

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

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Secretary, United States Department of)	
Housing and Urban Development, on behalf of)	
Complainants, the Assistant Secretary for Fair)	
Housing and Equal Opportunity, Clifford Marohl,)	
and Gina Marohl,)	
)	HUD ALJ 14-JM-0146-FH-013
Charging Party,)	FHEO Nos. 08-13-0122-8
)	08-13-0249-8
v.)	
)	
American Bank Federal Savings Bank and)	
Jesse Menke,)	
)	
Respondents)	
)	

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INITIAL DECISION AND CONSENT ORDER

I. FACTUAL AND PRODECURAL BACKGROUND

On or about February 15, 2013, complainants, Clifford and Gina Marohl filed a verified complaint with the U.S. Department of Housing and Urban Development ("HUD"). The complaint alleged American Bank Federal Savings Bank ("American Bank" or "ABFSB"), also known as American Bank, FSB, and Jesse Menke, a Senior Mortgage Banker at ABFSB, (collectively "Respondents") violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 et seq. (the "Act"), on the basis of disability in processing their application for a home refinance mortgage loan.¹ Respondents deny the allegations and timely filed a response to the complaint in which Respondents specified the grounds upon which they base their denial.

On or about July 2, 2013, HUD's Acting Assistant Secretary for Fair Housing and Equal Opportunity, Bryan Greene, filed a Fair Housing Act complaint with HUD. The complaint alleged that American Bank discriminated against applicants with disabilities by denying or delaying mortgage applications, discriminated in the provisions of services and made discriminatory statements based on disability in violation of Sections 804 and 805 of the Act.

¹ 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.1

Respondents deny those allegations, as well, and timely filed a response to the complaint in which Respondents specified the grounds upon which they base their denial.

HUD determined that there was reasonable cause to believe that discriminatory housing practices had occurred in these cases based on disability. On September 29, 2014 the Charging Party issued a Charge of Discrimination (the "Charge") pursuant to a Determination of Reasonable Cause that the Act had been violated. 42 U.S.C. §§ 3604(c), 3604(f)(1) and 3605.

There has been no factual finding or adjudication with respect to any matter alleged by the Charging Party, the Complainants Clifford and Gina Marohl, or the Assistant Secretary. The parties have entered into this Initial Decision and Consent Order ("Consent Order") to avoid the risks, expenses, and burdens of litigation and to voluntarily resolve the claims in the Charge of the Respondents' alleged violations of federal fair housing laws. Respondents deny that they violated the Act as alleged in the Charge, but agree to settle the claims in the underlying action strictly for the purpose of avoiding the costs and uncertainty of litigation. The entry of this Consent Order shall not be deemed as an admission of fault or liability by Respondents, and Respondents expressly deny any such fault or liability.

II. GENERAL PROVISIONS

1. 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.
2. The parties acknowledge that the terms set forth herein are contractual and not merely a recital of the parties' intentions. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations hereunder.
3. 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 original executed Signature Pages to be attached to the body of the Consent Order to constitute one document.
4. The signature of the parties to this Consent Order may be executed by way of facsimile transmission, or other electronic means, 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.
5. The parties agree the Charging Party will file a Joint Motion for Issuance of Initial Decision and Consent Order, and the Initial Decision and Consent Order, after this Consent Order is executed by all of the appropriate parties.
6. The parties acknowledge this Consent Order will become the final agency decision thirty (30) calendar days from the date it is issued by the HUD Administrative Law Judge

("HUD ALJ") or earlier, if affirmed by the Secretary within that time. 24 C.F.R. § 180.680(b)(2).

7. This Consent Order is binding upon Respondent ABFSB, its employees, successors, agents, assigns and all others in active concert with them in the operation of their business.
8. This Consent Order is binding upon Jesse Menke and his successors and assigns.
9. This Consent Order is full settlement of all claims by the Complainants Clifford and Gina Marohl and the Assistant Secretary for Fair Housing and Equal Opportunity, in all ways related to the allegations set forth in the subject Charge of Discrimination.
10. The parties consent to jurisdiction by the HUD's Office of Administrative Law Judges over the subject matter contained in the Charge and any items or issues related to the contents or obligations contained within this Consent Order.
11. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other unrelated complaints involving Respondent ABFSB or Jesse Menke made pursuant to the Act, or any other complaints within HUD's jurisdiction.
12. Respondents' decision to agree to settle the claims in the underlying action is made in contemplation of the expenses associated with litigating this action through hearing and the uncertainty connected with litigation, and it is not to be interpreted as an admission of fault or liability under the Act, which fault and/or liability is expressly denied by Respondents.

