

**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, Charging Party,
on behalf of

Nkechi Ebube,

Complainant,

v.

Ithaca Renting, LLC d/b/a Ithaca Renting Company
f/k/a 130 Clinton, LLC, Fane Enterprises, Inc.,
and Kelly Geiger,

Respondents.

HUDOHA No. 20-AF-0224-FH-011
FHEO No. 02-16-4291-8

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On July 7, 2020 the United States Department of Housing and Urban Development (“HUD” or “Charging Party”) filed a Charge of Discrimination against Ithaca Renting, LLC d/b/a Ithaca Renting Company f/k/a 130 Clinton, LLC (hereinafter referred to as “IRC”), Fane Enterprises, Inc. and Kelly Geiger (“Respondents”). The Charge alleges that Respondents violated Sections 804(f)(1) and (f)(2) as defined by Section 804(f)(3) of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the “Act”), by discriminating against Complainant Nkechi Ebube based on disability. Specifically, the Charge alleges that Respondents discriminated against the Complainant by refusing to grant her request to keep an assistance animal as a reasonable accommodation for her disability.

At issue is one of Respondents’ apartments located at 154 East State Street, New York (the “Subject Premises”)

Respondents deny that they violated the Act as alleged in the Charge. However, in order to avoid the additional cost and expense and uncertainty of litigation, the parties agree to settle the claims in the underlying action by entering into this Initial Decision and Consent Order

("Consent Order"). The entry of this Consent Order shall not be deemed an admission or finding of any fault or liability on the part of Respondents.

II. GENERAL PROVISIONS

1. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaint. The parties acknowledge that they are entering into the agreement willfully, without any duress or intimidation 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.

2. 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 Consent Order, after this document is executed by all parties.

3. This Consent Order is binding upon Respondents, their employees, successors, agents, assignees and all others in active concert with them in the management of the Subject Premises.

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

III. MUTUAL RELEASE

5. In consideration of the execution of this Consent Order, the payment of the Relief for Complainant set forth at paragraph 7, the Charging Party and Complainant, their successors, assignees, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue Respondents, their heirs, executors, assignees, agents, employees, or 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 20-AF-0224-FH-011/FHEO No. 02-16-4291-8, or which could have been filed in any action or suit arising from said subject matter, whether based on statute, regulation, rule of law, equity, contract, tort, or any other theory of recovery as well as any and all claims under all other federal, state or local laws, including but not limited to claims for discrimination and/or harassment, together with all costs and fees, including attorney fees, except where necessary to enforce this agreement. Nothing in this release will be construed to prevent HUD from investigating other complaints filed against Respondents or taking appropriate enforcement action thereon.

6. In consideration of the execution of this Consent Order, the Respondents, their successors, assignees, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue HUD or Complainant, her heirs, executors, assignees, agents, employees, or 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 20-AF-0224-FH-011/FHEO No. 02-16-4291-8, or which could have been filed in any action or suit arising from said subject matter, whether based on statute, regulation, rule of law, equity, contract, tort, or any other theory of recovery as well as any and all claims under all other federal, state or local laws, including but not limited to claims for discrimination and/or harassment, together with all costs

and fees, including attorney fees, except where necessary to enforce this agreement. Nothing contained in this release will be construed to prevent Respondents from bringing and maintaining a proceeding for an alleged violation or breach not arising out of the subject matter of the Charge.

IV. RELIEF FOR COMPLAINANT

7. Respondents will pay to Complainant by certified check the sum of eight thousand five hundred dollars (\$8,500.00) within thirty (30) days of the issuance of this Consent Order by the Administrative Law Judge as full settlement of claims for damages arising out of the allegations presented in the Charge.

- a. Within thirty (30) days of the effective date of this Consent Order, Respondents will make checks payable to “Nkechi Ebube.” Respondents will send the checks to Complainant’s representative for delivery to Complainant: Legal Assistance of Western New York, Inc., Attn. Lisa Pantuso, Esq., 1 West Main Street, Suite 400, Rochester, New York 14614.
- b. Complainant acknowledges that she has not relied on any representations by HUD as to the tax consequences of this agreement or any payments made hereunder. Complainant will be responsible for all applicable taxes, if any, on the foregoing payments.

V. ACTIONS IN THE PUBLIC INTEREST

10. Injunction from Discrimination.

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

- a. Discriminating in the sale or rental, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, national origin, or disability as prohibited by the Act, 42 U.S.C. §§ 3604(a), (f)(1);
- b. Discriminating in the terms, conditions, or privileges of sale or rental of a dwelling based on race, color, religion, sex, familial status, national origin, or disability as prohibited by the Act, 42 U.S.C. §§ 3604(b), (f)(2);
- c. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, familial status, disability, or national origin, as prohibited by the Act, 42 U.S.C. § 3604(c); and
- d. Retaliating against Complainant or any other person who participated in the investigation

of this complaint, as prohibited by the Act, 42 U.S.C. § 3617.

