

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE AT CHATTANOOGA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:06-cv-104
	)	Edgar/Lee
	)	
FOUNTAINBLEAU APARTMENTS L.P.;	)	
CLARK W. TAYLOR, INC.; CLARK W.	)	
TAYLOR; JANE MCELROY; CWT	)	
MANAGEMENT, INC.; AND	)	
ELIZABETH FOSTER,	)	
	)	
Defendants.	)	
	)	

**CONSENT ORDER**

**I. Factual and Procedural Background**

The United States initiated this action on April 27, 2006, against Fountainbleau Apartments L.P. (“Fountainbleau Apartments”) and Elizabeth Foster (“Foster”). On October 2, 2007, the United States amended its complaint to add defendants Jane McElroy (“Ms. McElroy”), Clark W. Taylor (“Mr. Taylor”), Clark W. Taylor, Inc., and CWT Management, Inc (“CWT Management”). In its amended complaint, the United States alleged that the defendants violated the Fair Housing Act, Title VIII of the Civil Rights Act of 1988, 42 U.S.C. §§ 3601 *et seq.* (“the Act”), on the basis of familial status with respect to residential rental units or dwellings at the Fountainbleau Apartments, a 128-unit complex in East Ridge, Tennessee.

At all times relevant to this lawsuit, Fountainbleau Apartments L.P. and Clark W. Taylor, Inc. owned Fountainbleau Apartments. Clark W. Taylor, with a trust he created for his family,

were the only stockholders of Clark W. Taylor, Inc. CWT Management Inc., of which Mr. Taylor is the president and sole stockholder, and Fountainbleau Apartments L.P. managed Fountainbleau Apartments. Jane McElroy was employed by CWT Management, Inc. to manage Fountainbleau Apartments. Elizabeth Foster was the resident manager of Fountainbleau Apartments.

Between April 12 and June 9, 2005, the United States performed fair housing tests in which paired individuals with similar characteristics except for race or color or familial status visited the Fountainbleau rental office, 950 Spring Creek Road, East Ridge, Tennessee, and inquired about the availability of two-bedroom apartments. Audio recordings of these tests and other evidence obtained by the Justice Department indicated that the defendants discriminated on the basis of familial status. In particular:

- A. During each test, Foster asked the tester if she had children or how many people would be staying in the apartment. For the testers who stated that they did not have children or responded that they had only a spouse, Foster informed them that the complex did not have children and that most of the residents were older people and senior citizens. Recordings show that Foster stated to two testers that, “we don’t have children here.” She was also recorded making the statement, “mostly what we have here are senior citizens and older adults,” and “we don’t have any children here at all.”
- B. The tester who stated that she had children was told that Fountainbleau Apartments does not have children. Moreover, Foster directed this tester to a

complex that she said accepted children. The tester was not offered an opportunity to view any apartments, nor was she given an application.

On June 19, 2008, the Court granted the United States' motion for partial summary judgment as to liability, holding that the defendants violated the Fair Housing Act by engaging in discrimination on the basis of familial status at Fountainbleau Apartments.

The Defendant Clark Taylor admitted that he had operated the Fountainbleau Apartments based upon an assumption on his part that his doing so was in compliance with the Act. In other words, Taylor believed that he was acting in a lawful manner in compliance with the Act. He has acknowledged that he made certain mistakes, in good faith, and has announced an intention and desire to comply with the Act as well as all other laws.

The parties agree that the United States' claims for damages, civil penalties, and injunctive relief against defendants should be settled and resolved without the necessity of a trial. The parties have agreed to the entry of this Consent Order, as indicated by the signatures below.

Therefore, it is **ORDERED, ADJUDGED and DECREED** as follows:

## **II. Injunction**

1. Except as provided for in Section VIII, infra, defendants, their agents, employees, successors, and all persons in active concert or participation with them are hereby enjoined, with respect to the rental of dwellings at the Fountainbleau Apartments, from:
  - a. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of familial status;
  - b. Discriminating against any person in the terms, conditions, or privileges of the

rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;

- c. 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 any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination; or
- d. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act.

### **III. Nondiscrimination Policies and Procedures**

- 2. The Fountainbleau Apartments dwelling units subject to this Order are hereinafter referred to as "covered dwelling units."
- 3. Defendants shall prepare and implement the Nondiscrimination Policies and Procedures, identified in Exhibit A, which regard the rental of covered dwelling units and shall be applied equally to all applicants, actual and prospective, regardless of their familial status (having children under 18).