III. BACKGROUND

13. American Bank is headquartered in Rockville, Maryland. American Bank offers a diversified range of banking and non-banking financial services and products, including home mortgage loan lending.
14. Clifford and Gina Marohl applied for a mortgage loan with American Bank to refinance an existing loan on their home. The Marohls indicated on their loan application that the source of income for repayment was SSDI income and provided historical tax records and documents from the Social Security Administration demonstrating receipt of benefits. In order to receive approval for their mortgage loan, American Bank required the Marohls to provide information from Mr. Marohl's doctor verifying that his condition, and therefore his SSDI income, would continue for at least three years.
15. Clifford and Gina Marohl filed a timely complaint with HUD alleging that American Bank and Jesse Menke discriminated against them on the basis of disability.

16. The Assistant Secretary and HUD allege that American Bank discriminated against some mortgage loan applicants with disabilities by requiring, as a condition of originating a mortgage loan, that the applicants provide a letter from a doctor to document his or her SSDI income. It is alleged that some applicants were asked for a letter from a doctor providing information about the nature and severity of the applicants' disability and other applicants were asked for a letter from their doctor indicating the duration of their disability.
17. American Bank denies the matters alleged in the Charge and states that it has treated loan applicants, including the Marohls, fairly and without regard to impermissible factors, such as disability. American Bank notes that the Marohls' loan application was approved on market rate terms.
18. American Bank contends that it sought to facilitate the ability of persons whose mortgage applications relied upon disability income to purchase home or refinance an existing mortgage loan and in certain circumstances requested a letter from a doctor regarding the expected duration of the disability of the mortgage loan applicant. American Bank states that it sought such information only to confirm that the income source would continue for three years, which American Bank contends was a standard industry practice at the time. American Bank states that income verification is crucial in all lending transactions and that any requests by it for information from applicants was for income verification purposes only and was not driven by any wrongful discriminatory motive.

IV. REMEDIAL ORDER

19. Within thirty (30) days of the Effective Date of this Consent Order, American Bank shall identify all individuals who submitted a home mortgage loan, whether for a new home purchase or refinance, application to American Bank between January 1, 2011 and December 31, 2013 and who included Social Security Disability Insurance ("SSDI") income, Social Security Income ("SSI"), and/or short-term disability or long-term disability as a source of income in that application ("disability income"). American Bank estimates that it has approximately 2,900 loan applications that fit these criteria. American Bank shall list applicants by transaction type and identify by name, loan number, property address, mailing address, e-mail address (if available), and phone number.
20. Within sixty (60) days of the Effective Date of this Consent Order, American Bank shall research and identify all internal or external communications, documents and data systems, including but not limited to electronic mail messages, instant messages, or other means regarding the Applicants identified in Paragraph 19 above. The identified records shall be made available to the Administrator pursuant to paragraph 23 herein, which will have full and open access to all such records.
21. Within thirty (30) days of the Effective Date of this Consent Order, American Bank shall appoint, at American Bank's expense, a third-party administrator (the "Administrator") to comply with the terms of this Consent Order. American Bank has identified and suggested the use of CrossCheck Compliance, LLC, as the third-party administrator,

which is acceptable to HUD. American Bank's contract with the Administrator shall require the Administrator to comply with the provisions of this Consent Order as applicable to the Administrator. Within thirty-five days (35) of the Effective Date of this Consent Order, American Bank shall provide a copy of its contract with the Administrator to HUD.

