

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

between

[REDACTED] (Complainant)

and

**Huntington Management, LLC; Oakmont Livonia, LLC; Oakmont Senior
Communities, LLC; Adam Kalaydjian, Director of Operations; Pamela Armon,
Director; Madeline Lipinski, Regional Director;
(collectively, Respondents)**

and

United States Department of Housing & Urban Development

**Approved by the FHEO Regional Director on behalf of the United States
Department of Housing and Urban Development**

FHEO CASE NUMBER: 05-13-0917-8

A. PARTIES AND SUBJECT PROPERTY

• **Complainant:**



• **Respondents:**

Huntington Management, LLC
c/o Cynthia J. Jones, Registered Agent
25480 Telegraph Road, Suite 100
Southfield, Michigan 48033

Oakmont Livonia, LLC
c/o Armen Kalaydjian, Registered Agent
25480 Telegraph Road, Suite 100
Southfield, MI 48033

Oakmont Senior Communities, LLC
c/o Armen Kalaydjian, Registered Agent
25480 Telegraph Road, Suite 100
Southfield, MI 48033

Adam Kalaydjian, Director of Operations
Huntington Management, LLC
25480 Telegraph Road, Suite 100
Southfield, MI 48033

Pamela Armon, Director
Oakmont Livonia
14265 Middlebelt Road
Livonia, Michigan 48154

Madeline Lipinski, Regional Director
Oakmont Northville
42000 Seven Mile Road
Northville, Michigan 48167

• **Subject Property:**

Oakmont Livonia
14265 Middlebelt Rd
Livonia, MI 48154

B. STATEMENT OF FACTS

A complaint was filed on April 20, 2013 with the United States Department of Housing and Urban Development (the "Department") alleging that [REDACTED] ("Complainant") was injured by a retaliatory termination of her employment as a result of the fair housing issues she raised relative to policies and practices by Respondents.

Complainant [REDACTED] was employed by Huntington Management, LLC from August 2011 to April 2012. Huntington Management, LLC ("Respondent Huntington") is a Michigan limited liability company with headquarters in Southfield, Michigan that manages and operates eighteen properties in the area. Six of the properties are advertised as "senior living" communities under the name of Oakmont Senior Communities. Complainant worked primarily at one of these facilities, Oakmont Livonia. Complainant alleges that she began raising fair housing issues from her first day working with Huntington on August 22, 2011, including allegations of the regular collection of medical data for applicants and current residents which was then used to discriminate on the basis of disability. Other allegations include a prohibition against allowing residents to return to their units after hospital stays unless staff cleared them to do so. Complainant also alleges there were incidents involving specific individuals whose fair housing rights were violated on the basis of disability. Complainant alleges that she was terminated on April 20, 2012 because she raised these issues, which, if sufficiently proven, would be a violation of Section 818 of the Fair Housing Act, as amended in 1988, 42 U.S.C. 3601 *et seq.* (the "Act").

Respondents deny having discriminated against Complainant and against prospective and current residents at the properties, but agree to settle the claims in the underlying action by entering into this Conciliation Agreement ("Agreement").

Five of the Oakmont Senior Communities facilities are advertised as "independent and enhanced care." The sixth facility markets itself as "assisted living and memory care." This facility is Pomkal Sterling Assisted, LLC, doing business as Oakmont Sterling Assisted, and currently maintains a Home for the Aged license granted by the State of Michigan, set to expire on August 26, 2014. For the purposes of this Agreement, the actions and prohibitions required herein will only apply to the five Oakmont Senior Communities facilities advertised as "independent and enhanced care." The business names of these facilities are noted below. These five facilities as a group will be referred to as "Respondent Oakmont" in this Agreement. Each of the five facilities claim an exemption to the Fair Housing Act, enumerated below. In no way does this enumeration show an endorsement or certification by the Department of these exemption claims.

