

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,)	
Charging Party, on behalf of)	
)	
Marlene Boyer,)	
)	OHA Case No. 20-JM-0084-FH-002
Complainant-Intervenor,)	
)	FHEO Case No. 02-16-4255-8
v.)	
)	
Milton James,)	
Respondent.)	

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On January 22, 2020, the U.S. Department of Housing and Urban Development (“HUD” or “Charging Party”) filed a Charge of Discrimination (“Charge”) against Milton James (“Respondent”). The Charge alleges that Respondent engaged in discriminatory housing practices against Complainant-Intervenor Marlene Boyer (“Complainant Boyer”) in violation of the Fair Housing Act, as amended by the Fair Housing Act of 1988, 42 U.S.C. §§ 3601-3619 (“Act”). Specifically, the Charge alleges that Respondent discriminated against Complainant Boyer on the basis of her disability when he failed to grant a reasonable accommodation for an assistance animal and when he made housing unavailable. The Charge further alleges that Respondent threatened and intimidated Complainant Boyer because she engaged in protected activity.

Respondent denies that he violated the Act as alleged in the Charge. However, 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” or “agreement”). The entry of this Consent Order shall not be deemed an admission or finding of any fault or liability by Respondent.

II. GENERAL PROVISIONS

1. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaint. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Consent Order. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and agree to fully comply

with their obligations hereunder.

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 Respondent, his successors, agents, assigns and all others in active concert with them in the operation and management of 303 Lenox Avenue, Oneida, NY (the "Subject Premises"). In the event the subject premises is transferred or sold prior to full performance of all the provisions of this Consent Order, Respondent will remain liable for the financial compensation described in Section IV.
4. The parties agree that if any party to this Consent Order needs 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.
5. Pursuant to 24 C.F.R. § 180.680, the parties understand that this Consent Order is a public document.
6. The signatures of the parties to this Consent Order 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.
7. All references to "days" in this agreement shall refer to calendar days unless otherwise indicated.
8. Each of the signatories to this Consent Order represents and warrants that he or she is duly authorized to execute this Consent Order on behalf of the indicated party, that no further corporate or other action is necessary to authorize such execution, and that no other entity or person is a necessary party to this Consent Order.

III. MUTUAL RELEASE

9. In consideration of the execution of this Consent Order, Complainant Boyer, her heirs, executors, successors, assigns, agents, and attorneys, hereby forever waive, release, and covenant not to sue Respondent, his heirs, executors, successors, assigns, 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 HUDOHA No. 20-JM-0084-FH-002, 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.
10. In consideration of the execution of this Consent Order, Respondent, his successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue HUD or Complainant Boyer, their heirs, executors, assigns, 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 HUDOHA No. 20-JM-0084-FH-002, 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.

IV. RELIEF FOR COMPLAINANT

11. Within ninety (90) days of the effective date of this Consent Order, Respondent shall pay to Complainant Boyer the sum of six thousand dollars (\$6,000.00) in full settlement of Complainant's claims for damages arising out of the allegations presented in the Charge. Such payment shall be by money order, cashier's check, or certified check payable to "Marlene Boyer" sent via overnight delivery, or certified mail, return receipt requested, to:

Conor Kirchner, Esq.
Staff Attorney
CNY Fair Housing
731 James St., Suite 200
Syracuse, NY 13203

12. Within fifteen (15) days of the payment required under paragraph 11, Respondent shall send a copy of the payment to HUD's Office of Regional Counsel, Region II, at the email address indicated in paragraph 23.

13. Complainant acknowledges that she has not relied on any representation by HUD as to the tax consequences of this agreement or any payments made hereunder. Complainant will be responsible to consult with an accountant or attorney as to applicable taxes, if any, on the foregoing payment.

V. ACTIONS IN THE PUBLIC INTEREST

14. Injunction from Discrimination.

Respondent, his agents, employees, successors, and assigns, 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 otherwise making unavailable or denying, a dwelling to any buyer or renter because of disability, as prohibited by the Act, 42 U.S.C. § 3604(f)(1);
- b. 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 disability, as prohibited by the Act, 42 U.S.C. § 3604(f)(2);
- c. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling, as prohibited by the Act, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(B).
- d. Retaliating against Complainants or any other person who participated in the

