

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

Vance Green,
and The Fair Housing Council of Northern
New Jersey,

Charging Party,

v.

Michael Pontoriero and
Mary Ann Pontoriero,

Respondents.

HUDALJ 13-AF-0136-FH-008

September 3, 2013

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INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On June 19, 2013, the United States Department of Housing and Urban Development ("HUD") filed a Charge of Discrimination against Michael and Mary Ann Pontoriero (collectively, "Respondents"), private landlords and co-owners of two rental buildings located in North Arlington, New Jersey. The Charge alleged that Respondents violated Sections 804(a), (b) and (c) of the Fair Housing Act (the "Act") by denying or discouraging the rental of housing to applicants on the basis of race and/or color (African-American/Black).

The Charge alleged that on July 28, 2009, Complainant Green contacted Respondent Michael Pontoriero in response to a newspaper advertisement placed by Respondents which listed an available one-bedroom apartment at 44 Beech Street, North Arlington, New Jersey. The Charge alleged that Respondent Michael Pontoriero scheduled an appointment for Complainant Green to view the vacant apartment the following day but, upon becoming aware of Complainant Green's race and/or color (African-American/Black), Respondent Michael Pontoriero failed to appear for the appointment or respond to Complainant Green's telephone calls.

The Charge further alleged that having been contacted by Complainant Green regarding his experience, Complainant Fair Housing Council of Northern New Jersey ("FHC") constructed a test to determine whether Respondents' actions constituted illegal housing discrimination. The

Charge alleged that the results of the tests provide evidence of illegal housing discrimination in violation of the Act.

II. GENERAL PROVISIONS

A. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaints. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations under it.

B. The entry of this Consent Order shall not be deemed as an admission of fault or liability by Respondents.

C. The parties and counsel 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.

D. This Consent Order is binding upon Respondents, their employees, successors, agents, assigns and all others in active concert with them in the ownership and management of rental housing units. This Consent Order is a full settlement of all claims by Complainants, in any way related to the allegations set forth in the subject Charge of Discrimination.

E. 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, by any other complainants within HUD's jurisdiction.

F. The parties agree that if a party to this agreement needs an extension of time in order to satisfy a deadline provided in the agreement, such extension must be obtained in writing by mutual agreement of the parties.

G. Pursuant to 24 C.F.R. § 180.680(a), the parties understand that this Consent Order shall be a public document.

H. The signatures of the parties to this Consent Order constitute a waiver of any right to apply for additional 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.

III. INDIVIDUAL RELIEF

Within 30 days of the entry of this Consent Order, Respondents shall pay to Complainant Green the sum of \$10,000 in full settlement of any claims for damages arising out of the allegations presented in the Charge. Payment shall be made by certified check to:

Vance Green
130 Rutherford Place, Apt. 2B
North Arlington, NJ 07031

Within 30 days of the entry of this Consent Order, Respondents shall pay to Complainant FHC the sum of \$5,000 in full settlement of any claims for damages arising out of the allegations presented in the Charge. Payment shall be made by certified check to:

Fair Housing Council of Northern New Jersey
Attn: Ms. Lee Porter, Executive Director
131 Main Street
Hackensack, NJ 07601

Respondents shall send a copy of the certified checks to the attention of Valerie M. Daniele, Trial Attorney, Office of Regional Counsel, U.S. Department of Housing and Urban Development, 26 Federal Plaza, Room 3500, New York, New York 10278.

IV. CIVIL PENALTY

Within 30 days of the entry of this Consent Order, Respondents shall pay to the United States a civil penalty pursuant to 42 U.S.C. § 3612(g)(3) in the amount of \$6,000. Such sum shall be paid by submitting a certified check made payable to the United States of America to Valerie M. Daniele, Trial Attorney, Office of Regional Counsel, U.S. Department of Housing and Urban Development, 26 Federal Plaza, Room 3500, New York, New York 10278.

V. ACTIONS IN THE PUBLIC INTEREST

A. Injunction from Discrimination.

Respondents, their agents, employees, successors, and assigns, and all other persons in active concert or participation with any of them, are hereby enjoined from:

- i. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of race and/or color as proscribed in the Act, 42 U.S.C. § 3604(a);
- ii. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling because of race and/or color as proscribed in the Act, 42 U.S.C. § 3604(b);
- iii. Making, or causing to be made, any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race and/or color as proscribed in the Act, 42 U.S.C. § 3604(c).

B. Mandatory Education and Training.

1. Within 60 days of the entry of this Consent Order, Respondents shall attend a minimum of two hours of training pertaining to their obligations under the Act and applicable state and local non-discrimination laws. The fair housing education training may be conducted by HUD's Office of Fair Housing and Equal Opportunity. Respondents may contact the FHEO Regional Director, Region II (contact information below) to schedule the date, time and location of the fair housing training. Respondents may request the approval of the FHEO Regional Director to attend said fair housing training not conducted by HUD. If Respondents choose to attend fair housing education training not conducted by HUD, Respondents agree to provide a certification of compliance with this provision to the FHEO Regional Director, Region II. All costs of the training shall be borne by Respondents.