Oakmont Livonia LLC: 62 and Over Exemption (42 U.S.C. §§ 3607(b)(1), (b)(2)(B); 24 C.F.R. § 100.303)

Oakmont Manor, LLC: 62 and Over Exemption (42 U.S.C. §§ 3607(b)(1), (b)(2)(B); 24 C.F.R. § 100.303)

Oakmont Northville, LLC: 55 and Over Exemption (42 U.S.C. §§ 3607(b)(1), (b)(2)(C); 24 C.F.R. § 100.304)

Oakmont Sterling, LLC: 55 and Over Exemption (42 U.S.C. §§ 3607(b)(1), (b)(2)(C); 24 C.F.R. § 100.304)

Oakmont Parkway, LLC: 55 and Over Exemption (42 U.S.C. §§ 3607(b)(1), (b)(2)(C); 24 C.F.R. § 100.304)

C. EFFECTIVE DATE & DURATION

1. This Agreement shall become effective on the date on which it is executed by the FHEO Region V Director of the United States Department of Housing and Urban Development (HUD).
2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the U.S. Department of Housing and Urban Development, through the FHEO Region V Director, or his designee.
3. This Agreement shall conduct the behavior of the parties to it for a period of twenty four (24) months from the effective date of the Agreement.

D. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
2. Respondents acknowledge that they have 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 Agreement, and a statutory violation of the Act.

3. This Agreement, after it has been approved by the FHEO Region V Director, or his designee, is binding upon Complainant and upon Respondents, their employees, heirs, successors and assigns and all others in active concert with them in the ownership or operation of the 18 properties described above in Section "B" of this Agreement.
4. It is understood that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Region V Director, or his designee, it is a public document.
5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Region V Director.
7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.
8. In consideration of the amount set forth below and the mutual promises and covenants expressed herein, [REDACTED] ("Complainant"), hereby releases, discharges, holds harmless and covenants not to sue all Respondents, and their respective shareholders, members, directors, managers, officers, owners, employees, contractors, agents, attorneys, insurers, representatives, affiliates, successors and assigns (the "Releasees") from and against any and all claims, demands, causes of action, liabilities, losses, fees, costs, expenses and damages of every kind and character, including attorneys' fees and costs, arising out of or relating in any way to the subject matter of the complaint that initiated this Agreement or to Complainant's employment with Respondents, including without limitation any claims for wages or fringe benefits, a claim of breach of express or implied contract, or a claim alleging a violation of the Michigan Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, Americans with Disabilities Act, Title VII of the Federal Civil Rights Act, the Age Discrimination in Employment Act, the Family Medical Leave Act, the National Labor Relations Act, Whistle Blowers Protection Act, the Fair Labor Standards Act, the Genetic Information Nondiscrimination Act, and/or the Bullard-Plawecki Employee Right to Know Act.

Complainant understands and agrees that she: (a) has had up to twenty-one (21) days within which to consider her waiver and release of all claims under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621, et seq.) ("ADEA") against Respondents before agreeing to this Section; (b) has carefully read and fully understands all of the provisions of this Section; (c) is, through this Agreement, releasing Respondents from any and all rights or claims she may have against Respondents under the ADEA; (d) knowingly and voluntarily intends to be legally bound by the same; (e) was advised, and hereby is advised in writing, to consider the terms of this Agreement and consult with an attorney of Complainant's choice prior to executing this Agreement; (f) has a full seven (7) days following the execution of this Agreement to revoke Complainant's waiver and release of any claims arising under the ADEA against Respondents and has been and hereby is advised in writing that said waiver and release with respect to ADEA claims shall not become effective or enforceable until the revocation period has expired; (g) understands that rights or claims under the ADEA that may arise after the date this Agreement is executed are not waived.

9. Adam Kalaydjian, Pamela Armon and Madeline Lipinski agree that they will not disparage Complainant. For the purposes of this Agreement, "disparage" shall mean communicating in any manner to any third party, any disparaging claim, statement, opinion or information of any kind or nature whatsoever, the intention of which is to cause embarrassment, disparagement, damage or injury to one's reputation, business, or standing in the community.
10. Likewise, Complainant agrees that she will not disparage Respondents, and their respective shareholders, members, directors, managers, officers, owners, employees, contractors, agents, attorneys, insurers, representatives, affiliates, successors and assigns.
11. Respondents hereby forever waive, release, and covenant not to sue the Department or Complainant and their successors, assigns, agents, officers, board members, 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 No. 05-13-0917-8, or which could have been filed in any action or suit arising from said subject matter.

