of the Consent Order and three (3) years from said date.

Respondent agrees to provide full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Consent Order.

## **VII. PUBLICITY**

The Department, Complainants, and Respondent agree that they will not issue a press release or hold a press conference regarding this Consent Order. However, the parties may respond to specific media inquiries and may provide requested documents to the media or others in accordance with the Freedom of Information Act and any corresponding rules, regulations, and internal procedures.

## **VIII. DISMISSAL OF CHARGE**

In consideration of Respondent's payment to Complainants and compliance with the terms and conditions of this Consent Order, and all orders contained herein, the Charging Party agrees to the dismissal, without a formal determination, of the allegations that Respondent injured Complainants by violating the Act. Therefore, as of the effective date of this Consent Order, 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**

Respondent's 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). Moreover, if Respondent fails to make full, timely payment to Complainants or otherwise comply with this order, the ALJ will retain jurisdiction to hear a motion by the Charging Party to set aside this Consent Order and set a hearing on the merits of the Charge. Respondent hereby waives its right to object to such motion. As a sanction for the Respondent's breach of this Consent Order, should the Charging Party move to conduct such hearing, and should such motion be granted and a hearing occur, the Respondent shall be liable to the Charging Party for the Charging Party's reasonable attorney's fees and costs in making such motion and conducting such hearing.

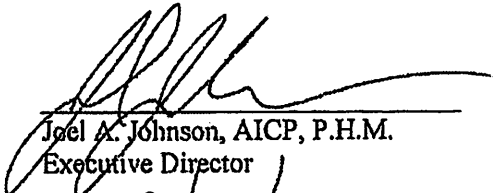
## **X. ADMINISTRATION**


This Consent Order is entered into pursuant to the Fair Housing Act and its implementing regulations, 24 C.F.R. § 180.450 (2013). This Consent Order shall remain in effect for a period of three (3) years from its effective date. The effective date of the Consent Order shall be the date it becomes final, *i.e.*, upon the expiration of thirty (30) days from the date of its issuance or affirmance by the Secretary within that time. *See* 42 U.S.C. §3612(h); 24 C.F.R. § 180.680(b) (2013). 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 this Consent Order at any time.

**XI. CONSENT AND SIGNATURE PAGES**

The undersigned party has read the foregoing Consent Order, HUD ALJ No. 13-AF-0069-FH-002, and willingly consents to it with a full understanding of the rights it confers and the responsibilities it imposes, as signified by its signature and the signature of its counsel below:

FOR RESPONDENT MONTGOMERY COUNTY HOUSING AUTHORITY:

  
Joel A. Johnson, AICP, P.H.M.  
Executive Director  
Date: 03/25/2013

  
WENDI BARISH  
Respondent's Attorney  
Date: 3/25/2013

# **XI. CONSENT AND SIGNATURE PAGES**

The undersigned parties have read the foregoing Consent Order, HUD ALJ No. 13-AF-0069-FH-002, and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes, as signified by their signatures below:

**FOR COMPLAINANT BELINDA BURGESS:**

*Belinda Burgess*  
BELINDA BURGESS

Date: *March 25, 2013*

**FOR COMPLAINANT ESTATE OF WALTER BURGESS:**

*Belinda Burgess*  
BELINDA BURGESS  
Estate Administratrix


Date: *March 25, 2013*




**XI. CONSENT AND SIGNATURE PAGES**

The undersigned counsel have read the foregoing Consent Order, HUD ALJ No. 13-AF-0069-FH-002, and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes, as signified by their signatures, below:

FOR THE DEPARTMENT:

  
SHERYL L. JOHNSON  
Regional Counsel  
Region III

3/22/13  
Date

  
MARGARET BALDWIN  
Attorney-Advisor  
U.S. Department of Housing  
and Urban Development  
Office of Regional Counsel  
Region III  
The Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107-3380  
Telephone: (215) 430-6653  
Fax: (215) 656-3446

3/27/13  
Date



## XII. ORDER OF THE COURT

This Consent Order settling HUD ALJ Case No. 13-AF-0069-FH-002 has been signed by all parties and appears to be in the public interest. Accordingly, the terms of the Consent Order are hereby entered.

SO ORDERED this 27<sup>th</sup> day of MARCH, 2013.

A handwritten signature in blue ink, appearing to read "Alexander Fernández", followed by a large, stylized circular flourish.

Alexander Fernández  
ADMINISTRATIVE LAW JUDGE