2. Within 30 days of the entry of this Consent Order, Respondents agree to provide to the FHEO Regional Director, Region II a list of each person or entity employed by Respondents in any capacity in managing their rental properties. Within 60 days of the entry of this Consent Order each employee shall attend a minimum of two hours of training pertaining to their obligations under the Act and applicable state and local non-discrimination laws. Certification of compliance shall be provided to the FHEO Regional Director, Region II.

C. Communication with Complainant FHC regarding available units.

1. For a period of four calendar months following the entry of this Consent Order, Respondents agree to contact Complainant FHC every time a unit becomes available for rent. Respondents agree to make such contact one week prior to listing the unit for rent through conventional means, including newspaper and internet listings, to allow Complainant FHC the opportunity to alert its clientele of the availability.

VI. NONDISCRIMINATION POLICY

A. Upon entry of this Consent Order, Respondents shall implement the Nondiscrimination Policy appearing at Appendix A at all buildings now under their ownership. Respondents agree to immediately implement the Nondiscrimination Policy for any buildings that may come under their ownership during the effective term of this Consent Order.

B. Within 15 days of the entry of this Consent Order, Respondents shall distribute the Nondiscrimination Policy to all current tenants at all buildings now under their ownership and to their agents and employees involved in showing, renting or managing any dwelling unit at said buildings.

C. Within 15 days of the entry of this Consent Order, Respondents shall take the following steps to notify the public of the Nondiscrimination Policy:

- i. Prominently post in all rental offices that Respondents currently or subsequently use for the rental of dwellings, a fair housing sign no smaller than 10 inches by 14 inches that indicates that all apartments are available for rent on a

nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

- ii. Prominently post a sign meeting the specifications outlined in paragraph VI.C.i. above near the main entry way of each building under the ownership of Respondents. Posting in the foyer or near mailboxes will satisfy this requirement.
- iii. Whenever any dwelling unit at any building under the ownership of Respondents is available for rent, Respondents shall prominently post an easily readable "For Rent" or "Vacancy" sign or notice at the building. The sign or notice shall prominently display the words "Equal Housing Opportunity" and/or the fair housing logo.
- iv. Include the words "Equal Housing Opportunity" and/or the fair housing logo in all rental advertising conducted by Respondents, including in newspapers, flyers, handouts and internet advertisements; on radio, television or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional material. The words and/or logo shall be prominently placed and easily readable. Nothing within this requirement shall be read to compel Respondents to advertise in any of these media.
- v. Include the following phrase in the standard rental application and the standard rental agreement used for rental dwelling units at any building under the ownership of Respondents:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status.

This phrase shall be in boldface type, using letters of equal or greater size to those of the text in the body of the document.

VII. ADOPTION AND IMPLEMENTATION OF POLICIES AND PROCEDURES

A. Within 60 calendar days of the entry of this Consent Order, Respondents agree to submit to HUD the policies and procedures they will utilize to conduct their real estate business in a non-discriminatory manner and in compliance with the Act. The policies and procedures must clearly describe (1) the manner in which appointments to show dwellings will be scheduled and confirmed; (2) the manner in which inquiries from prospective buyers and tenants will be processed; and (3) the manner in which applications will be collected, reviewed and stored. A copy of these policies and procedures shall be provided to the FHEO Regional Director, Region II, for review and approval prior to implementation.

B. Contemporaneously with the submission described in paragraph VII.A. above, Respondents shall submit to HUD a copy of a standard rental application and standard rental agreement that Respondents shall use in conducting their real estate business. Respondents shall

include in this submission a statement that rental applications and rental agreements shall be distributed in a nondiscriminatory manner. Rental applications shall be provided to all interested applicants who may request one.

C. Within 60 calendar days of the receipt of Respondents' policies and procedures, HUD agrees to notify Respondents of its approval or disapproval. In the event of disapproval, HUD shall provide suggested revisions to the policies and procedures. If revisions are required, Respondents agree to submit revised policies and procedures within 30 days of receipt of HUD's notice of disapproval.