E. RELIEF FOR COMPLAINANT

1. Respondent Huntington agrees to pay \$35,000.00 (Thirty-five thousand dollars and no cents) to [REDACTED] by business check, to be sent via certified mail, within 5 business days of the effective date of this Agreement. This check shall be sent to [REDACTED], Canton, Michigan

48187.

2. Respondent Huntington agrees to forward a true copy of the check to David C. Long, at the Detroit HUD Office, 477 Michigan Ave, Detroit, MI 48226 and by e-mail to Maggie Smith at margaret.k.smith@hud.gov, within two business days following the date on which the check is sent.

F. RELIEF IN THE PUBLIC INTEREST

POLICIES

1. Respondent Huntington will alter existing policies and practices for the following Oakmont Senior Communities to completely align with the requirements of the Act: Oakmont Livonia, Oakmont Manor, Oakmont Northville, Oakmont Sterling, and Oakmont Parkway. This process will be conducted with the reasonable oversight and approval of the Department, according to the following timeline and process.
 - a. Within 90 days after the execution of this Agreement, Respondent Huntington will present to the Department new or amended policy documents that address the following subjects, along with any further alterations determined to be necessary by the Department. This submission should also include a guide of Respondent Huntington's practices at the five subject communities. While Respondent Huntington will perform the bulk of the work in determining these changes, it will do so with the reasonable approval and oversight of the Department. Respondent Huntington may seek outside assistance with prior approval from the Department.
 - i. Residents who leave their unit for hospital stays will no longer be required to go through any process or gatekeeping review before being allowed to return to their unit; provided, that, if initiated by a Resident or his/her legal guardian or attorney-in-fact, Respondents may discuss with Resident or his/her legal guardian or attorney-in-fact the services available at the community and the services the Resident may need to secure independently.
 - ii. Residents shall not be required to sign in and out of the buildings unless a particular resident or a legal guardian of a resident authorizes this tracking; provided, that a resident (or a legal guardian or attorney-in-fact) may voluntarily opt-in and opt-out of a voluntary program where residents may check in and out of the property with a member of the community's staff or the Resident requests the community's staff check in on Resident if he or she fails to appear for a meal.

- iii. Residents' diets may no longer be tracked or restricted by any of Respondents' staff unless a particular resident or a legal guardian of a resident authorizes this tracking; provided, that a resident (or a legal guardian or attorney-in-fact) may voluntarily share information without prompting from Respondents' staff with respect to the Resident's dietary needs, including without limitation with respect to any meals with are provided by Respondents to the Resident.
- iv. Residents or applicants may no longer be required to submit their medical information for approval or evaluation prior to or at any time during tenancy.
- v. Residents will no longer be asked to authorize Respondents to have access to their medical history or medical information.
- vi. The following areas of the Oakmont Rental and Services Agreement and other leasing paperwork will be altered or removed in accordance with the Act:
 - a. In the "General" section of the Rental and Services Agreement at Item 18: "The Resident agrees that [Respondent Oakmont] is authorized to release the Resident's personal and medical information in its possession for any medical or emergency purposes and is authorized to obtain any medical information regarding the Resident at any time from any source."
 - b. Item 24, "Self-Propelled Mobility Devices," advises that while mobility devices are permissible at Respondent Oakmont, they must be operated in a safe manner which requires a "certain level of coordination, skill and good judgment." "Risk of injury" to other residents caused by an "inability to control" allows Respondent Oakmont to "require an alternate form of mobility" or may be the basis of early termination. The lease states that it is the responsibility of the resident and the resident's family to "assure proper instruction in the Resident's ability to operate the device." Moreover, the lease states that wheelchairs and scooters must be kept at the lowest speed setting. Residents are required to purchase Renter's Insurance which provides coverage for the operation of the mobility device, with Respondent Oakmont named as an additional insured party. A copy of the insurance policy must be provided to Respondent Oakmont.

Notwithstanding the Foregoing, Respondents shall be entitled to require all residents to maintain renter's insurance covering all damages which may be caused by the resident to the resident's units, and all exterior and other common areas on the property.

Further, Respondents may prescribe generally applicable rules and regulations pertaining to the safe use of motor vehicles, including self-propelled mobility devices, on the facility's property.

