

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

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of Complainants)
Darlene Phillips, Curt Marchiando, and)
her two minor children,)
)
Charging Party,)
)
v.)
)
Carrol Goodsell and Goodsell General)
Contracting, LLC,)
)
Respondents.)

HUDOHA No.: 15-JM-0122-FH-019

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

1. On September 28, 2015, the U.S. Department of Housing and Urban Development (“HUD” or “Charging Party”) filed a Charge of Discrimination (“Charge”) against Respondents Carrol Goodsell and Goodsell General Contracting, LLC (“Respondents”) pursuant to the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-19 (“Act”). The Charge alleges that Respondents discriminated against Complainants Darlene Phillips and Curt Marchiando (“Complainants”) and Complainant Phillips’s two minor children by sexually harassing Complainant Phillips, in violation of subsections 804(b) and (c) and section 818 of the Act. 42 U.S.C. §§ 3604(b), 3604(c), and 3617.
2. Respondents deny any violations of the Act and they deny all allegations in the Charge. Respondents’ execution of this Consent Order does not constitute admissions of fault or liability on their part.
3. The Charging Party, Complainants, and Respondents (“the parties”) have agreed to voluntarily resolve this matter without a hearing before the HUD Administrative Law Judge (“ALJ”). Accordingly, the parties have agreed to the entry of this Initial Decision and Consent Order (“Consent Order”) as attested by their signatures below.

II. GENERAL PROVISIONS

4. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed Charge. No party has been coerced or in any way forced to become a party to this Consent Order.
5. The parties agree that the Charging Party shall file with the Office of Hearings and Appeals a Joint Motion for Entry of an Initial Decision and Consent Order, along with this Consent Order, after this Consent Order is executed by all parties.
6. This Consent Order is binding upon Respondents, their members, employees, successors, agents, assigns and all others in active concert with them in the rental, management, maintenance, repair, or remodeling of all residential dwellings owned in whole or in part by Respondents.
7. Pursuant to 24 C.F.R. § 180.680, this Consent Order is a public document.

III. RELIEF FOR COMPLAINANTS AND MINOR CHILDREN

8. Respondents shall pay a total of TWENTY FOUR THOUSAND AND SIX HUNDRED DOLLARS (\$24,600) in monetary damages to compensate Complainants and Complainant Phillips's two minor children. This amount shall be allocated as follows:

Darlene Phillips and her two minor children	<u>\$22,000</u>
Curt Marchiando	<u>\$2,600</u>

Payment of the above amounts shall be made according to the following schedule: (1) within five (5) days of the effective date of this Consent Order, Respondent shall pay \$11,000 to Darlene Phillips and her two minor children and \$2,600 to Curt Marchiando; (2) by June 30, 2016, Respondents shall pay the remaining \$11,000 to Darlene Phillips and her two minor children.

The first payment shall be delivered to the undersigned counsel for the Charging Party in the form of two cashier's or certified checks made payable to Darlene Phillips and Curt Marchiando, respectively. The second payment shall be delivered to the undersigned counsel for the Charging Party in the form of a cashier's or certified check made payable to Darlene Phillips. Such checks shall be accompanied by a letter referencing FHEO Number 08-12-0245-8, FHEO Number 08-13-0150-8, and HUDOHA 15-JM-0122-FH-019.

IV. RELIEF IN THE PUBLIC INTEREST

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

- a. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex, as prohibited by the Act, 42 U.S.C. § 3604(b);
- b. Making statements with respect to the sale or rental of a dwelling that indicate a preference, limitation, or discrimination based on sex, or an intention to make any such preference, limitation, or discrimination, as prohibited by the Act, 42 U.S.C. § 3604(c);
- c. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Act, 42 U.S.C. § 3617. This includes retaliating against any person because of his or her cooperation with HUD's investigation or litigation of this case.

10. Any residential rental property in which Respondents have any direct or indirect ownership, management, or other financial interest currently, or at any time during the term of this Consent Order, shall be referred to herein as a "Covered Property" or, collectively, as the "Covered Properties."

11. A current and complete list of Covered Properties is attached to this Consent Order as Attachment A. Should Respondents acquire any direct or indirect ownership, management, or other financial interest in any residential rental properties during the term of this Consent Order, Respondents shall notify HUD within fifteen (15) days of the acquisition of such interest. Any such properties shall be added to the list of Covered Properties and shall be subject to the terms of this Consent Order.

