

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

Civil Action No. 1:08cv311 HSO-JMR

**LEMUEL "LEMMY" W. KLEINPETER and
DENNIS RANDALL O'BRIEN**

CONSENT DECREE

This action was filed by the United States on July 18, 2008, to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Act Amendments of 1988, 42 U.S.C. §§ 3601 et seq. In its complaint, the United States alleges that defendants engaged in unlawful sexual harassment of Complainant Kevin Ely when he rented an apartment located at 102 Park Row Avenue, Long Beach, Harrison County, Mississippi. Complainant Clifford David Pugh was at all times relevant to this action Kevin Ely's roommate, and the United States alleges he was also adversely affected by defendants' conduct. Defendant Lemuel Kleinpeter was at all times relevant to this action the owner of the residential property at 102 Park Row Avenue. The United States contends that Defendant Dennis O'Brien performed maintenance work and other jobs as Lemuel Kleinpeter's agent at the apartment at 102 Park Row Avenue during the period of Complainant's tenancy.

In its Complaint, the United States specifically alleges that Defendants Kleinpeter and O'Brien subjected Mr. Ely to extensive, continuous, unwelcomed, and uninvited sexual harassment, and created a hostile environment for him, in violation

of the Fair Housing Act, 42 U.S.C. §§ 3604(b), (c) and 3617. The United States further alleges that Defendant Kleinpeter knew or should have known of the discriminatory conduct of Defendant O'Brien but failed to take action to curtail and/or prevent such conduct, and retaliated against Mr. Ely and Mr. Pugh for taking action to curb the harassment by both defendants, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(b), (c) and 3617.

Defendants deny each and every allegation of the United States.

The parties have agreed that in order to avoid protracted and costly litigation, this controversy should be resolved without further litigation. Therefore, without a trial or adjudication of any of the facts alleged by the United States, the parties consent to the entry of this Consent Decree. This agreement constitutes full resolution of the United States' claims in this action. Moreover, Complainants Ely and Pugh hereby release Defendants of any and all claims that were or could have been alleged arising out of the allegations underlying the Complaint (Appendices C and D).

It is HEREBY AGREED AND ORDERED as follows:

I. GENERAL INJUNCTIVE RELIEF

1. The Defendants, their officers, agents, employees, representatives, successors and assigns and all other persons in active concert or participation with them are enjoined from:

- a. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of sex, in violation of 42 U.S.C. § 3604(b);

- b. 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, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination in violation of 42 U.S.C. §3604(c); and
- c. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed, or on account of his/her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act, in violation of 42 U.S.C. § 3617.

II. SPECIFIC INJUNCTIVE RELIEF

A. Protective Order.

2. Defendants shall not in any manner intentionally contact, in person or through any other person, Kevin Ely or Clifford David Pugh without the express consent of such person or this Court. Defendants shall do nothing intentionally in person or through any other person to cause any of these persons fear, humiliation or harm. These prohibitions are permanent.

B. Provisions Regarding Defendant Lemuel Kleinpeter.

Throughout the term of this Consent Decree, if Defendant Kleinpeter begins residential rentals on any property he currently owns or subsequently acquires, he shall do the following:

3. Prior to beginning such rentals, provide written notice to counsel for the United States.

4. Prior to beginning such rentals, undergo training on the Fair Housing Act, with specific emphasis on discrimination on the basis of sexual harassment. The training shall be conducted by an independent, qualified third party, approved by the United States, and any expenses associated with this training shall be borne by Defendant Kleinpeter. Defendant Kleinpeter shall obtain from the trainer a certification of attendance confirming his attendance. This certification must be provided to counsel for the United States within ten (10) days of execution, and shall take a form similar to that of Appendix A.

5. Within ten (10) days after beginning such rentals, post and prominently display in his rental and management offices 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.

6. Within ten (10) days after beginning such rentals, ensure that all advertising 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.

7. Within thirty (30) days after beginning such rentals, adopt and implement specific, uniform, and objective written standards and procedures for receiving and handling sexual harassment complaints. These standards shall comply with the requirements of 42 U.S.C. §§ 3601 *et seq.*, and shall include the following elements:

- a. A provision describing where and how Defendant Kleinpeter will accept and process complaints regarding sexual harassment;
- b. A provision stating that each complaint regarding sexual harassment and response thereto shall be fully documented by Defendant Kleinpeter;
- c. A provision stating that all complaints shall be acknowledged, in writing, within fourteen (14) days of Defendant Kleinpeter's receipt of an oral or written complaint;
- d. A provision stating that Defendant Kleinpeter shall notify those making complaints regarding sexual harassment in writing of the actions taken to address the complaint within thirty (30) days of Defendant Kleinpeter's receipt of the request; if Defendant Kleinpeter takes no action, he shall include an explanation of the basis for such failure to take action in this written notification;

- e. A provision stating that Defendant Kleinpeter will retain the final written decision regarding any sexual harassment complaint in his files; and
- f. A provision stating that Defendant Kleinpeter shall not impose any additional fees or costs, or otherwise retaliate against any person who has exercised his or her right under the Fair Housing Act to make such complaints regarding sexual harassment.

