

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

_____)
Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
Melissa Hatten,)
)
Charging Party,)
)
v.)
)
Bradford Strom and Sarah Strom,)
)
Respondents.)
_____)

HUD ALJ No.: 13-JM-0132-FH-007
FHEO No.: 05-12-1365-8

INITIAL DECISION AND CONSENT ORDER

I. JURISDICTION

This matter arose from a complaint of familial status discrimination filed by Complainant Melissa Hatten ("Complainant") on August 29, 2012 pursuant to the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601, *et seq.* (hereafter, the "Act"). On June 12, 2013, the Charging Party issued a Charge of Discrimination (hereafter, "Charge") against Respondent Bradford Strom and Respondent Sarah Strom ("Respondents"), alleging that they engaged in a discriminatory housing practice in violation of 42 U.S.C. § 3604(a) and (c) of the Act.

II. BACKGROUND

On June 12, 2013, the Secretary of the United States Department of Housing and Urban Development (hereafter, 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 3610(g)(1) and (2) of the Act, as amended.

The Charge alleged that on or about August 3, 2012, Respondent Bradford Strom, during a telephone call by Complainant inquiring about the availability of a rental unit advertised by Respondents, located at 407 ½ Street, Jackson, Minnesota ("Subject Property"), made statements expressing limitation and/or preference based on Complainant's familial status. According to the Charge, after explaining to Complainant the rental terms and the layout of the unit, Respondent

Bradford asked Complainant "just you?" When Complainant answered that she was planning to live with her one year old daughter, he replied that "it wouldn't work," adding that he had "rented to families with children before and it just doesn't work." The Charge alleged that he afterwards ceased the telephone conversation and did not afterwards stop or otherwise discourage Complainant when she terminated the telephone call. According to the Charge, Complainant terminated the telephone call because she believed that Respondent Bradford rejected her as a tenant based on her familial status.

The Charge additionally alleged that these telephone statements by Respondent Bradford otherwise made the rental unit unavailable to her by discouraging her from applying. Complainant filed an inquiry with HUD on the very day of the incident, August 3, 2012.

Respondents deny the allegations in the Charge. However, in order to avoid uncertain and costly litigation, Respondents have agreed to resolve the abovementioned 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 be, nor shall it be construed by anyone to be, an admission of liability by or on behalf of Respondents, by whom all such liability is expressly denied.

Respondents and Complainant, after having given careful consideration to the issue, have consented to the entry of this Initial Decision and Consent Order (hereafter, "Consent Order"), as indicated by the signatures of the parties and their counsel below. The parties agree that the Charging Party shall file with the Office of Hearings and Appeals 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, Respondents, as well as their heirs, executors, assigns, agents, employees, guardians, and successors, and all other persons in active concert or participation with them in the ownership or operation of any and all properties owned or managed by them (collectively, "Agents") are permanently enjoined from discriminating against any person on the basis of familial status, in any aspect of rental or advertisement of a dwelling, in any matter that violates the Act. Respondents hereafter promise and agree to comply with all the provisions of the Act relevant to any and all properties owned and/or managed by them. Respondents agree that they will rent the properties they own or manage to qualified occupants on a non-discriminatory basis as required by the Act.
2. Respondents and their Agents are hereby enjoined, with respect to rental of dwelling, from:

- a. Making unavailable or denying a dwelling unit to any person because of familial status, 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 familial status.
- 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 familial status, including evicting a person or persons or subjecting them to extra security deposit or higher rent because of familial status.
- c. Making statement(s) with respect to the rental of a dwelling unit that indicate any preference, limitation or discrimination based upon familial status, including making statements discouraging a person or persons from applying based on their familial status. However, Respondents may make accurate representation of the local occupancy code, as detailed in Paragraph B Section 4 below, and deny an applicant whose rental would violate the local occupancy code, as long as the denial is not based on the number of children as opposed to the number of occupants.
- d. Representing to any person that any dwelling unit is not available for inspection or rental when such dwelling is, in fact, so available, or refusing to negotiate with a person for the rental of any available unit, because of his or her familial status.
- e. Treating a person less favorably based on familial status or adopting or engaging in practices or policies that have a disparate impact on a person based on his or her familial status, such as interpreting or applying local occupancy codes in a way that only allows individual renters.

