

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:07-CV-615-WJ-RLP
)	
)	
ETHEL GUNTHARP,)	
)	
)	
Defendant.)	
_____)	

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the above-captioned case brought by the United States of America on behalf of Complainants, Patricia Cruz-Lee and Andres Trujillo, pursuant to subsection 812(o) of the Fair Housing Act ("Act"), 42 U.S.C. § 3612(o).

2. Mr. Trujillo has hearing impairments and mental disabilities, and was, at all relevant times, handicapped within the meaning of the Act, 42 U.S.C. § 3602(h). Ms. Cruz-Lee is the mother of Mr. Trujillo.

3. Woodrow Guntharp and Ethel Guntharp, were the owners of Rock Creek Apartments, located in Albuquerque, New Mexico. Woodrow Guntharp is now deceased and has been dismissed as a party. During June of 2006, Complainants inquired, by telephone and in person, about renting a unit at Rock Creek Apartments as a dwelling for Mr. Trujillo. The complaint alleges that Defendants discriminated against Complainants by making prohibited inquiries regarding the nature of Mr. Trujillo's disabilities, and by expressing a preference not to

rent to persons with certain types of disability. The complaint alleges that Complainants reasonably interpreted the Defendants' statements as a refusal to show them an apartment.

4. The Complaint alleges that in making the statements generally described in paragraph 3 above, Defendant Ethel Guntharp denied Mr. Trujillo a dwelling on account of his disabilities, in violation of 42 U.S.C. § 3604(f)(1), and made or caused to be made a statement with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination, or an intent to make such a preference, limitation or discrimination, based on disability, in violation of 42 U.S.C. § 3604(c).¹

5. On or about August 26, 2006, Complainants filed a timely complaint with the U.S. Department of Housing and Urban Development ("HUD"), pursuant to 42 U.S.C. § 3610(a), alleging discrimination based on disability. HUD then conducted and completed an investigation of the complaint and determined that reasonable cause existed to believe that discriminatory housing practices had occurred. After Defendants elected to proceed in federal district court, HUD referred the case to the Department of Justice for filing pursuant to 42 U.S.C. § 3612(o)(1).

6. The parties agree that this Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o). The parties further agree that to avoid costly and protracted litigation, the claims against the Defendant Ethel Guntharp should be resolved without further proceedings. Therefore, as indicated by the signatures below, the parties agree to the entry of this Consent Decree.

It is hereby **ORDERED, ADJUDGED, AND DECREED:**

¹ This document uses the term "disability" rather than "handicap," which the Act uses. The terms are synonymous.

II. GENERAL INJUNCTION

7. The Defendant Ethel Guntharp, her officers, agents, employees, representatives, successors and assigns and all other persons in active concert or participation with her are enjoined from:

- a. Discriminating in the rental of a dwelling or otherwise making unavailable or denying a dwelling to any renter because of a disability of that renter, a person residing in or intending to reside in the dwelling after it is rented or made available, or any person associated with that renter, in violation of 42 U.S.C. § 3604(f)(1); and
- b. Making, printing or publishing, or causing to be made, printed or published, any notice, statement or advertisement with respect to the rental of a dwelling that indicates a preference, limitation, or discrimination, or an intent to make such a preference, limitation or discrimination, based on disability, in violation of 42 U.S.C. § 3604(c).

III. COMPENSATION OF AGGRIEVED PERSONS

8. In an action such as this one pursuant to section 812(o) of the Act, if liability is established, complainants may be awarded relief, including actual and punitive damages. See 42 U.S.C. 3612(o)(3) and 3613(c). Complainants Patricia Cruz-Lee and Andres Trujillo, however, have consulted an attorney, and have each freely, voluntarily, and on their own initiative determined that they do not wish to derive any monetary benefit from this action, which they initiated solely to protect the rights of other persons with disabilities under the Act.