8. Within thirty (30) days after beginning such rentals, provide a copy of the sexual harassment policy to each current resident of the property or properties, by delivering a copy by hand to each dwelling unit.

9. Within thirty (30) days after beginning such rentals, provide a copy of the sexual harassment policy to all prospective tenants at the time of application, to each new tenant at the time he or she signs his or her initial lease, and to each new employee at the time of hire.

10. Within thirty (30) days after beginning such rentals, post and prominently display the sexual harassment policy in its rental and management offices in locations that are easily visible to residents and prospective residents, and at all other places on its property or properties where announcements or vacancies are posted.

11. Keep written records of each complaint regarding sexual harassment he receives during the duration of this Consent Decree. These records shall include:

- a. the name, address, and telephone number of the person making the complaint;
- b. the date on which the complaint was received;

- c. summary of complaint;
- d. resolution of complaint; and
- e. reason(s) for actions taken and/or not taken.

12. Provide copies of this Consent Decree to all of his agents and employees whose duties, in whole or in part, involve the management of rental units, within ten (10) days after they begin employment or agency with Defendant Kleinpeter, and secure the signed statement, in a form similar to that of 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 Kleinpeter or his counsel.

13. 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 Kleinpeter shall submit the final report sixty (60) days prior to the expiration of this Decree.

14. The compliance reports shall include:
- a. copies of any advertisements, pamphlets, brochures, or other promotional literature concerning Defendant Kleinpeter's rental property;
 - b. copies of the records regarding sexual harassment complaints referred to in paragraph 11 above; and
 - c. the signed statements and certifications of each agent and employee referred to in paragraph 12 above.

15. For the duration of this Decree, Defendant Kleinpeter shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any complaint of housing discrimination against Defendant Kleinpeter or any of Defendant Kleinpeter'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 Kleinpeter shall notify counsel for the United States, in writing, of the details of the resolution.

16. For the duration of this Decree, Defendant Kleinpeter 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 Kleinpeter, representatives of the United States shall be permitted to inspect and copy any of Defendant Kleinpeter's records and inspect Defendant Kleinpeter'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 Kleinpeter from such inspections.

C. Provisions Regarding Defendant Dennis O'Brien

17. In the event Defendant O'Brien secures employment in the management or operation of a multi-family residential property, including but not limited to

showing and renting units, selecting tenants, making repairs, collecting rents, or determining whom to evict, the following provisions shall apply:

- a. Prior to commencing employment in the management or operation of any multi-family residential property, Defendant O'Brien must:
 - 1) Notify the prospective employer of this lawsuit, its resolution, and provide the prospective employer with a copy of this Consent Decree.
 - 2) Undergo training on the Fair Housing Act, with specific emphasis on discrimination on the basis of sexual harassment. The training shall be conducted by an independent, qualified third party, approved by the United States, and any expenses associated with this training shall be borne by Defendant O'Brien. Defendant O'Brien shall obtain from the trainer a certification of attendance confirming his attendance. This certification must be provided to counsel for the United States within ten (10) days of execution, and shall take a form similar to that of Appendix A.
 - 3) Provide written notice to counsel for the United States of the identity, address and telephone number of the employer;

as well as his sworn certification that he informed the employer of this lawsuit and provided the employer a copy of this Consent Decree.

- b. For the duration of this Decree, Defendant O'Brien shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any housing discrimination complaint on the basis of sexual harassment against him or his employer. 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 O'Brien shall notify counsel for the United States, in writing, of the details of the resolution.

III. MONETARY JUDGMENT

18. Judgment is hereby entered in favor of the United States, and against both Defendant Lemuel Kleinpeter and Defendant Dennis O'Brien, in the amount of Fifteen Thousand Dollars (\$15,000) for each Defendant, for a total judgment of Thirty Thousand Dollars (\$30,000); provided, however, that execution on this judgment shall be stayed upon the following conditions:

- a. On or before March 10, 2010, each defendant will make a payment to the United States in the amount of One Hundred Dollars (\$100.00) each.

b. On or before the tenth day of each month thereafter, each defendant will make a payment to the United States in the amount \$100.00 until each defendant has paid a total of \$6,000 each pursuant to these terms.

c. Each payment required by this paragraph will be mailed by registered mail, by the day on which it is required to be made, to the United States Attorney's Office for the Southern District of Mississippi, addressed as follows:

United States Attorney's Office
Attn: Financial Litigation Unit
188 East Capitol Street, Suite 500
Jackson, MS 39201