### **IV. Notice to Public of Nondiscrimination Policies**

- 4. Except as provided for in Section VIII, infra, within thirty (30) days after the date of entry of this Consent Order, defendants shall take the following steps to notify the public of their nondiscriminatory policies:
  - a. Prominently post in the Fountainbleau rental office, a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all apartments are

available for rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

- b. Whenever any covered dwelling unit is available, defendants shall prominently post an easily readable "For Rent" or "Vacancy" sign or notice at the complex in which the dwelling unit is vacant. The sign or notice (having minimum dimensions of eight (8) inches by ten (10) inches) shall include the slogan "Equal Housing Opportunity" and/or the fair housing logo. Such slogan and logo shall be prominently displayed and easily readable.
- c. Include the words "Equal Housing Opportunity" and/or the fair housing logo in all rental advertising conducted by defendants, their agents or employees, in newspapers, flyers, handouts, telephone directories and other written materials; on radio, television or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature, provided that this requirement does not compel defendants to advertise in any of these media, but does require compliance with this provision whenever defendants so advertise. The words and/or logo shall be prominently placed and easily readable.
- d. Include the following phrase in the standard rental application and the standard rental agreement used for covered rental dwelling units, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status (having children under age 18).

#### **V. Mandatory Training**

5. Within thirty (30) days of the entry of this Consent Order, defendants shall provide a copy of this Order and the Nondiscrimination Policies and Procedures to their agents and employees involved in showing, renting, or managing any and all covered dwelling units and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order and the Nondiscrimination Policies and Procedures identified in Exhibit A, has had the opportunity to have questions answered about the Order and Nondiscrimination Policies and Procedures, and agrees to abide by the relevant provisions of the Order and said policies and procedures. This statement shall be in the form of Exhibit B.
6. During the term of this Order, within ten (10) days after each new agent or employee becomes involved in showing, renting, or managing any covered dwelling units, defendants shall provide a copy of this Order and the Nondiscrimination Policies and Procedures to said agent or employee involved in showing, renting, or managing any and all covered dwelling units and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, had the opportunity to have questions about the Order answered, and that he or she has also received and read the Nondiscrimination Policies Procedures, and agrees to abide by said policies and procedures and the relevant provisions of the Order. This statement shall be in the form of Exhibit B.
7. Within one hundred eighty (180) days from the date of entry of this Order, defendants and all agents and employees involved in showing, renting, or managing any covered dwelling units shall undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of familial status. The training shall be

conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with this training shall be borne by defendants.

Defendants shall obtain from the trainer certifications of attendance, executed by each individual who received the training, confirming their attendance, in a form that has been approved by the United States. This confirmation shall include the name of the course, the date the course was taken, and the length of the course and/or time within which the course was completed. The United States will, upon request, identify persons deemed competent by the United States to provide such training in the Southeast Tennessee area at reasonable cost. Should Defendants propose a different trainer, the United States will state any objections to such person with particularity, but its approval of any such trainer will not be unreasonably withheld.

## **VI. Processing Rental Applications, Record Keeping, and Compliance Testing**

Except as provided for in Section VIII, *infra*, defendants shall implement the procedures herein.

### **8. Processing Rental Applications**

Within ninety (90) days from the date of entry of this Order, defendants shall, as to all covered dwelling units, implement the objective, uniform, non-discriminatory standards and procedures that have been approved by the United States for the processing of applications, which include the establishment and maintenance of an Availability List, the establishment and maintenance of a Waiting List and a procedure for notifying people who are on the Waiting List about an available unit, the establishment and maintenance of Guest Cards, and the establishment and maintenance of a Rental Application Log and a procedure for deciding in a non-discriminatory manner which applicants shall be

permitted to rent available dwellings. The standards and procedures shall be posted and prominently displayed in the Fountainbleau Apartments rental office and in any office where there is rental activity and/or personal contact with applicants, and a copy of these standards and procedures shall be made available upon request to any applicant for the rental of a dwelling. For the duration of this Order, these rental standards and procedures may be modified only if written notice is given to counsel for the United States thirty (30) days before modifications are to take effect.