- c. The "Authorization to Disclose Protected Health Information" form asks residents at lease signing to provide the name of "any health care provider or entity that has information with respect to [Resident's] medical status," to disclose "all health information" to "any staff member of [Respondent] Oakmont," removing all HIPAA protection.
- d. In addition to this release of medical information, applicants to the properties are required to complete an exhaustive "Confidential Medical Report." This report requires a treating physician to fill out the two pages of information about the potential resident's medical history and current health. The form states, "In order to process the application, it is necessary to have information relative to the applicant's physical and mental condition." The form asks for medical history, including "physical findings." One example from the form is a "yes/no" choice of whether an applicant is able to dress his or her self. Another area asks for medication information and surgical history.
- vii. Applicants shall not be turned away from residency due to disabilities, and residents who develop certain disabilities will not be encouraged to go elsewhere on the basis of disability or the accommodations required to live with this disability; provided, that residents (and their legal guardians and/or attorneys-in-fact, if applicable) shall not be deterred from and are entitled to discuss with Respondent's staff the services available at the given Oakmont facility.
- viii. Residents will be allowed to use independent contractors to facilitate their care for disabilities, regardless of whether an independent contractor is available through Respondent Oakmont or any other Respondent.
- ix. In Item 3 of the Rental and Services Agreement, "Purpose," the Rental and Services Agreement will be altered to include "disability" in the statement that Respondent Oakmont offers its apartments and services to all qualified persons on a non-discriminatory basis, without regard to "race, color, sex, religion, or national origin."
- x. In Item 4 of the Rental and Services Agreement, "Qualified Residents," the lease states that "OAKMONT IS NOT A LICENSED NURSING HOME AND MAY NOT ACCOMMODATE PERSONS WHO REQUIRE CONTINUOUS NURSING CARE." It further states,

"Oakmont is for people who are capable of living independently." This language will be removed or altered to no longer prohibit residents who may need enhanced care and who may not be able to live independently. Language may be included to clarify that if a resident should require nursing care or other assistance to live independently, it will not be the responsibility of Respondents to provide such services.

- xi. The following sections will be altered or removed from the Rental and Services Agreement: In Item 14, "Early Termination," the agreement states that Oakmont may, upon fifteen days written notice, terminate the occupancy due to the resident's noncompliance with "reasonable behavior requirements," as well as "when such action is proper for the Resident's physical welfare or for the physical welfare of other Residents." Item 15 of the lease, "Obligations of the Responsible Party," notes that whenever a responsible party other than the resident signs the lease, the responsible party agrees "to monitor and make provisions for the physical and psychological needs and conditions of the Resident, and to be responsible for all care necessary to deal with any physical or psychological conditions of the Resident, or any changes therein."
- xii. Residents will no longer be required to sign a "Credit/Debit Authorization Form" to set up automatic debits for their rent payment, however Residents may voluntarily participate in a voluntary program in which Residents pay rent via automatic debit.
- xiii. The following language will be altered or removed in accordance with the Act: The "Rules, Policies and Guidelines" document states that in order to assure that residents are "living independently," residents need to be able to, without assistance: feed themselves, "maintain friendly relationships with other residents and respect their right for privacy or companionship," "interact appropriately with other residents and staff," and "must not be a flight risk to wander away from the building." The Rules further state that residents can do the following with assistance, but they must not rely on Oakmont staff to enter or exit the building, dress, bathe and care for personal needs, manage bowel and bladder control, and hear fire alarms or smoke detectors and respond appropriately. The Rules advise that in the event any of the above requires assistance, "Independent Care Providers must be hired by the resident and/or family for assistance." This document further advises that at Oakmont's sole discretion, the lease can be terminated with 15 days' notice, if management "feels" that the "resident's physical welfare is being compromised by continuing residency at Oakmont."

Notwithstanding the foregoing, Respondents shall be entitled to establish rules requiring residents to not be disruptive of other residents' rights of quiet enjoyment, and to prohibit residents from causing damage to or soiling the facility, its buildings and common areas and other personal property maintained by Respondents on the properties. Respondents may also establish rules limiting the number of individuals who may use the common areas, including eating areas, at any given time, and otherwise address issues of overcrowding in common areas for safety purposes.