The payment may be made in the form of a check or money order, which will be made payable to the United States Department of Justice, with a notation of the defendant's name and the case number 1:08cv311.

d. This Court will terminate the stay of execution on the \$15,000 judgment against one or both defendants in the event that: (a) the United States files a motion to terminate the stay, with a written certification that the defendant against whom the termination of stay is sought is in arrears in an amount of \$200 or more on the payments required under this section; (b) the United States files a certification that it attempted to notify defendant of the arrearage by mailing notice thereof to his last-known address or to any counsel of record, and defendant failed to pay the arrearage within thirty (30) days after the notice was mailed; (c) the United States files a certification that it has attempted to notify defendant of its motion by mailing it to his last-known address or to any counsel of record; and (d) within thirty (30) days after the

filing of such motion and certifications, defendant fails to show good cause why the stay should not be terminated.

19. The payments required herein shall not bear interest, but the \$15,000 judgment against each defendant shall bear interest at the legal rate provided for judgments in the United States District Courts. At any time before the United States files a motion pursuant to paragraph 18(d) above, defendant may satisfy or reduce his monetary obligation under this paragraph by making an advance, lump sum payment. Any advance payment that does not satisfy the entire amount due will be applied to the earliest payments due. Upon full payment of the \$6,000 by one or both defendants, at any time before the United States files a motion pursuant to paragraph 18(d) above, the United States shall file a satisfaction of judgment showing full satisfaction of the \$15,000 judgment and accrued interest against the defendant who has provided full payment of the \$6,000.

20. The United States shall pay the money received pursuant to this Consent Decree to Kevin Ely and David Pugh if they are alive and can be located, and if either is not alive or cannot be located, in equal shares to his/their heir(s).

21. This judgment shall be non-dischargeable in bankruptcy under 11 U.S.C. § 523 (a)(6) and under the Fair Housing Act, as amended.

IV. RETENTION OF JURISDICTION AND DURATION OF DECREE

22. This Court shall retain jurisdiction to implement and enforce this Order.

23. The Court shall retain jurisdiction for five (5) years after the entry of this Decree to enforce the terms of the Consent Decree, at which time the case shall be

dismissed with prejudice. Prior to the expiration of the Consent 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 either Defendant's failure to comply with a provision of the Decree.

24. 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 either Defendant 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.

V. COSTS OF LITIGATION

25. Each party will bear its own costs and attorney's fees associated with this litigation.

SO ORDERED this 10th day of March, 2010.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

Dennis O'Brien

Dennis O'Brien, Pro Se
Defendant

Lemuel W. Kleinpeter

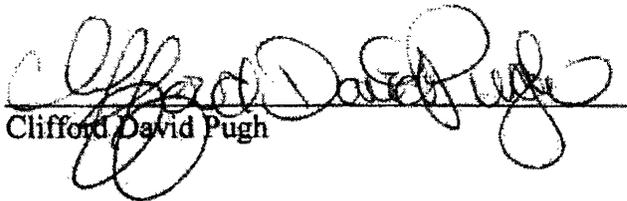
Lemuel "Lemmy" W. Kleinpeter, Pro Se
Defendant

Felicia Adams, AUSA for

ANGELA GIVENS WILLIAMS
Assistant United States Attorney
188 East Capitol Street, Suite 500
Jackson, MS 39201
(601) 973-2822
MS Bar No. 102469
Counsel for the United States

APPENDIX C
RELEASE OF CLAIMS BY CLIFFORD DAVID PUGH

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in the *United States v. Kleinpeter, et al.*, Civil Action No. 1:08cv311 (S.D. Miss.), and the Defendants' payment in accordance with the consent decree, I, Clifford David Pugh, hereby release the Defendants named in this action, Lemuel Kleinpeter and Dennis O'Brien, as well as their employees, agents, officers and directors from any and all liability for any claims, legal or equitable, I may have against them arising out of the allegations raised, or that could have been raised, in this action or any related action or complaint pending before HUD involving these Defendants. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

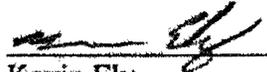

Clifford David Pugh

Date: 2/20/10

APPENDIX D

RELEASE OF CLAIMS BY KEVIN ELY

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in the *United States v. Kleinpeter, et al.*, Civil Action No. 1:08cv311 (S.D. Miss.), and the Defendants' payment in accordance with the consent decree, I, Kevin Ely, hereby release the Defendants named in this action, Lemuel Kleinpeter and Dennis O'Brien, as well as their employees, agents, officers and directors from any and all liability for any claims, legal or equitable, I may have against them arising out of the allegations raised, or that could have been raised, in this action or any related action or complaint pending before HUD involving these Defendants. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.



Kevin Ely

Date: 2/20/10