9. Record Keeping

With respect to the rental of covered dwelling units, within thirty (30) days from the date of this Order, defendants shall ensure that each of the following are maintained and updated as new information becomes available:

- a. An Availability List on a daily basis that includes the address and apartment number of each unit known to be available or reasonably expected to be available for rental within thirty (30) days; monthly rent for each such unit; security deposit for each such unit; the date defendants or their agents or employees were first informed it would be available for rental, and the first date it would be available for rental or occupancy by a new tenant. Defendants and their agents/employees shall share or offer to share information on the Availability List with each person who visits or calls the rental office to inquire about the availability of rental dwellings;
- b. Guest Cards: A request shall be made of all persons who visit or inquire about rental units at the covered dwelling units to fill out a Guest Card providing the date of the visit, the visitor's name, address, daytime and evening telephone

numbers, children under age 18 expected to occupy the dwelling, and the date by which they wish to move. Defendants shall note on the Guest Card the dwelling units the person was shown and whether the person was given an application.

The top portion of the Guest Card shall contain the following disclaimer: "The following information is requested to assist Fountainbleau Apartments in complying with the federal Fair Housing Act and will be kept confidential. This information is not required in order to rent an apartment.";

- c. A Waiting List for all persons who inquire by telephone or in person about renting a dwelling from defendants and who are informed that there are no vacancies or available apartments to rent. This Waiting List shall indicate the date of the visit or telephone call, the visitor's or caller's name, address, daytime and evening telephone numbers, the date on which the person wishes to move and any other relevant information (such as a preference regarding the number of bedrooms). With regard to those who inquire in-person, defendants shall indicate whether the individuals have any children. The defendants shall also note on the waiting list the date, time, and employee or other person who contacted any individual to inform him or her of any vacancies or available apartments, and the manner of each attempt to contact persons on the list; and
- d. A Rental Application Log maintained on a daily basis that sets forth the name of the applicant, the number of children under 18, if any, residing with the applicant, whether the application for tenancy was approved or rejected, the building and unit number occupied for all approved applicants, and a detailed explanation for all rejected applications.

10. Compliance Testing

The United States may take steps to monitor defendants' compliance with this Order including, but not limited to, conducting fair housing tests at any covered dwelling unit.

**VII. Reporting Requirements**

11. Within ninety (90) days of the date of entry of this Consent Order, and every six (6) months thereafter for the duration of this Order, defendants shall deliver to counsel for the United States<sup>1</sup> a report containing information about defendants' compliance efforts during the preceding reporting period, including but not limited to:

- a. Copies of all mandatory education acknowledgments signed by defendants, their agents and employees, and all certifications of attendance of each participant in such educational program, pursuant to Section V of this Order;
- b. Copies of all Availability Lists, Guest Cards and other information recorded by any means related to any inquiries regarding the availability of rental dwellings, including Rental Application Logs, and Waiting Lists maintained pursuant to Section VI of this Order;
- c. Copies of lists setting forth the occupancy of each covered dwelling unit by address and apartment number, including the name and familial status of each tenant in that dwelling unit during the reporting period;
- d. Photographs of each office in which rental activity is conducted, showing the fair

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<sup>1</sup> All documents or other communications required by this Order to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-70-147, United States Department of Justice, 950 Pennsylvania Avenue N.W.- G St., Washington, D.C. 20530, or as otherwise directed by the United States. If the Consent Order requires transmission by facsimile, the communication shall also be sent via facsimile to (202) 514-1116.

housing signs required by Section IV of this Order; and

- e. Copies of any documents required by 42 U.S.C. § 3607(b), 24 C.F.R. §§ 100.305-307, or Section VIII of this Consent Order to prove that Fountainbleau Apartments meets the exemption for “housing for older persons.”
12. During the period in which this Order is in effect, defendants shall preserve all records that are the source of, contain, or relate to any of the information pertinent to the obligations under this Order, including all rental applications, leases, and rental roll ledgers, and occupancy lists for all covered dwelling units as well as records relating to the transfer of interest in dwelling units as set out in Section XII below. Upon reasonable notice to counsel for defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, defendants shall provide copies of such documents.
13. During the period in which this Order is in effect, defendants shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against defendants, or defendants' agents or employees, regarding familial status discrimination in housing. If the complaint is written, defendants shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including, if known, the complainant's name, address, and telephone number. Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within fifteen (15) days of any resolution of such complaint.