22. The Administrator's contract shall require the Administrator to fully comply with the terms of this Consent Order and to work cooperatively with the Department in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the Department. American Bank shall allow the Administrator access to all mortgage application loan files, and other communications, records, and documents that are in the possession of American Bank or any entity owned by or affiliated with American Bank, for the purposes of accomplishing the Administrator's tasks set forth in the Consent Order. The Administrator's contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator. The Administrator's contract shall require the Administrator to exercise due diligence and good faith in identifying, retrieving, and reviewing additional records, should they be known to the Administrator but were not previously identified by American Bank. The Administrator's contract shall require the Administrator, as part of its operation, to establish cost-free means for aggrieved persons to contact it, including an email address, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY.
23. Within seventy-five (75) days of the Effective Date of this Consent Order, American Bank shall submit the list of home mortgage loan applications ("Applications") identified pursuant to Paragraph 19 to the Administrator and to the Department. American Bank shall make available to the Administrator all records relating to the Applications. The applicant and co-applicant named in the Applications shall be referred to as Applicants.
24. Within sixty (60) days of the Effective Date of this Consent Order, the Administrator shall design a method for review and evaluation of the records related to the Applications ("Method of Review") and submit the Method of Review to the FHEO Region VIII Director. Prior to implementing the Method of Review, the Administrator shall obtain written approval of the Method of Review from the FHEO Region VIII Director on behalf of the Department. The Department shall not unreasonably withhold approval of a Method of Review reasonably designed to identify the Claimants as described in Paragraph 28, below. If more than thirty (30) days have passed since notification of the Method of Review to the FHEO Region VIII Director and written approval has not been received, the proposed Method of Review shall be deemed approved. The Method of Review shall include a manual review of each page of the loan file (electronic or hard copy) and additional related records by an employee of the Administrator who clearly understands the requirements of this Consent Order and is competent to identify relevant documents and make determinations in accordance with Paragraph 28 below. The Administrator shall convert all records related to the Applications to a searchable format and make those records available to the Department upon request.

25. Within one hundred twenty (120) days of the FHEO Region VIII Director's approval of the Method of Review and, utilizing the approved Method of Review, the Administrator shall make preliminary determinations regarding whether each Applicant is a Claimant and therefore eligible for an award as set out in Paragraphs 28 and 34 below. American Bank agrees to accept these determinations without objection. Such determinations by the Administrator shall be provided to Department on a weekly basis as they become available, or when one hundred (100) such determinations have been made, whichever is earlier.
26. Within seven (7) days of completing the preliminary determination set forth in Paragraph 25 above, the Administrator shall submit a report to the Department and American Bank that includes the Administrator's preliminary determinations regarding whether each Applicant qualifies as a Claimant, the Type level assigned to each Claimant, the basis for each determination, and the relevant documents supporting each determination.
27. The Department, at its discretion, can review any preliminary determinations of the Administrator and can make a determination regarding which Applicants are Claimants and the amount of compensation to be paid to each Claimant under the terms of this Consent Order. American Bank shall not review these determinations or have the right to object to any determination. If more than ninety (90) days have passed since notification to the Department by the Administrator of the Administrator's preliminary determinations and no determinations by the Department have been issued, the Administrator's preliminary determinations will be deemed approved and final.
28. American Bank agrees to compensate certain Claimants as set forth below and that:

For the purposes of this Consent Order only, and without any admission of any fault, guilt, or liability by American Bank, a "Claimant" shall be defined as any Applicant, and for whom one of the following may be true:

Type-1 Claimant: The loan application file contains information or there exists other contemporaneous records relating to the loan application that the Applicant (A) was asked by American Bank to provide a letter from a doctor or medical provider regarding his or her disability, or (B) there is a letter from the Applicant's doctor or medical provider regarding the Applicant's disability in the loan file; or

Type-2 Claimant: The loan application file contains information in the loan file or there exists other contemporaneous records relating to the loan application that the Applicant was asked by American Bank to provide a letter from a doctor or medical provider regarding the permanency, continuance, nature, or severity of the Applicant's disability; or

Type-3 Claimant: The Applicant qualifies as Type-1 Claimant or Type-2 Claimant, above, and meets the following criteria:

1. The loan file or other contemporaneous documents indicate that the applicant was unwilling to provide a letter from a doctor or medical provider or objected to providing a letter from a doctor or

medical provider; or

2. The loan file or other contemporaneous documents indicate specific economic harm caused by denial of the loan application, delay of the loan application, or failure to originate the loan because the Applicant did not provide a letter from a doctor or medical provider.