2. If necessary, the Department will determine edits or revisions of the Respondent Huntington's first submission of the new or amended policy and practices documents. Any resubmissions by Respondent Huntington will be performed in a timely manner under timeframes determined by the Department. Respondent Huntington will continue to resubmit the materials until the Department determines the policies and practices no longer exhibit potential violations of the Act and notifies Respondent of same in writing.

TRAINING

3. In accordance with the above policies, Respondent Huntington will obtain third party assistance in developing and performing additional training of staff. The third party will be approved in advance by the Department. The additional training, including its schedule and format, will be submitted by Respondent Huntington to the Department for approval within nine (9) months of the execution date of this Agreement.

NOTICES

4. Respondent Huntington will notify current residents that it is changing policies and that it will be required to conduct itself as an apartment building serving older individuals (notwithstanding the access or facilitation of independent contractors), by using a notice letter to be approved by the Department.
5. Respondent Huntington will notify current residents when the changes are actually in effect, and will make documents available for residents in the main office of each building that show and explain the changes. These documents will also be approved by the Department.
6. Respondents Huntington, Oakmont Livonia and Oakmont Senior Communities will include a statement in all community marketing materials, including internet materials, that explains that (i) Oakmont Livonia, Oakmont Manor, Oakmont Sterling, Oakmont Northville and Oakmont Parkway are each a residential senior housing facility, not licensed as an assisted living facility (other than Oakmont Sterling Assisted), with the express aim of housing

older adults that offers access to independent contractors that provide additional services directly to residents, (ii) the Resident and/or his/her legal guardian or attorney-in-fact are responsible for obtaining the services such Resident may require, and (iii) the various Oakmont senior housing facilities are required to adhere to laws applicable to apartment complexes and other similar housing options.

G. MONITORING


1. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may inspect Respondents' records; examine witnesses and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

H. CONSEQUENCES OF BREACH

1. Whenever the Department has reasonable cause to believe that Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act. Additionally, failure to carry out the terms of this Agreement may result in the suspension or termination of, or refusal to grant or to continue federal financial assistance, or other actions authorized by law.
2. The Department will endeavor to provide thirty (30) days' notice to Respondents of any breach of this Agreement and to cooperate with Respondents in seeking the remedy of such breach prior to commencing a civil action permitted by Section H.1 of this Agreement.


[SIGNATURES ON FOLLOWING PAGE]

I. SIGNATURES


Cynthia J. Jones
For Huntington Management, LLC

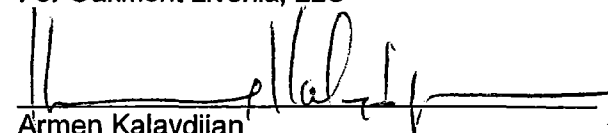
9/15/2014

Date


Armen Kalaydjian
For Oakmont Livonia, LLC

9/15/2014

Date

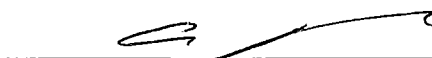

Armen Kalaydjian
For Oakmont Senior Communities, LLC

9/15/2014

Date

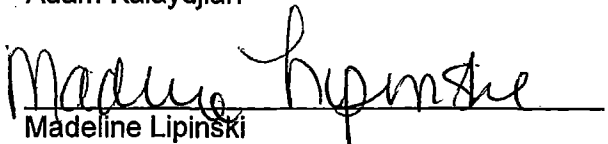
Pamela Armon

Date


Adam Kalaydjian

9/12/2014

Date


Madeline Lipinski

9/22/2014

Date

J. APPROVAL

Maurice J. McGough, Director
Office of Fair Housing & Equal Opportunity
Region V

Date

I. SIGNATURES

_____ Date

Cynthia J. Jones
For Huntington Management, LLC


_____ Date

Armen Kalaydjian
For Oakmont Livonia, LLC

_____ Date

Armen Kalaydjian
For Oakmont Senior Communities, LLC

_____ Date



9/19/14

Pamela Armon

_____ Date

Adam Kalaydjian

_____ Date

Madeline Lipinski

_____ Date

J. APPROVAL

Maurice J. McGough, Director
Office of Fair Housing & Equal Opportunity
Region V

_____ Date