#### **VIII. Housing for Older Persons Exemption**

14. During the term of this Consent Order, if any defendant claims that Fountainbleau

Apartments meets the exemption for “housing for older persons,” see 42 U.S.C. § 3607(b), 24 C.F.R. §§ 100.300 et seq., that defendant may submit to the United States all supporting documents required by 42 U.S.C. § 3607(b) and 24 C.F.R. §§ 100.305-307. Within sixty (60) days of receipt of such documents, the United States shall notify that defendant whether it (a) may be excused from Sections II, III, IV, and VI of this Consent Order, or (b) may not be excused from these provisions because the information provided does not support such a determination. The United States may also request additional or clarifying information. The property at issue shall remain subject to this Consent Order unless and until the United States provides written confirmation that the property is excused, or the Court, upon application of a Defendant, rules that the property is excused.

15. A defendant cannot discriminate against families with children at Fountainbleau Apartments to achieve 80 percent occupancy by persons 55 years or older. A defendant seeking to reach the 80 percent threshold may not, among other things, reserve unoccupied units for persons 55 years or older, advertise itself as housing for older persons, evict families with children, deny families with children a chance to occupy vacant units, discourage families with children from occupying units, or otherwise discriminate against families with children in the terms, conditions, or privileges of rental.
16. Should the United States or the Court determine to excuse Fountainbleau Apartments from provisions of this Consent Order pursuant to paragraph 14, above, nothing herein shall be construed as releasing Fountainbleau Apartments from its obligation to establish and maintain appropriate policies, practices and procedures in accordance with 42 U.S.C. § 3607(b), and 24 C.F.R. §§ 100.305-307.

### **IX. Compensation of Aggrieved Persons**

17. Within thirty (30) business days after entry of this Consent Order, the defendants shall pay a total of one hundred sixteen thousand five hundred dollars (\$116,500) to the United States for the purpose of compensating those persons identified in Exhibit D, who were harmed by defendants' discriminatory rental practices (hereinafter "aggrieved persons"). This payment shall be delivered to counsel for the United States in the form of a cashier's check payable to the "United States Treasury."
18. When counsel for the United States has received a signed release in the form of Exhibit C from an aggrieved person, counsel for the United States shall deliver a check to the aggrieved person and the original, signed release to counsel for defendants. No aggrieved person shall be paid until he/she has signed and delivered to counsel for the United States the release at Exhibit C.

### **X. Civil Penalty**

19. Within thirty (30) days after the entry of this Consent Order, the defendants shall pay a total of fifteen thousand dollars (\$15,000) to the United States as a civil penalty, pursuant to 42 U.S.C. 3614(d)(1)(C). This payment shall be delivered to counsel for the United States in the form of a cashier's check payable to the "United States Treasury."

### **XII. Transfer of Interest in Covered Dwelling Units**

20. If at any time while this Order remains in effect, any defendant other than defendant McElroy or defendant Foster ("transferring defendant") decides to transfer the entirety of said defendant's direct or indirect ownership, management, or other financial interest in Fountainbleau Apartments to an unrelated party ("purchaser" or "transferee") in an arms-

length transaction,<sup>2</sup> the transferring defendant shall take the following steps:

- a. At least thirty (30) days prior to completion of the sale or transfer, provide to the United States each prospective transferee's name, address and telephone number;
- b. Within thirty (30) days following completion of the sale or other transfer, the transferring defendant shall provide to the United States by first-class mail a copy of the documents memorializing the transfer in interest of the dwelling unit(s);
- c. If the transferring defendant complies with parts a and b above, and thereby transfers all of defendant's ownership, management, or other financial interest in the dwelling unit(s) to the purchaser or other transferee, said defendant will thereafter be relieved of defendant's obligations under this Order, with the exception of Defendants' obligations under Sections IX and X of this Order.

### **XIII. Scope and Duration of Consent Order**

22. The provisions of this Consent Order shall apply to all defendants, their employees, agents, successors, and all persons acting in active concert or participation with them. If defendant Foster or defendant McElroy leaves the employment of defendant Taylor, or any entity owned or controlled by defendant Taylor, she shall be relieved of her obligations under Sections II - IV, VI - VII, and XII - XIV of this Order.
23. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for two (2) years.
24. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of

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<sup>2</sup> For purposes of this Consent Order, "arms-length transaction" is defined as a transaction such as a contract or agreement that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that contract.

the Order, after which time the case shall be dismissed with prejudice.