D. Upon obtaining HUD approval, Respondents agree to implement the policies and procedures immediately.

VIII. RECORD KEEPING AND REPORTING

A. Record Keeping.

- i. Respondents shall maintain a log of all persons who inquire, whether in-person or by telephone, about any dwelling which is under Respondents' ownership. The inquiry log shall include the name, address and telephone number of each prospective tenant, the date of the in-person or telephone inquiry, and, based on the good faith belief and observation of Respondents, the person's race and/or color. In the event a prospective tenant refuses to provide any of the required information, Respondents shall record the date of the inquiry and any information that was received and note the refusal. Respondents agree to provide the FHEO Regional Director, Region II with a copy of the log on a quarterly basis, beginning 120 calendar days from the entry of this Consent Order.
- ii. Respondents shall maintain a waiting list of all persons who inquire about rental dwelling units and who wish to be placed on such a list. The waiting list shall be maintained in chronological order by date and time of inquiry. For each such person, the waiting list shall state the person's name, current address and daytime and evening telephone numbers, a description of the dwelling desired (e.g. number of bedrooms), and, based on the good faith belief and observation of Respondents, the person's race and/or color.
- iii. Respondents shall maintain a Rental Application log indicating all persons who submit rental applications. The Rental Application log shall be maintained in chronological order by date and time of receipt of each rental application, whether deemed complete or incomplete. For each such rental application, the Rental Application log shall state the person's name, current address and daytime and evening telephone numbers, a description of the dwelling desired (e.g. number of bedrooms), and, based on the good faith belief and observation of Respondents, the person's race and/or color.

D. Reporting of Complaints. For a period of 5 years from the entry of this Consent Order, Respondents will notify HUD of any formal complaint filed against them with any local, state or

federal agency regarding equal opportunity or discrimination in housing. Notification shall be provided within 10 days of any such complaint. The notification must include a copy of the complaint and the full details of the complaint, including the complainant's name, address and telephone number. Respondents will also promptly provide HUD with all information it may request concerning any such complaint and its actual or attempted resolution.

C. All required notifications and documentations of compliance must be submitted to HUD as follows, unless otherwise indicated:

Jay Golden
Director, Region II
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, NY 10278

Henry Schoenfeld
Associate Regional Counsel for Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

Valerie M. Daniele
Trial Attorney
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

IX. COMPLIANCE

A. HUD shall determine compliance with the terms of this Consent Order.

B. During the term of this Consent Order, HUD may review compliance with this Consent Order. As part of such review, HUD may, upon providing advance notice, inspect Respondents' property, examine witnesses, and copy pertinent records of Respondents. Respondents agree to cooperate fully in any review undertaken by HUD to ensure compliance with this Consent Order.

C. HUD may take steps to monitor Respondents' compliance with this Consent Order by conducting fair housing tests at any dwelling in which Respondents, now or in the future, have a direct or indirect ownership, management or financial interest.

D. Should Respondents breach 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 Third

Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j)).

X. ACQUISITION OR TRANSFER OF INTEREST IN RENTAL PROPERTIES

A. If at any time during the term of this Consent Order Respondents sell or otherwise transfer its interest in any or all of the buildings currently under Respondents' ownership to an unrelated party in an arms-length transaction,¹ Respondents shall take the following steps:

- i. At least 30 days prior to completion of the sale or transfer, provide each prospective purchaser or transferee a copy of this Consent Order along with written notice that the building being sold or transferred remains subject to this Consent Order, with the exception of Sections III and IV;
- ii. At least 30 days prior to the completion of the sale or transfer, provide HUD written notice of Respondents' intent to sell or transfer their interest in any or all buildings currently under their ownership, along with a copy of the notice sent to each prospective purchaser or transferee, containing the latter's name, address and telephone number;
- iii. Within 30 days following completion of the sale or other transfer, Respondents shall provide HUD a copy of the documents memorializing the transfer; and
- iv. Respondents shall require the transferee, as a condition of the sale or transfer, to agree in writing to perform all obligations and be liable for compliance with this Consent Order, with the exception of Sections III and IV.

B. If Respondents fully comply with paragraph X.A. above, and transfer all of their ownership, management, or other financial interest in all buildings under Respondents' ownership to an arms-length purchaser or transferee, then Respondents shall thereafter be relieved of further obligations under this Consent Order, with the exception of obligations under Sections III and IV. Respondents shall remain liable for the financial compensation described in Sections III and IV.

C. If any proposed transfer of interest is not an arms-length transaction, Respondents shall comply with the requirements of paragraph X.A. above and shall additionally remain jointly and severally liable, along with the purchaser or transferee, for any violations of this Consent Order, with the exception of Sections III and IV, for the effective period of this Consent Order. Respondents shall remain liable for the financial compensation described in Sections III and IV.

¹ For the purposes of this Consent Order, "arms-length transaction" is defined as a transaction that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding the transaction.

XI. ADMINISTRATION

A. This Consent Order shall remain in effect for a period of five (5) years from its effective date.

B. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. The effective date of the Consent Order shall be the date it becomes final, *i.e.*, upon the expiration of 30 days from the date of its issuance, or affirmance by the Secretary within that time. 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680(b)(2).