B. Adoption and Implementation of Non-Discrimination Policy

1. Respondents shall prominently post in the highly visible part of the common area of the second floor of the Subject Property (such as hallway) a fair housing sign no smaller than ten (10) inches by fourteen (14) inches indicating that Respondents operate and manage their rental properties on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement. Within thirty (30) days after the date of entry of this Consent Order, Respondents shall submit photographs to the Department showing that the fair housing poster has been posted along with a written declaration under penalty of perjury that Respondents have posted the poster in the requisite location and will not remove it during the time this Consent Order is in effect.
2. While this Consent Order is in effect, all written advertisements (including newspaper advertisement and online advertisements) issued by Respondents shall contain a phrase, "a Fair Housing Lender." Respondents will provide to the

Department a copy of the first advertisement published after this Consent Order becomes effective.

3. While this Consent Order is in effect, Respondents must submit a summary to the Department when any person with a minor child applies for or inquires for a residential rental unit they own or control. The summary must contain the name and contact information of the person, the date of the inquiry, and a description of the disposition of the inquiry or the application, including, in cases of rejection, an explanation why the person was not accepted. The summary must be submitted within 20 days of the inquiry or application.
4. Within thirty (30) days after the date of the entry of this Consent Order, Respondents will measure unit 6 of the Subject Property and submit to the Department, for the Department's review and approval, their policy concerning the occupancy of unit 6. The policy shall include accurate measurements of the unit and Respondents' plan to rent unit 6 in a manner that complies with both the applicable local occupancy code (currently 1994 Uniform Building Code adopted by the City of Jackson) and the Act. Respondents are responsible for fully complying with the requirements of both the local occupancy code and the Act. For example, if the configuration of unit 6 is too small to be rented as studio, Respondents may have the option of foregoing rental of that unit altogether or installing a closet and renting the unit as an efficiency to up to two persons. Alternatively, Respondents may renovate the unit to meet the local occupancy code requirement. The submitted policy shall contain a written declaration under penalty of perjury that Respondents will, once approved by the Department, fully comply with the policy throughout the duration of the time this Consent Order is in effect.

C. Training

1. Within three (3) months of the entry of the Consent Order, Respondents and any of their Agents who engage in residential rental and/or management activities must attend fair housing training conducted by a qualified person or organization, concerning their responsibilities under federal fair housing laws and regulations. Respondents may contact the Department for assistance in locating an acceptable agency for training purposes. Respondents shall also provide copies of the Consent Order to all such Agents in advance of the training and be responsible for any and all costs associated with such fair housing training. Additionally, Respondents must provide to the Department the name of the entity or person providing training and the syllabus of the training session and receive prior approval. While this Consent Order is in effect, whenever a new Agent is hired, employed, appointed, or otherwise utilized to engage in the management of residential rental properties, Respondents must provide a notification to the Department and arrange training for that Agent under this Provision within three (3) months of his or her hire, employment, appointment, or involvement.

2. Respondents and each Agent identified above shall provide a certificate of completion to HUD, in the same or similar form as that attached hereto as "Attachment A," certifying 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 submitted to the Department.

D. Report, Submission and Notification to HUD

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

Courtney Minor, Regional Counsel, Region V
United States Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, IL 60604-3507
Courtney.B.Minor@hud.gov

IV. SPECIFIC RELIEF

In exchange for 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 connection with, the instant action by the Charging Party and Complainant, Respondents agree to:

- A. Pay to Complainant the sum of \$6,500 (six thousand and five hundred dollars) within thirty days of the entry of this Consent Order by the Administrative Law Judge as full settlement of Complainant's damages arising out of the allegations presented in this Charge. The \$6,500 payment shall be in the form of a cashier's check made payable to "Melissa Hatten" and will be overnighted (postmarked by the two week deadline mentioned above) to the following address:

Melissa Hatten
1225 North 36th Street #1115
Phoenix, AZ 85008

A photocopy of the aforementioned check and the overnight courier shipment slip (with the tracking number) must be also transmitted to HUD on the same day, either via overnight mail or electronic mail, to the Department, in the manner indicated on Provision III Paragraph D of this Consent Order.