12. Respondents shall adopt a written policy against sexual harassment. A copy of this policy shall be provided to counsel for the Charging Party within five (5) days of the effective date of this Consent Order. This policy shall be approved by the Charging Party and implemented by Respondents within five (5) days after counsel for the Charging Party indicates the policy is satisfactory to HUD; at that time Respondents shall provide each current tenant at the Covered Properties with a copy of this Consent Order and the policy. In addition, during the term of this Consent Order, Respondents shall provide a copy of the Consent Order and policy to each prospective tenant at the time such individual applies for housing.

13. During the first thirty (30) days after the effective date of this Consent Order, Respondent Carol Goodsell shall at all times be accompanied by a non-party adult, approved by HUD, while conducting any business at the Covered Properties, including maintenance or repairs, rental collection, renting of the properties, or visits of any kind. The non-party adult must be over the age of 18, and may include a real estate professional or attorney, but may not include an employee,

agent, or co-owner of any business owned in whole or in part by Respondents. The Manager appointed pursuant to paragraph 14, below, can satisfy the obligations of this paragraph.

14. Should Respondents continue to have any direct or indirect ownership, management, or other financial interest in any Covered Properties after thirty (30) days of the effective date of this Consent Order, Respondents shall retain or otherwise enter into an agreement with an individual or entity (hereinafter "Manager"), approved by HUD, to manage the rental of any and all such Covered Properties for the term of this Consent Order.

15. HUD approval of the non-party adult and Manager required by paragraphs 13 and 14 of this Consent Order, respectively, shall be obtained by submitting in writing the name, phone number, email address, and mailing address of the individual or entity, along with a brief statement of the individual or entity's relationship to Respondents, if any, and qualifications to manage the Covered Properties to the undersigned counsel for the Charging Party. The approval of HUD shall not be unreasonably withheld.

16. The period following the first thirty (30) days after the effective date of this Consent Order and through the remaining term of this Consent Order shall be referred to herein as the "Management Period."

17. If, after retaining a Manager, Respondents wish to change to another Manager, Respondents may do so during the Management Period, provided that any such subsequent Manager must also be approved in advance by HUD pursuant to paragraph 15 above, and comply with the requirements for the Manager as described in this Consent Order.

18. During the Management Period, the Manager shall be responsible for all aspects of the management of the Covered Properties, including showing and renting units, performing maintenance or arranging for the performance of maintenance, making repairs, collecting rents, determining whom to rent to and/or evict, and all other aspects of the rental or rental management process.

19. During the Management Period, Respondent Carrol Goodsell may only enter the premises of any Covered Property under the following circumstances:

- a. *Emergency Repairs.* Respondent Carrol Goodsell may enter the premises of a Covered Property without advance notice only when necessary to respond to exigent circumstances requiring immediate aid or action. For purposes of this Consent Order, exigent circumstances requiring immediate aid or action means an emergent event that is causing or will cause significant damage to such property if not addressed immediately. Exigent circumstances also include situations where there is, or will be, a significant risk to human life if said situation is not addressed immediately. Respondent Goodsell must report any such incident to the Manager, including the duration of his time on the premises, within twenty-four (24) hours.

- b. *Standard Maintenance or Repairs.* Respondent Carrol Goodsell may enter the premises of a Covered Property with advance notice when necessary to perform maintenance or repairs. The Manager shall accompany Respondent Carrol Goodsell for the duration of any such visit to a Covered Property. The Manager shall provide the tenant with at least forty-eight (48) hours written notice of any intent by Respondent Carrol Goodsell to enter the premises, except where the tenant has communicated to the Manager his or her desire to waive the 48-hour notice period. Such notice shall specify the maintenance or repairs which necessitate Respondent Carrol Goodsell's entry upon the premises and that the tenant may contact the Manager to re-schedule the visit. Absent exigent circumstances, the Manager and Respondents shall grant all reasonable requests by tenants to re-schedule such visits and shall ensure, to the maximum extent feasible, that tenants have the opportunity to be present for such visits if the tenant so chooses.