29. Upon the Department's determinations regarding whether each Applicant is a Type-1 Claimant, Type-2 Claimant, or Type-3 Claimant, or after passage of ninety (90) days as set forth in paragraph 27 above, and upon Claimant's return of the Release as set forth below, American Bank shall provide compensation to Claimants in certain amounts as set forth in Paragraph 34, below. The date of the Department's confirmation of the Administrator's determination, or ninety (90) days from the date of submission by the Administrator if no confirmation is issued by the Department as set forth in paragraph 27 above, shall be referred to as the "Determination Date."
30. Within thirty (30) days of the Determination Date, the Administrator shall notify each Claimant of their entitlement to compensation by U.S. Mail ("Notice") using a form substantially similar to Appendix A and provide the Claimant a release form (Appendix B) to complete, sign, and return ("Release"). American Bank agrees to compensate a Claimant in the amount specified in the Notice only for the purpose of resolving the Complaint, and neither this Consent Order nor the Notice shall constitute an admission of liability by American Bank nor shall they constitute evidence that the Claimant has been injured. The Notice and Release shall be substantively in the forms attached hereto as Appendices A and B, respectively. Before providing the Notice, the Administrator shall access the U.S. Postal Service National Change of Address database ("NCOA Database") and, as necessary, update the address for each Claimant. If the NCOA Database indicates that the last known address of any Claimant is invalid or otherwise undeliverable, the Administrator shall send the Notice to the last known email address of the Claimant, if American Bank has such an email address, and make at least 2 attempts to contact the Claimant telephonically at the last telephone number supplied to American Bank by the Claimant. In the event that any Notice is returned as undeliverable with a forwarding address, the Administrator shall send the Notice to the indicated forwarding address within ten (10) business days from the date of receipt of the forwarding address, provided, however, that the Administrator shall have no obligation to send any Notice returned as undeliverable after thirty (30) days from the date on which it was originally mailed.
31. Within forty-five days (45) days of the Determination Date, American Bank and the Administrator shall certify to the Department that it has provided the Notice to Claimants pursuant to Paragraph 30, above.
32. Claimants shall have sixty (60) days from date of the Notice to properly complete, execute, and return the Release to the Administrator ("Return Date"). Any Claimant's failure to return the Release by the Return Date shall constitute a waiver by Claimant of any right to receive compensation from American Bank hereunder and American Bank shall have no

further obligations as to such Claimant pursuant to this Consent Order. Releases returned by Claimants, or a Claimant's duly authorized representative, by the Return Date that contain deficiencies shall be returned to the Claimant with a notice of the deficiencies and the Claimant shall have twenty (20) days to correct such deficiencies and return the Release to the Administrator.

33. Within thirty (30) days of receipt of a properly completed and executed Release, the Administrator shall (1) verify that the person who completed the Release is a Claimant by confirming in its records that the person who completed the Release submitted an application for a residential mortgage loan during the applicable time period; and (2) upon such verification, transmit to the Claimant payment in the amount of compensation due as set forth below.
34. For the purposes of this Consent Order only, and without any admission of any fault, guilt, or liability, American Bank shall pay (1) \$1,100.00 in settlement to a Type-1 Claimant; (2) \$2,750.00 in settlement to a Type-2 Claimant; and (3) \$5,500.00 in settlement to a Type-3 Claimant. These amounts are mutually exclusive, such that if any Claimant meets the definition of more than one type, that Claimant shall only be entitled to the greatest compensation type for which the Claimant qualifies. Moreover, these amounts are to be paid on a per loan or per application basis; if there is a borrower and co-borrower, or an applicant and co-applicant, they shall share the compensation.
35. Within one hundred twenty (120) days of the Determination Date, American Bank shall by money order, cashier's check, or certified check pay each Claimant pursuant to Paragraphs 28 and 34, above. Such payment shall be sent to each Claimant by Federal Express or certified mail, return receipt requested.

V. RELIEF FOR COMPLAINANTS CLIFFORD AND GINA MAROHL

36. Within ten (10) days of the Effective Date of this Consent Order, American Bank shall pay \$25,000.00 by money order, cashier's check or certified check payable to Clifford and Gina Marohl, and sent to them by Federal Express or certified mail, return receipt requested to 13175 423rd Avenue, Pierpont, South Dakota 57468.

