

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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|------------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 08-CV-3427 |
| |) | |
| COLDWELL BANKER BULLARD |) | |
| REALTY COMPANY, INC.; |) | |
| COLDWELL BANKER JOE T. LANE |) | |
| REALTY, INC.; and RODNEY LEE |) | Trial By Jury Demanded |
| FOREMAN, |) | |
| |) | |
| Defendants. |) | |

FIRST AMENDED COMPLAINT

The United States of America alleges:

1. This is a civil action brought by the United States of America to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (the “Fair Housing Act”). It is brought on behalf of the National Fair Housing Alliance (“NFHA”) pursuant to Section 812(o) of the Fair Housing Act, as amended, 42 U.S.C. § 3612(o).

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).
3. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the Northern District of Georgia and because all Defendants reside and/or do business in the Northern District of Georgia.

PARTIES

4. From at least October 2003 through August 2005, Defendant Coldwell Banker Joe T. Lane Realty, Inc. (“Lane Realty”) was a corporation with its office at 9411 South Main Street, Jonesboro, Clayton County, Georgia.
5. From at least September 2007 to the present, Defendant Coldwell Banker Bullard Realty Company, Inc. (“Bullard Realty”) has been a corporation with its office at 238 Stockbridge Road, Jonesboro, Georgia.
6. Defendant Rodney Lee Foreman holds a license from the State of Georgia Real Estate Commission that authorizes him to transact business in Georgia as a licensed salesperson (License No. 221898). From at least October 2003 through August 2005, Mr. Foreman, by contract, acted as a salesperson for Lane Realty. The contract required, among other things, that Mr. Foreman list all properties with Lane Realty, that any listing Mr. Foreman brought in

became the property of Lane Realty, and that Mr. Foreman share his sales commissions with Lane Realty. Lane Realty, in turn, controlled the amounts Mr. Foreman could charge for his services, and provided Mr. Foreman with training, advice, and an office.

FACTUAL ALLEGATIONS

7. NFHA is a national non-profit membership organization incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Washington, D.C. NFHA is a nationwide alliance of private, non-profit fair housing organizations, including member organizations in Georgia, whose mission is to eliminate housing discrimination and to ensure equal opportunity in housing. As part of its fair housing enforcement efforts, NFHA conducts fair housing tests to determine whether entities covered by the Fair Housing Act are engaging in discrimination.
8. From October 2003 through August 2005, NFHA conducted an investigation of the sales practices of Lane Realty. As part of this investigation, NFHA conducted tests using “testers” to compare the treatment afforded by Defendants to prospective home purchasers who were of different races or colors. Testers are persons who, without the intent to purchase a home, seek

information about the availability of housing to determine whether discriminatory practices are occurring.

9. On or about October 23, 2003, a white tester talked with Mr. Foreman by telephone to inquire about a property listed at 210 Scenic View Court, Atlanta, Georgia, which according to 2000 Census Bureau data, is located in a Census tract with a population of more than 90% African-American. The tester and Mr. Foreman agreed to view homes on October 27, 2003.
10. On or about October 27, 2003, Mr. Foreman steered the white tester toward areas that are predominantly white and away from areas that are predominantly African-American. Mr. Foreman told the tester he wanted to show him homes near the airport. Mr. Foreman showed the tester six (6) homes, all of which were in predominantly white areas. The six homes were not near the airport and were not near the home at 210 Scenic View Court. The home at 210 Scenic View Court was not near the airport.
11. On or about May 24, 2004, a second white tester met with Mr. Foreman for the purpose of viewing homes in the Jonesboro area. On or about May 24 and 25, 2004, Mr. Foreman steered the white tester toward areas that are predominantly white. Mr. Foreman showed the tester fourteen (14) homes,

most of which were in predominantly white areas. Mr. Foreman told the tester not to view homes in a neighborhood in the Stonewall Jackson area, which was predominantly African-American, because he was in that area recently and saw people selling drugs at the neighborhood entrance. Mr. Foreman also told the tester not to view homes in predominantly African-American areas because the tester would be a minority. Mr. Foreman said that he knew a white family that lived in a predominantly black area and that their children were the only whites in their graduating class. Mr. Foreman told the tester about a home being foreclosed on because the owner could not make the payments. Mr. Foreman told the tester that he hated to say it, but that the family and the real estate agent were black.