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

15. Mandatory Education and Training.

- a. Within one hundred and eighty days (180) days of the effective date of this Consent Order, Respondent and any employees of Respondent and individuals acting under his direction who receive, process, review or make determinations with regard to any reasonable accommodation request (“covered employee”) shall attend a minimum of two (2) hours of training pertaining to their obligations under the Act and applicable state and local housing non-discrimination laws. The fair housing education training may be conducted by HUD’s Office of Fair Housing and Equal Opportunity (“FHEO”). Respondent may contact the FHEO Regional Director, Region II, to schedule the date, time, and location (or teleconference or video conference) of the fair housing training. Respondent shall require all attendees to sign a certification of attendance and said form shall be signed by the trainer. Respondent may request the approval of the FHEO Regional Director to attend a fair housing training that is not conducted by HUD. If Respondent chooses to attend fair housing education training that is not conducted by HUD, Respondent agrees to provide a certification of compliance with this provision executed by the trainer to the FHEO Regional Director, Region II, within ten (10) days of the training. All costs of the training shall be borne by Respondent.
- b. During the term of this Consent Order, any new covered employee for Respondent must receive at least two (2) hours of fair housing training within thirty (30) days of starting employment. Respondent shall maintain records of evidence of the completion of fair housing training throughout the term of this Consent Order.
- c. Within ten (10) days after the completion of the fair housing training required under this subsection, Respondent will submit the signed attendance form signed by the trainer to HUD.

16. Adoption and Implementation of Reasonable Accommodation Policy.

- a. Within sixty (60) days of the effective date of this Consent Order, Respondent agrees to adopt and implement a “Reasonable Accommodation Policy” that complies with the Fair Housing Act. Respondent agrees to submit the Policy to HUD for approval within thirty (30) days of the issuance of this Consent Order.
- b. Within fifteen (15) calendar days of the receipt of Respondent’s Reasonable Accommodation Policy, HUD agrees to notify Respondent of its approval or disapproval. In the event of disapproval, HUD shall provide suggested revisions to the Policy. If revisions are required, Respondent agrees to submit a revised Policy within fifteen (15) days of receipt of HUD’s notice of disapproval.
- c. Upon obtaining HUD approval, Respondent agrees to implement the Reasonable Accommodation Policy immediately.

VI. DISMISSAL OF CHARGE

17. In consideration of Respondent's payment to Complainant Boyer and compliance with the terms and conditions of this Consent Order, the Charging Party agrees to the dismissal, without a formal determination, of the allegations that Respondent injured Complainant by violating the Act. Therefore, as of the effective date of this Consent Order, the Charge against Respondent 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.

VII. COMPLIANCE

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

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

20. 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

21. This Consent Order shall remain in effect for a period of one (1) year from its effective date.

22. 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).

23. 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
jay.golden@hud.gov

Sean P. Kelly
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
Sean.P.Kelly@hud.gov

A. Isabel DeMoura
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
Ana.Isabel.DeMoura@hud.gov

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

25. 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 Hearing and Appeals. Signatures of the parties to this Consent Order may be executed by way of facsimile or electronic transmission.

26. 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. CONSENT AND SIGNATURE PAGES

The undersigned parties have read the foregoing Consent Order, HUD OHA No. 20-JM-0084-FH-002, 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:

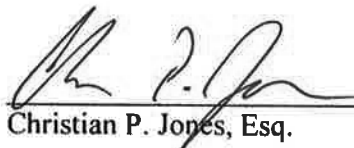
RESPONDENT:



Milton James

4/9/20
Date

COUNSEL FOR RESPONDENT:

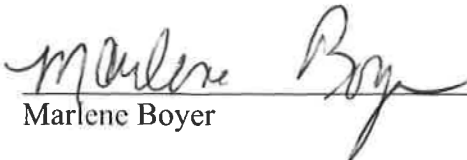


Christian P. Jones, Esq.

4/9/2020
Date

The undersigned parties have read the foregoing Consent Order, HUD OHA No. 20-JM-0084-FH-002, 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:

COMPLAINANT-INTERVENOR:



Marlene Boyer

3/31/2020

Date

COUNSEL FOR COMPLAINANT-INTERVENOR:

/s/ Conor Kirchner

Conor Kirchner, Esq.

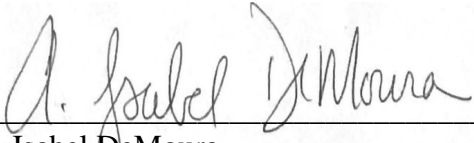
4/2/2020

Date

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

4/10/2020
Date



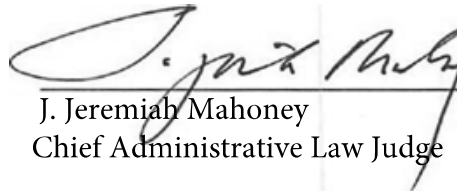
A. Isabel DeMoura
Trial Attorney
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278

4/9/2020
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 April 10, 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 16th day of April, 2020.



J. Jeremiah Mahoney
Chief Administrative Law Judge