VI. RELIEF IN THE PUBLIC INTEREST

37. American Bank agrees to adopt, subject to the Department's approval, a written policy addressing the income verification requirements for home mortgage loan applicants who receive disability income from any source that is consistent with the Fair Housing Act, 42 U.S.C. 3601, *et seq.*, as amended. The policy regarding income verification requirements for home mortgage loan applicants who receive disability income shall explicitly state that such loan applicants shall not be required to provide any documentation regarding

continuity of income beyond the proof of continuity of income required under applicable underwriting or investor guidelines and that American Bank shall not request such loan applicants to provide a doctor's letter to establish continuity of income. American Bank agrees to submit the proposed policy to the FHEO Region VIII Director on behalf of the Department for approval within thirty (30) days of the Effective Date of this Consent Order. If, following her review of the proposed policy, the FHEO Region VIII Director identifies changes that need to be made in the proposed policy; American Bank agrees to modify its proposed policy to incorporate these changes. American Bank agrees to communicate the policy, and to provide a copy of the policy, to each of its loan officers, processors, and underwriters within thirty (30) days of receipt of the Department's approval of the policy.

38. American Bank will provide fair lending training, including training regarding disability income, to newly hired employees within sixty (60) days of their respective start dates and will promptly provide within forty-five (45) days of the Effective Date of this Consent Order, on-going training, including training regarding disability income, to current employees in loan originations, processing, and underwriting.
39. Within thirty (30) days of providing the fair lending training, as provided in Paragraph 38, American Bank shall send a letter to the Department stating that fair lending training was provided to current employees in loan originations, processing, and underwriting pursuant to Paragraph 38 of this Consent Order.
40. American Bank shall maintain copies of its non-discrimination policies, in every location where it provides residential loan services to the public, in both English and Spanish. These postings shall be prominently displayed, readily apparent to all persons seeking to engage in residential real estate-related transactions, and shall include the fair housing logo. Such information shall also be maintained on American Bank's residential mortgage lending website.
41. The details in administration set forth in Paragraphs 19-40 may be modified by written agreement of the parties. Any time limits for performance fixed by this Consent Order may be extended by written agreement of the parties.

VII. MUTUAL RELEASE

42. In consideration of the execution of this Consent Order, and other good and valuable consideration, Complainants Clifford and Gina Marohl hereby forever waive, release and covenant not to sue Respondents, their successors, assigns, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, with respect to the Complaint arising out of the subject matter of HUD Case Number 08-13-0122-8.
43. In consideration of the execution of this Consent Order, and other good and valuable consideration, the Assistant Secretary for Fair Housing and Equal Opportunity hereby

forever waives, releases, and covenants not to sue Respondents, their successors, assigns, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, with respect to the Complaint arising out of the subject matter of HUD Case Number 08-13-0249-8, except for any suit that may be necessary to enforce the provisions of this Consent Order.

44. In consideration of the execution of this Consent Order, Respondents hereby forever waive, release, and covenant not to sue HUD, its 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 Case Number 08-13-0122-8 and 08-13-0249-8 or which could have been filed in any action or suit arising from said subject matter, except for any suit that may be necessary to enforce the provisions of this Consent Order.

VIII. NON-RETALIATION

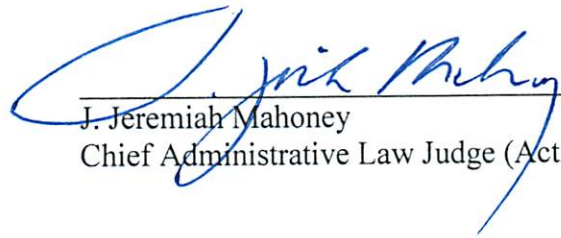
45. Respondents acknowledge that they an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Consent Order, and a statutory violation of the Act.

IX. ADMINISTRATION

46. This Consent Order shall remain in effect for a period of three (3) years from its effective date.
47. All notices or correspondence required to be sent by American Bank and/or the Administrator to the Department and/or the FHEO Region VIII Director shall be addressed to Amy Frisk, Region VIII Director, Office of Fair Housing and Equal Opportunity, 1670 Broadway, 22nd Floor, Denver, Colorado 80202, and shall be deemed sufficient if sent by FedEx, UPS, or U.S. Mail, certified and return receipt requested.
48. For purposes of this Consent Order, the effective date of this Consent Order is the date that this Consent Order is signed by the HUD AU.
49. 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); 24 C.F.R. § 180.680(b)(2).

50. Upon this Consent Order becoming final, the Charge is dismissed with prejudice and the HUD ALT shall only retain jurisdiction over the terms of this Consent Order and not the subject matter of the underlying Charge.

Signed this 27th Day of October, 2014.



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)