12. On or about July 22, 2004, a third white tester spoke by telephone with Mr. Foreman about viewing properties in the Jonesboro area. On or about July 24 and 25, 2004, Mr. Foreman steered the tester toward areas that are predominantly white and away from areas that are predominantly African-American. Before showing the tester any homes, Mr. Foreman told the tester that he did not know where to take the tester because he could not tell from talking on the telephone whether the tester was white. Mr. Foreman

said words to the effect that “I didn’t know if you were a Caucasian or not over the phone.” Mr. Foreman then handed the tester a listing for a home at 10653 Red Bud Lane, Jonesboro, and told the tester words to the effect that he had planned to show that home to the tester, but that the home was in a black neighborhood, “so that one’s out.” Mr. Foreman told the tester that he made two different sets of listings – one set in case the tester was white and one set in case the tester was black.

13. While on their way to view a home, Mr. Foreman handed the tester a stack of home listings, and then asked the tester to hand the stack back to him. Mr. Foreman went through the stack and removed the listings for homes in African-American neighborhoods. Mr. Foreman took those listings, folded them in half and placed them on the dashboard of his vehicle. Mr. Foreman then handed the tester some listings for homes and said words to the effect that “these houses are okay.”
14. Mr. Foreman repeatedly told the tester words to the effect that “blacks do not keep their homes up,” that “whites move south when blacks move in,” and that whites “don’t care how far south they have to go.” He told the tester on more than one occasion that property values decline once blacks

move in. As Mr. Foreman and the tester drove through a neighborhood, Mr. Foreman pointed to two young African-American females and said words to the effect that the neighborhood may already be black. Mr. Foreman told the tester that he did not want the tester's property value to decline, and that he wanted the tester to be able to sell his home. Mr. Foreman told the tester words to the effect, "That's why I'm steering you away from here."

15. On April 13, 2005, NFHA filed a timely complaint with the United States Department of Housing and Urban Development ("HUD") against Lane Realty and its brokers and agents, pursuant to the Fair Housing Act, alleging discrimination on the basis of race and color. On September 15, 2006, NFHA filed an amended complaint to additionally allege "white" race or color as a basis for discrimination.
16. On July 22, 2005, HUD's General Deputy Assistant Secretary for Fair Housing and Equal Opportunity filed a timely HUD complaint against Lane Realty, among others, pursuant to the Fair Housing Act, alleging discrimination on the basis of race or color.
17. On or about September 20, 2007, Bullard Realty purchased Lane Realty's assets and assumed the liabilities and obligations necessary to continue Lane

Realty's business, which included the purchase of Lane Realty's salespersons contracts, customer lists, pending home listings, trademarks, logos, and goodwill. Bullard Realty publically referred to the deal as a merger. Under the deal, 16 of Lane Realty's salespersons—including Mr. Foreman—became salespersons in Bullard Realty's Jonesboro office. These salespersons constituted a substantial portion of Lane Realty's workforce, and they continued to perform the same or substantially the same work at Bullard Realty under the same or substantially the same working conditions. Joe T. Lane, the broker at Lane Realty, joined Bullard Realty as an associate broker. At the time of the deal, Bullard Realty had notice of the pending HUD complaints against Lane Realty and Mr. Foreman.

18. Pursuant to 42 U.S.C. §§ 3610 (a) and (b), the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary of HUD, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that illegal discriminatory housing practices had occurred.
19. On September 19, 2008, HUD issued a Charge of Discrimination pursuant to

42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discrimination in violation of the Fair Housing Act.

20. On October 7, 2008, NFHA elected to have the claims asserted in HUD's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).
21. On October 7, 2008, the Administrative Law Judge issued a Notice of Election and Judicial Determination and terminated the administrative proceeding on NFHA's complaint. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT CLAIMS

22. The testing conducted by NFHA, as described above, reveals that Defendants have:
 - A. Refused to negotiate for the sale of or otherwise made unavailable or denied dwellings to persons because of race or color in violation of 42 U.S.C. § 3604(a); and
 - B. Made statements with respect to the sale of a dwelling indicating a preference, limitation, or discrimination based on race or color, or an

intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

23. Lane Realty is liable for the discriminatory conduct described above of its agent Mr. Foreman.
24. Bullard Realty is liable for the discriminatory conduct described above as a successor of Lane Realty.
25. NFHA is an aggrieved person within the meaning of 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendants' discriminatory conduct as described above, including the frustration of its mission and diversion of its resources.
26. Defendants' conduct described herein was intentional, willful, and taken in disregard for the rights of NFHA and others.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

- A. Declares that Defendants' conduct as alleged herein violates the Fair Housing Act;
- B. Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them from

discriminating on the basis of race or color against any person in any aspect of the sale of a dwelling; and

C. Awards monetary damages to NFHA.

The United States further prays for such additional relief as the interests of justice may require.

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Dated: January 26, 2009

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