In light of Complainants' desires, the parties and complainants have agreed to the following resolution: Within ten (10) days of the entry of this Decree, Defendant Ethel

Guntharp shall pay a total of \$3000 to tax-exempt organizations which provide services to persons with disabilities in New Mexico, and shall furnish counsel for the United States with documentation showing that these payments have been made.² The organizations to which payment shall be made have been selected jointly by the Defendant and the complainants. The recipients and the amounts to be paid shall be as follows:

St. Elizabeth Shelter
804 Alarid Street
Santa Fe, NM 87505
\$1500

The Archdiocese of Santa Fe
4000 Saint Joseph's Place NW
Albuquerque, NM 87120-1741
\$1500

9. Within ten days of entry of this Decree, Patricia Cruz-Lee and Andres Trujillo shall each execute a release of all claims, legal or equitable, that Complainants might have against Defendant relating to the occurrences which gave rise to this lawsuit (Appendix A). The executed release shall be sent by overnight delivery to counsel for the United States. Within the same time period, Defendant Ethel Guntharp shall execute a release in similar terms in favor of Ms. Cruz-Lee and Mr. Trujillo, on her own behalf and on behalf of the estate of Woodrow Guntharp, and send the release by express to counsel for the United States. Upon receipt of

² Whenever this Decree requires that a document be sent to counsel for the United States, such document shall be sent by overnight delivery to the following address:

Chief, Housing & Civil Enforcement Section
Civil Rights Division
Department of Justice
1800 G St. N.W., Seventh Floor
Washington, DC 22206

evidence that the payments required by paragraph 8 have been made, the United States shall send each of these releases to the person in favor of whom it is executed.

IV. INJUNCTIVE RELIEF

10. Within ten (10) days after the entry of this decree, Defendant Ethel Guntharp shall post and prominently display in the rental office of Rock Creek Apartments in locations that are easily visible to residents and prospective residents, and at all other places on said properties in which announcements or vacancies are posted, a sign no smaller than ten inches by fourteen inches (10" x 14") indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that includes the content required by 24 C.F.R. § 110.25 and otherwise comports with 24 C.F.R. Part 110 will satisfy this requirement.

11. Within ten (10) days after the entry of this decree, Defendant Ethel Guntharp shall ensure that all advertising for the Rock Creek Apartments in newspapers, telephone directories, radio, television, the Internet, or other media, and on signs, pamphlets, brochures and other promotional literature, includes a fair housing logo and the following sentence:

We are an equal opportunity housing provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability.

The words and logo should be prominently placed and easily legible.

12. Within ten (10) days after the entry of this decree, Defendant Ethel Guntharp shall provide copies of this Decree to all of her agents and employees whose duties, in whole or in part, involve the management of rental units at Rock Creek Apartments, and secure the signed statement, conforming to Appendix B, from each agent or employee acknowledging that he or she has received and read, and understands the Decree, and has had his or her questions about

the Decree answered. The questions shall be answered by Defendant Ethel Guntharp or her counsel.

13. Within ninety (90) days of the date of entry of this Consent Order, Defendant Ethel Guntharp and all employees and agents whose duties, in whole or in part, involve the management or rental of units at Rock Creek Apartments shall undergo fair housing training. The training shall focus on discrimination based on disability and shall inform these individuals of their obligations under the Order as well as applicable state or local law. The training shall be conducted by a qualified third party or parties, approved by the United States and unconnected to Defendant Ethel Guntharp or her employees, agents or counsel, and any expenses associated with this training shall be borne by Defendant Ethel Guntharp. It is explicitly agreed that Defendant Ethel Guntharp may undergo the required training at any place that may be convenient to her, provided the training provider is approved by the United States. Those who attend the training shall be required to sign a certification confirming their attendance, in a form substantially equivalent to Appendix C.

14. Within thirty (30) days and thereafter on the anniversary of the date of entry of this Decree, submit to the United States a compliance report as provided by this section, except that Defendant Ethel Guntharp shall submit the final report sixty (60) days prior to the expiration of this Decree.

15. The compliance reports shall include:
- a. copies of any advertisements, pamphlets, brochures, or other promotional literature concerning Rock Creek Apartments; and
 - b. the signed statements and certifications of each person who received the training referred to in paragraph 12 above.