- B. Failure to mail the abovementioned cashier's check to Complainant within the specified deadline in the full amount, and/or failure to provide a copy of the check and the shipment slip as specified will each constitute a breach of this Consent Order by Respondents, except with Complainant's and Department's prior written consent. If Respondents fail to mail the full payment in a timely manner, they will also be

responsible for interest on the amount owed at 5% annum, which shall accrue starting on the thirty first day after the entry of this Consent Order by the Administrative Law Judge, and amortize on a daily basis until Complainant receives all the amount owed in full, including interest that accrues. Additionally, Respondents will be responsible for any costs and attorney fees that Complainant, the Department, or the U.S. government incur in attempting to collect such payments, including, but not limited to, court costs and expenses, legal fees, and any and all relevant costs such as fees or expenses related to document service, lien service, and person/property/asset search/locator service. "Failure to mail the full payment" as used in this section will include instances when a personal check is mailed instead of cashier's check and is returned by the bank for insufficient funds or other similar reasons.

- C. On the condition that Respondents will fully comply with this Consent Order, including making the abovementioned payment to Complainant in a full and timely manner, the Department agrees to waive any and all civil penalties it is authorized to assess on Respondents arising out of this matter. Upon a breach of the Consent Order, including the failure to make the full payment in a timely manner, the Department reserves the right to reinstitute a \$1,000 USD (one thousand dollars) civil penalty against Respondents, in addition to any and all remedies available under law and equity. The civil penalty will accrue interest, and Respondents will be liable for the cost of collecting the amount, to the same extent as described in Provision IV Paragraph B.
- D. In exchange for the financial and affirmative relief provided by Respondents in this Consent Order, Complainant agrees to the dismissal of the Charge of Discrimination against Respondents.

V. COMPLIANCE AND MONITORING BY HUD

Between the date of the entry of this Consent Order and three (3) years from the 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 Respondents and/or their 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

- A. In consideration of Respondents' payment to Complainant and their full 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 Charging Party and Complainant, their successors, assigns, agents, employees, and attorneys hereby forever waive, release and covenant not to initiate a proceeding against Respondents, their successors, heirs, executors, assigns, agents, employees, officers, 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 OHA 13-JM-0132-FH-007, FHEO 05-12-1365-8, or which could have been filed in any action or suit arising from the said subject matter, except where necessary to enforce this Agreement. Nothing in this release will be construed to prevent HUD from investigating other complainants filed against Respondents not filed by Complainant, or taking appropriate enforcement action thereon.

- B. In consideration of the execution of this Consent Order, and other good and valuable consideration, Respondents, their successors, assigns, agents, officers, employees, attorneys, and assigns, including any entities or organizations controlled or managed by them, hereby forever waive, release, and covenant not to sue the Department or Complainant, their successors, assigns, agents, officers, employees, attorneys, and assigns, including any entities or organizations controlled or managed by them, 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 OHA 13-JM-0132-FH-007, FHEO 05-12-1365-8, or which could have been filed in any action or suit arising from the said subject matter, except where necessary to enforce this Agreement.

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 delivered 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 in other situations where Respondents need an extension of time to meet their obligations under this Consent Order, such extension must be obtained by a prior written agreement by the Department. For the purposes of this Section, electronic mail consents may constitute a written agreement.
- E. The Department does not waive or forfeit any of its rights under this Consent Order by the reason of its failure to enforce a right or an obligation under this Consent Order in a timely manner.

- F. 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).
- G. The Consent Order is binding upon Complainant, Respondents, and their Agents.
- H. The signatures of the parties to this Consent Order further constitutes a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612(p).
- I. All of the provisions of the Consent Order are material terms. A party's failure to fully comply with any provision, including any of the deadlines, shall constitute a material breach of the Consent Order. In the event that any party commits a breach of this Consent Order or otherwise fails to act in accord with any provision thereof, other parties may seek any remedy authorized by law or equity, including, but not limited to, an order requiring performance of acts and an award of any damages, costs, and attorneys' fees.
- J. This Agreement is not intended to affect, nor should it be construed to affect, any liability the Respondents have, or may have, under the Internal Revenue Laws, Title 26 of the United States Code.