11. Mandatory Education and Training.

- a. No later than September 30, 2020, all leasing agents employed by IRC shall attend training pertaining to their obligations under the Fair Housing Act and applicable state and local housing non-discrimination laws. The agreed upon training course will be “New HUD Guidance on Assistance Animals – What You Should Know” and will be provided by the Institute of Real Estate Management. IRC’s leasing agents must sign in on the designated day and remain for the duration of the training.

VII. COMPLIANCE

12. During the term of this Consent Order, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations.

13. The parties shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Order.

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

VIII. ADMINISTRATION

15. This Consent Order shall remain in effect for a period of one (1) year from its effective date or until compliance with all the terms and specific time periods set forth in Sections IV through VI whichever is later.

16. 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 thirty (30) days from the date of its issuance, or earlier affirmance by the Secretary. 42 U.S.C. § 3612(h); 24 C.F.R. § 180.670(b)(2).

17. All required notification and documentation 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


David Heitner

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

18. 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, or any other complaints within HUD's jurisdiction.
19. The parties agree that if Respondents need an extension of time in order to satisfy a deadline provided herein, such extension must be obtained in writing from counsel for the Charging Party.
20. The signatures of the parties constitute a waiver of any right to apply for 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.
21. 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 Judges. Signatures of the parties to this Consent Order may be executed by way of facsimile or electronic transmission.
22. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30)-day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

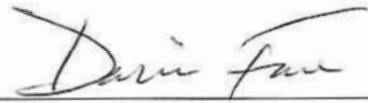
IX. AGREEMENT OF THE PARTIES

RESPONDENTS:



Ithaca Renting, LLC ~~d/b/a Ithaca Renting Company~~
f/k/a 130 Clinton, LLC

7-22-2020
Date



Fane Enterprises, Inc.

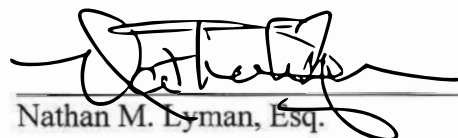
7/21/2020
Date



Kelly Geiger

7/22/2020
Date

COUNSEL FOR RESPONDENT:



Nathan M. Lyman, Esq.

August 5, 2020
Date

22. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30)-day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

IX. AGREEMENT OF THE PARTIES

RESPONDENTS:

Ithaca Renting, LLC d/b/a Ithaca Renting Company
f/k/a 130 Clinton, LLC

Date

Fane Enterprises, Inc.

Date

Kelly Geiger

Date

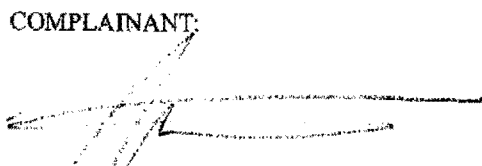
COUNSEL FOR RESPONDENT:

Nathan M. Lyman, Esq.

Date

VIII. AGREEMENT OF THE PARTIES

COMPLAINANT:



Natchi Ebube

07/27/20
Date

COMPLAINANT'S REPRESENTATIVE:

Lisa Pantuso, Esq.

Lisa Pantuso, Esq.

8/4/2020

Date

VIII. AGREEMENT OF THE PARTIES

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

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

Date

Sean Kelly
Associate Regional Counsel for 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

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

Date

X. ORDER OF THE COURT

VIII. AGREEMENT OF THE PARTIES

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



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

7/28/2020

Date



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

7/28/2020

Date



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

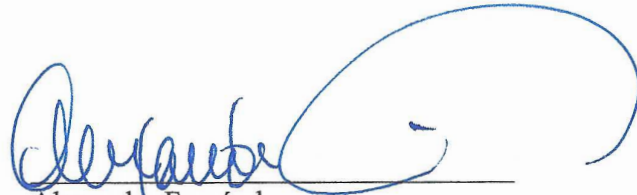
7/28/2020

Date

X. ORDER OF THE COURT

In accordance with 24 C.F.R. § 180.450, the Administrative Law Judge shall accept a settlement agreement agreed to by the parties if he finds the agreement to be in the public interest, by issuing an Initial Decision and Consent Order. The foregoing order was presented to the undersigned ALJ for approval on August 5, 2020. The proposed order does not incorporate information such as facts or stipulations necessary for the Court to determine whether the settlement is “in the public interest.” However, after considering the record in its entirety, the undersigned ALJ has independently determined that the agreement between the parties does not offend the public interest and is approved. All parties have given their consent and signed the agreement incorporated in the foregoing Consent Order, which is hereby accepted and issued.

So **ORDERED**, this 6th day of August, 2020.

A handwritten signature in blue ink, appearing to read 'Alexander Fernández', with a large, stylized flourish extending to the right.

Alexander Fernández
Administrative Law Judge