16. For the duration of this Decree, Defendant Ethel Guntharp shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any complaint of housing discrimination against Defendant Ethel Guntharp or any of Defendant Ethel Guntharp's agents or employees. Such notification shall include the date of the complaint, a copy of any written complaint or a description of the verbal complaint, and contact information (including mailing addresses and daytime and evening telephone numbers) for the complaining party. Within fifteen (15) days of the resolution of any such complaint, Defendant Ethel Guntharp shall notify counsel for the United States, in writing, of the details of the resolution.

17. For the duration of this Decree, Defendant Ethel Guntharp shall preserve all records related to this Decree and any other documents related to the management or rental of units at its property or properties. Such documents include, but are not limited to, applications, leases, tenant files, policies and procedures and unit availability logs. Upon reasonable notice to Defendant Ethel Guntharp, representatives of the United States shall be permitted to inspect and copy any of Defendant Ethel Guntharp's records and inspect Defendant Ethel Guntharp's offices at any and all reasonable times so as to determine compliance with the Consent Decree; provided, however, that the United States shall endeavor to minimize any inconvenience to Defendant Ethel Guntharp from such inspections.

V. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

18. Woodrow Guntharp, deceased, is dismissed as a defendant in this action.

19. The Court shall retain jurisdiction for two (2) years after the entry of this Decree to enforce the terms of the Decree, at which time the case shall be dismissed with prejudice.

Prior to the expiration of the Decree's term, the United States may move the Court to extend the

duration of the Decree for good cause, including on the basis of Defendant Ethel Guntharp's failure to comply with a provision of the Decree.

20. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Decree prior to bringing such matters to the Court for a resolution. However, in the event of a failure by Defendant Ethel Guntharp to perform in a timely manner any act required to this Decree or otherwise to act in violation of any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the violation or failure to perform.

VI. TIME FOR PERFORMANCE

21. Any time limits for performance imposed by this Consent Decree may be extended by the mutual, written agreement of the United States and the Defendant Ethel Guntharp.

VII. COSTS OF LITIGATION

22. Each party to this Consent Decree shall bear its own costs and attorney's fees associated with this litigation.

IT IS SO ORDERED, this 1st day of December, 2009.


UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to the entry of this Decree:

FOR THE PLAINTIFF THE UNITED STATES:

_____/s_____
Stephen H. Rosenbaum, Chief
Rebecca B. Bond, Deputy Chief
Harvey L. Handley, Trial Attorney
Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Phone: (202) 514-4756
Fax: (202) 514-1116

FOR THE DEFENDANT ETHEL GUNTARP:

_____/s_____
Dave Romero, Jr., Esq.
The Romero Law Firm
P.O. Box 3030
Las Vegas, NM 87701
Phone: (505) 425-7000
Fax: (505) 425-7003

APPENDIX A

RELEASE OF CLAIMS

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in *United States v. Ethel Guntharp*, Civil Action No. 1:07-CV-615-WJ-RLP and the Defendants' payment of the sum of Three Thousand Two Hundred Fifty dollars (\$3,250.00), I, _____, hereby release the Defendant named in this action, Ethel Guntharp, from any and all liability for any claims, legal or equitable, I may have against them arising out of the allegations raised in this action or any related action or complaint pending before HUD involving this Defendant. I hereby acknowledge that I have read and understand the Consent Decree and this Release, and have executed this Release voluntarily and with full knowledge of its legal consequences.

Dated: _____

APPENDIX B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I received a copy of the Consent Decree entered by the Court in *United States v. Ethel Guntharp*, Civil Action No. 1:07-CV-615-WJ-RLP. I have read and understand the Consent Decree, and have had my questions about this document answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX C

TRAINING CERTIFICATION

I certify that on _____, 20____, I received training with respect to my responsibilities under the Consent Decree entered by the Court in *United States v. Ethel Guntharp*, Civil Action No. 1:07-CV-615-WJ-RLP, and the federal, state and local fair housing laws. I have received copies of and have read the Consent Decree, and I have had any questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date