VIII. DISMISSAL OF CHARGE

In consideration of Respondents' 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 Respondents injured Complainant by violating the Act. Therefore, the Charge against Respondents 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. This document is subject to the regulations at 24 CFR 180.680 and 180.450.

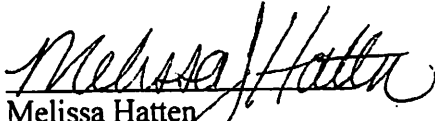
IX. COMPLIANCE

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 with appropriate jurisdiction pursuant to 42 U.S.C. § 3612(j) and (m).

X. CONSENT AND SIGNATURES

The undersigned parties have read the foregoing Consent Order for HUD OHA 13-JM-0132-FH-007 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:


Melissa Hatten
1225 North 36th Street #1115
Phoenix, AZ 85008

8/29/13
Date

For Respondents:

Bradford Strom

Date

Sarah Strom

Date

Counsel for Respondents:

Michael Fondungallah

Date

Fedelis Fondungallah
Fondungallah & Kigham, LLC
2499 Rice Street, Suite 145
St. Paul, MN 55113

Date

**Counsel for the Charging Party
United States Department of Housing and Urban Development:**

Courtney B. Minor

Date

Lisa M. Danna-Brennan

Date

Complainant:

Melissa Hatten
1225 North 36th Street #1115
Phoenix, AZ 85008

Date


Respondents:



Bradford Strom

Sept. 3 2013

Date




Sarah Strom

Sept. 3 2013

Date


Counsel for Respondents:



Michael Fondungallah

09/05/2013

Date



Fedelis Fondungallah
Fondungallah & Kigham, I.L.C.
2499 Rice Street, Suite 145
St. Paul, MN 55113

9/05/2013

Date

**Counsel for the Charging Party
United States Department of Housing and Urban Development:**

Courtney B. Minor

Date

Lisa M. Danna-Brennan

Date

For Complainant:

Melissa Hatten
1225 North 36th Street #1115
Phoenix, AZ 85008

Date

For Respondents:

Bradford Strom

Date

Sarah Strom

Date

Counsel for Respondents:

Michael Fondungallah

Date

Fedelis Fondungallah
Fondungallah & Kigham, LLC
2499 Rice Street, Suite 145
St. Paul, MN 55113

Date

**Counsel for the Charging Party
United States Department of Housing and Urban Development:**



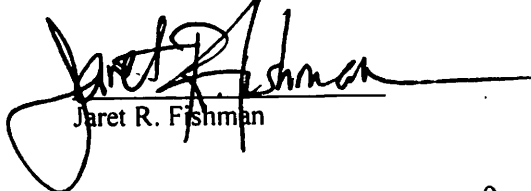
Courtney B. Minor

9/9/13
Date



Lisa M. Danna-Brennan

9/9/13
Date



Jaret R. Fishman

9/9/2013
Date



Sol Terence Kim
Trial Attorney
U.S. Department of Housing and
Urban Development
Office of Regional Counsel, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 913-8019
FAX: (312) 886-4944

9/9/13

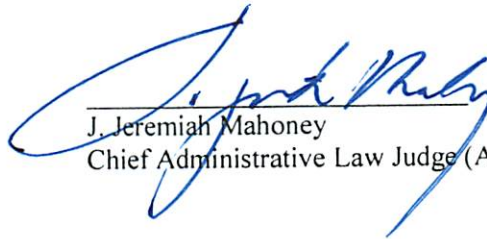
Date

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 under 42 U.S.C. § 3612(h). The signatures of the parties to this Consent Order constitutes 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 hearing in this matter, set for October 1, 2013, was stayed to accommodate settlement proceedings. On August 28, 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 12th day of September, 2013.



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)