20. During the Management Period, Respondents shall require the Manager to do the following:

- a. Ensure that all persons who will be performing any duties in relation to the Covered Properties are familiar with the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment.
- b. Maintain all records kept in relation to rental of the Covered Properties, including a record of each and every time that Respondent Carrol Goodsell enters any of the Covered Properties in accordance with the terms of this Consent Order, and allow HUD to inspect and copy all such records upon reasonable notice.
- c. Send to HUD within sixty (60) days after the commencement of the Management Period, and every six (6) months thereafter through the term of this Consent Order, except that the last submission is due sixty (60) days prior to the date of expiration of this Consent Order: (1) a list of all tenants at the Covered Properties and their addresses; and (2) a report listing each time that Respondent Carrol Goodsell entered the premises of a Covered Property along with a brief explanation of the reason for each such visit, whether the Manager was present, and whether any tenant was present.
- d. Notify HUD in the event it obtains any information indicating that Respondents are in violation of this Consent Order.
- e. Provide to HUD any information reasonably related to compliance with this Consent Order that it requests.

21. Within ninety (90) days of the effective date of this Consent Order, Respondent Carrol Goodsell, any owner, member, manager, or officer of Respondent Goodsell General Contracting, LLC, and any employees or agents acting under their direction who interact with residents shall each attend a minimum of six (6) hours of fair housing training, including training regarding sex discrimination and sexual harassment. Respondents must obtain written approval of the provider of the training from counsel for the Charging Party at least thirty (30) days prior to the

commencement of the training. All costs of the training shall be paid for by Respondents. Respondents shall require all attendees to sign a certification of attendance and shall provide copies of such certifications to HUD within thirty (30) days of completion of the required training.

V. ADDITIONAL REPORTING AND RECORD KEEPING

22. During the term of this Consent Order, Respondents shall notify HUD of any formal complaint filed against them with a local, state, or federal agency regarding equal opportunity or discrimination in housing within ten (10) days of receipt of any such complaint. Respondents shall provide a copy of the complaint with the notification to HUD. Respondents shall also promptly provide HUD with all information it may request concerning any such complaint and its actual or attempted resolution.

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

Amy M. Frisk, Region VIII Director
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
1670 Broadway, 23rd Floor
Denver, CO 80202

M. Casey Weissman-Vermeulen
Trial Attorney, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 10270
Washington, D.C. 20410

VI. COMPLIANCE

24. During the term of this Consent Order, 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 Respondents' properties, examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any review undertaken by HUD to ensure compliance with this Consent Order.

25. Upon a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Eighth Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j).

VII. ADMINISTRATION

26. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. This Consent Order will become effective and final thirty (30) calendar days from the date it is

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

27. This Consent Order shall remain in effect for a period of three (3) years from its effective date.

28. Complainants and Respondents agree that they shall refrain from making written or verbal statements concerning this matter that are intended or reasonably expected to be viewed as disparaging of the character of any Complainant or Respondent in this case for the duration of this agreement. This provision shall not apply to any written or verbal statements describing the terms of this Consent Order or made as part of any future judicial or administrative proceeding.

29. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other unrelated complaints involving Respondents made pursuant to the Act, or any other complaints within HUD's jurisdiction.

30. If Respondents need an extension of time in order to satisfy a deadline provided in this Consent Order, such extension must be obtained in writing from counsel for the Charging Party.

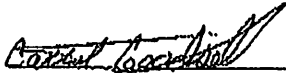
31. Each party is responsible for that party's own attorney's fees and costs, if any.

32. The parties agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the parties' signatures on separate pages of this Consent Order, with the individual signature pages to be attached to the body of the Consent Order to constitute one document to be filed with the Office of Hearings and Appeals. Signature pages may be provided by facsimile or electronic transmission.

VIII. AGREEMENT OF THE PARTIES

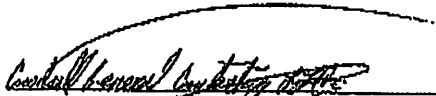
The parties below have read this Initial Decision and Consent Order and have willingly signed it with a full understanding of the rights it confers and the responsibilities it imposes on them.