C. 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 the Consent Order at any time.

RESPONDENTS:

Michael Pontoriero
Michael Pontoriero

8/26/13
Date

Mary Ann Pontoriero
Mary Ann Pontoriero

8/26/13
Date

COUNSEL FOR RESPONDENTS:

Sherry L. Silver
Sherry Silver
Haber Silver & Simpson
123 Columbia Turnpike, Suite 103A
Florham Park, NJ 07932

8/26/13
Date

COMPLAINANTS:

Vance Green

Date

Lee Porter, Executive Director
Fair Housing Council of Northern New Jersey

Date

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

Henry Schoenfeld
Associate Regional Counsel for
Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development

Date

RESPONDENTS:

Michael Pontoriero

Date

Mary Ann Pontoriero

Date

COUNSEL FOR RESPONDENTS:

Sherry Silver
Haber Silver & Simpson
123 Columbia Turnpike, Suite 103A
Florham Park, NJ 07932

Date

COMPLAINANTS:

Vance Green

Date



Lee Porter, Executive Director
Fair Housing Council of Northern New Jersey

Date

8/23/13

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

Henry Schoenfeld
Associate Regional Counsel for
Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

Date

RCYD USHUD NY/NJ
2013 AUG 30 PM 1:47
OFFICE OF
REGIONAL COUNSEL

RESPONDENTS:

Michael Pontoriero

Date

Mary Ann Pontoriero

Date

COUNSEL FOR RESPONDENTS:

Sherry Silver
Haber Silver & Simpson
123 Columbia Turnpike, Suite 103A
Florham Park, NJ 07932

Date

COMPLAINANTS:


Vance Green

8/21/2013
Date

Lee Porter, Executive Director
Fair Housing Council of Northern New Jersey

Date

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

Henry Schoenfeld
Associate Regional Counsel for
Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

Date

RESPONDENTS:

Michael Pontoriero

Date

Mary Ann Pontoriero

Date

COUNSEL FOR RESPONDENTS:

Sherry Silver
Haber Silver & Simpson
123 Columbia Turnpike, Suite 103A
Florham Park, NJ 07932

Date

COMPLAINANTS:


Vance Green

Date

Lee Porter, Executive Director
Fair Housing Council of Northern New Jersey

Date

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



Henry Schoenfeld
Associate Regional Counsel for
Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

9/3/2013

Date



John J. Cahill

Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

9/3/13
Date



Valerie M. Daniele

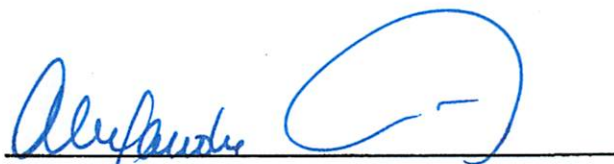
Trial Attorney
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

09/03/2013
Date

XII. ORDER OF THE COURT

The hearing in this matter was scheduled for October 15, 2013. The Charging Party, Complainants and Respondents have forwarded to the Court the foregoing Consent Order incorporating the terms of their settlement agreement. The agreement appears to be in the public interest and all parties have signed it. Accordingly, the terms of the Consent Order are hereby entered.

So Ordered this 4th day of September, 2013.

A handwritten signature in blue ink, appearing to read "Alexander Fernández", is written over a horizontal line.

Alexander Fernández
Administrative Law Judge

Appendix A

NONDISCRIMINATION POLICY

It is the policy of Michael and Mary Ann Pontoriero, in the operation and management of their real estate business, to comply with Title VIII of the Civil Rights Act of 1968, as amended, commonly known as the Fair Housing Act by ensuring, to the extent required by law, that apartments are available to all persons without regard to race, color, national origin, disability, or familial status. This policy means that, among other things, Michael and Mary Ann Pontoriero, and their agents and employees with the responsibility for renting, managing, or administering any dwelling units, must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants because of race or color. Such agents and employees may not:

- A. Refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, disability, sex, or familial status;
- B. Discriminate against any person in the terms, conditions, privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin, disability, sex, or familial status;
- C. Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, disability, sex, or familial status; or
- D. Represent to persons because of race, color, religion, national origin, disability, sex, or familial status that any dwelling is not available for inspection or rental when such dwelling is in fact so available.

Any agent or employee who fails to comply with this Nondiscrimination Policy will be subject to appropriate disciplinary action. Any action taken by an agent or employee that results in unequal service to, treatment of, or behavior toward tenants or actual or potential applications on the basis of race, color, religion, national origin, disability, sex, or familial status may constitute a violation of state and federal fair housing laws. Any tenant or applicant who believes that any of the above policies have been violated by any owner, agent or employee may contact the U.S. Department of Housing and Urban Development at 1-888-799-2085 or 1-212-542-7507.