25. All parties shall be responsible for their own attorney's fees and court costs, except as provided for in Section XIV below.

**XIV. Remedies for Non-Compliance, Time for Performance, and Modifications**

26. The United States may move the Court to extend the period in which this Order is in effect if defendants violate one or more terms of the Order or if the interests of justice otherwise require an extension of the terms of the Order.
27. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties.
28. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by any defendant, whether willful or otherwise, to perform in a timely manner any act required by this Order or otherwise to comply with 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 attorney's fees which may have been occasioned by the defendant's or defendants' violation or failure to perform. However, before the United States applies for such relief, it shall first advise the defendants in writing and with particularity the alleged violation and permit the defendants a reasonable opportunity to cure such violation.



By their signatures below, the parties consent to the entry of this Consent Order.

**For the United States:**

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

s/Jennifer E. McAllister  
STEVEN H. ROSENBAUM  
Chief  
MICHAEL S. MAURER  
Deputy Chief  
BRUCE I. GEAR [BAR No. 463388]  
JENNIFER E. MCALLISTER [BAR No. 71180]  
Trial Attorneys  
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**For Defendants:**

BURNETTE, DOBSON & PINCHAK

s/Frank P. Pinchak  
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FRANK P. PINCHAK, BPR # 02094  
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Exhibit A

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## **NONDISCRIMINATION POLICY**

It is the policy of Fountainbleau Apartments to comply with Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq., by ensuring that apartments are available to all persons without regard to familial status (having children under age 18). This policy means that, among other things, Fountainbleau Apartments and all its agents or employees with the responsibility for renting, or managing any dwelling units must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants because of familial status. Such agents and employees may not:

- a. Refuse to rent after the making of a bona fide offer, or refuse to negotiate for rental of, or otherwise make unavailable or deny, a dwelling to any person because of familial status;
- b. Discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
- c. Make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination; or
- d. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act.

Any agent or employee who fails to comply with this non-discrimination policy will be subject to appropriate disciplinary action, which may include termination and/or eviction. Any action taken by an agent or employee that results in the unequal service, treatment or behavior to tenants on the basis of familial status may constitute a violation of state and federal fair housing laws.

Exhibit B

Employee/Agent Acknowledgment of Receiving and Reviewing Order  
and Nondiscrimination Policies and Procedures

I have received a copy of the Consent Order entered in United States v. Fountainbleau Apartments L.P., et al., Civil Action No. 1:06-cv-104 (E.D. Tenn.). I have also received a copy of my employer's Nondiscrimination Policies and Procedures. The Consent Order and the Nondiscrimination Policies and Procedures were explained to me by my employer, and all questions concerning these documents were answered. I have read and understood the Consent Order and the Nondiscrimination Policies and Procedures.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
EMPLOYEE/AGENT NAME (PRINT)

\_\_\_\_\_  
EMPLOYEE/AGENT SIGNATURE

Exhibit C

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Fountainbleau Apartments L.P., et al., Civil Action No. 1:06-cv-104 (E.D. Tenn.), and defendants' payment to me of \$ \_\_\_\_\_, pursuant to the Consent Order, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from the housing discrimination alleged in that litigation up to and including the date of execution of this release, that I may have against any of the defendants, all related entities, parents, predecessors, successors, subsidiaries and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders and employees and their heirs, executors, administrators, successors or assigns.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]

Exhibit D

Aggrieved Persons

1.	Latoya Bailey	\$7,000
2.	Heather Nicole Dover	\$5,000
3.	Aubrey D. Evans	\$6,500
4.	Jennifer Evans	\$8,000
5.	Kimberly Evans Hutchinson	\$8,000
6.	Travis Hutchinson	\$6,500
7.	Karen Ingram	\$15,000
8.	Latasha Johnson	\$7,000
9.	Antonio Mattison	\$6,500
11.	Marisa Ross Mattison	\$7,000
10.	Tiffany McGill	\$5,000
12.	Tammy Royer	\$15,000
13.	Tammy Smith	\$5,000
14.	Sandra Sutton	\$8,000
15.	Martha Woods	\$7,000