RESPONDENTS:



Carrol Goodsell

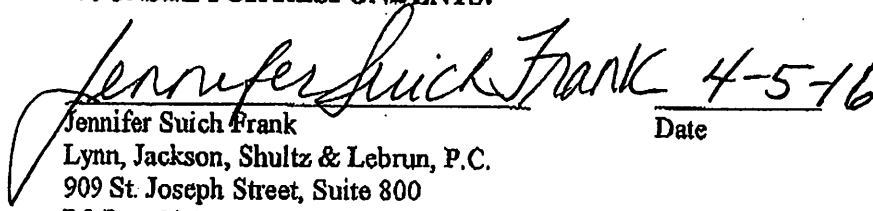
4-5-16
Date



Goodsell General Contracting, LLC

4-5-16
Date

COUNSEL FOR RESPONDENTS:



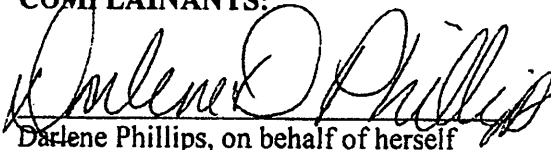
Jennifer Suich Frank
Lynn, Jackson, Shultz & Lebrun, P.C.
909 St. Joseph Street, Suite 800
PO Box 8250
Rapid City, SD 57709

4-5-16
Date

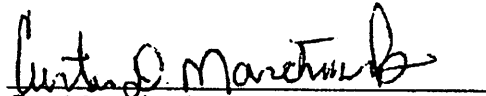
VIII. AGREEMENT OF THE PARTIES

The parties below have read this Initial Decision and Consent Order and have willingly signed it with a full understanding of the rights it confers and the responsibilities it imposes on them.

COMPLAINANTS:


Darlene Phillips, on behalf of herself
and her minor children

4-05-16
Date



Curt Marchiando

4-05-2016
Date

VIII. AGREEMENT OF THE PARTIES

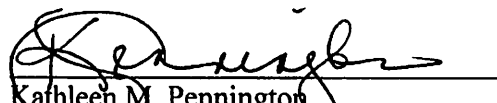
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COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:



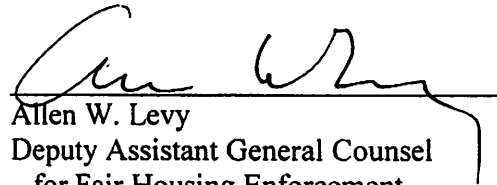
Jeanine M. Worden
Associate General Counsel for Fair Housing

4/7/16
Date




Kathleen M. Pennington
Assistant General Counsel
for Fair Housing Enforcement

4/7/16
Date



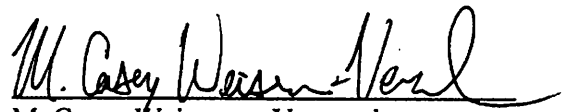
Allen W. Levy
Deputy Assistant General Counsel
for Fair Housing Enforcement

4/7/16
Date



Erik Heins
Trial Attorney
U.S. Department of Housing and Urban Development
Office of General Counsel
Fair Housing Enforcement
451 7th Street, S.W., Room 10270
Washington, DC 20410

4/7/16
Date



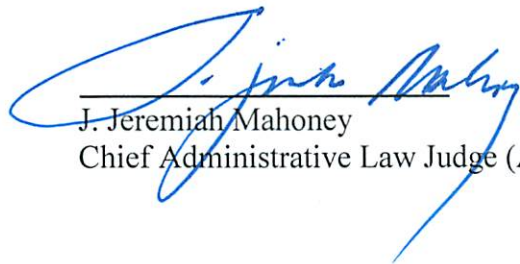
M. Casey Weissman-Vermeulen
Trial Attorney
U.S. Department of Housing and Urban Development
Office of General Counsel
Fair Housing Enforcement
451 7th Street, S.W., Room 10270
Washington, DC 20410

4/7/16
Date

IX. ORDER OF THE COURT

On April 8, 2016, the parties forwarded to the Court the foregoing Order, incorporating the terms of their agreement. The Court, after reading the agreement, finds that it appears to be in the public interest. All parties have given their consent and signed the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and entered.

So ORDERED, this 11th day of April, 2016.



J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

ATTACHMENT A

LIST OF COVERED PROPERTIES

1. 112 Valley Drive, Spearfish, South Dakota 57783 (mobile home)
2. 122 State Street #14, Spearfish, South Dakota 57783 (mobile home)
3. 1111 5th Street, Sturgis, South Dakota 57785 (four-plex)