

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
v.)	CASE NO. 2:08-CV-00573-MEF-SRW
)	
MATTHEW BAHR, <i>et al.</i> ,)	
)	
DEFENDANTS.)	
_____)	

**CONSENT DECREE BETWEEN PLAINTIFF UNITED STATES
AND DEFENDANTS JAMES AND BARBARA CLARK**

The parties hereby consent to the entry of this Consent Decree. Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. SCOPE OF CONSENT DECREE

1. The provisions of this Consent Decree shall apply to James and Barbara Clark and their respective employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with them.
2. This Consent Decree constitutes a full and final resolution of all claims of violation of the Fair Housing Act that the United States brought or could have brought in this action related to Defendant James Clark’s and/or Barbara Clark’s ownership and/or management of real property in Montgomery, AL.

II. FACTUAL BACKGROUND

3. This action was filed by the United States 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.* The United States alleges that Defendant Jamarlo K. Gumbaytay, aka Laurence Lamar d/b/a Elite Enterprises Consultant Group (hereinafter “Gumbaytay”) engaged in discrimination on the basis of sex in violation of the Fair Housing Act in connection with rental dwelling units he managed on behalf of Defendants Matthew Bahr, Brett Rosenbaum, Lori Williams, Sean McDonough, Woody D. Franklin, Sr., James F. Clark, Barbara Clark, Millennia Properties, LLC, Abraham Campbell, Guest Properties Sales, LLC, Jewel Manahan, Todd Chamelin, Terrill Jorgensen, and Bruce Dunn (hereinafter “the owner Defendants”) in and around Montgomery, Alabama. Specifically, the United States alleges that Defendant Gumbaytay, in violation of 42 U.S.C. §§ 3604 (a), (b), (c) and 3617, subjected female tenants and prospective tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct is alleged to have included, but is not limited to, unwanted verbal sexual advances; unwanted sexual intercourse and sexual touching; entering the apartments of female tenants without permission or notice; granting and denying tangible housing benefits based on sex; and taking adverse action against female tenants when they refused or objected to sexual advances.

4. The United States further alleges that the owner Defendants, including James and Barbara Clark, are vicariously liable for the above-described discriminatory conduct because Defendant Gumbaytay engaged in such acts while acting within the scope of his employment and/or agency with the owner Defendants.

5. Defendants represent that they currently own the following residential real property: 3012 Avenue E, Birmingham, AL, 8609 Division Avenue, Birmingham, AL, 1417 Alabama Avenue SW, Birmingham, AL, and 4005 Chelsea Drive, Montgomery AL. These properties are

not currently being offered for residential lease. The Defendants do not intend to re-enter the business of residential real estate.

6. The United States alleges that the Defendants' conduct constituted a pattern or practice of discrimination and/or a denial of rights to a group of persons that raises an issue of general public importance. See 42 U.S.C. § 3614(a).

7. To avoid the risks and burdens of litigation, the Defendants have entered into this Decree to resolve voluntarily the claims asserted by the United States.

III. INJUNCTION

8. Defendants and their respective agents, employees, successors, and all persons currently in active concert or participation with it are hereby enjoined from:

- a. Denying or otherwise making unavailable housing to any person because of sex;
- b. Discriminating against any person in the terms, conditions or privileges of renting a dwelling, or in the provision of services or facilities in connection therewith, because of sex;
- c. Making statements with respect to the rental of a dwelling that indicate any preference, limitation or discrimination based on sex; or
- d. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of any right granted by 42 U.S.C. §§ 3603 -3606.

IV. NON-DISCRIMINATION POLICIES AND PROCEDURES

9. Defendants shall take the following actions if they, at any point more than thirty (30) days after the entry of this Decree, re-enter the residential real estate business or engage directly or indirectly in the rental of residential real property:

- a. Implement the Nondiscrimination Policies and Procedures attached as Appendix A to this Decree. Provide all current tenants with copies of the Nondiscrimination Policies and Procedures. Provide all future tenants with a copy of the Nondiscrimination Policies and Procedures within fifteen (15) days of each tenant's signing a lease.
- b. Provide a copy of this Decree and Appendix A to all current and future agents, contractors, or employees involved in showing, renting, operating, or managing any residential real property, and secure a signed statement from each acknowledging that he or she has received and read the Decree and the Nondiscrimination Policies and Procedures, has had the opportunity to have questions answered about the Decree and Nondiscrimination Policies and Procedures, and agrees to abide by the relevant provisions of the Decree and Nondiscrimination Policies and Procedures. This statement shall be in the form set forth in Appendix B. This statement shall be obtained from future agents, contractors, or employees within 15 days of their hiring or promotion.
- c. Include in any and all advertising conducted for any residential real property—whether in newspapers, telephone directories, radio, television or other media, billboards, signs (including at the entrance to the property), pamphlets,

brochures or other promotional literature—either a fair housing logo, the words “equal housing opportunity provider,” and/or the following sentences:

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 or logo should be legible and prominently placed.

V. RECORD KEEPING AND REPORTING REQUIREMENTS

10. With respect to any residential rental property in which either Defendant has, individually or jointly, any ownership, equitable, or leasehold interest, Defendants shall, within fifteen (15) days of the entry of this Decree, or within fifteen (15) days of acquiring any ownership, equitable, or leasehold interest in residential rental property, preserve all rental applications, leases, rental roll ledgers, eviction notices, occupancy lists, and other similar business records. Upon reasonable notice, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times. Upon request by the United States, Defendants shall provide copies of such documents and any other information reasonably related to compliance with this Consent Decree that is requested by the United States.¹

11. Every six months from the date of the entry of this Decree, and sixty (60) days before the expiration of this Decree, Defendants shall send the United States a list of all tenants at any residential real property in which they, individually or jointly, have any ownership, equitable, or leasehold interest.

1. All documents or other communications required by this Consent Decree to be sent to counsel for the United States shall be sent by commercial (non-USPS) overnight delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ 175-2-80, or as otherwise directed by the United States. Facsimile transmissions shall be sent to (202) 514-1116.

12. Defendants shall notify counsel for the United States, in writing, within 15 days of receipt of any written or oral complaint against them or their agents, contractors, or employees regarding discrimination in housing based on sex and/or sexual harassment. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. If the complaint is written, Defendants shall provide the United States a copy with the notification. If the complaint is oral, Defendant shall provide a written summary of the complaint. 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.

VI. MANDATORY TRAINING

13. To the extent that either Defendant continues thirty (30) days after the entry of this Decree to engage, directly or indirectly, in the rental of residential real property, or within thirty (30) days of either Defendant's acquiring, individually or jointly, any ownership, equitable, or leasehold interest in residential rental property then Defendants all of and all of their agents, contractors, or employees involved in showing, renting, operating, or managing any such property shall, within 180 days from the date of entry of this Decree, undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of sex. The training shall be conducted by an independent qualified third party, not connected to the Defendants or defense counsel, and approved in advance by the United States. Any expenses associated with this training shall be borne by the Defendants. The Defendants shall obtain from the trainer certifications of attendance, in a form acceptable to the United States, executed by each individual who received the training confirming their attendance. This confirmation shall include the name of the course,

the date the course was taken, and the length of the course and/or the time in which it was completed.

VII. MONETARY DAMAGES FOR AGGRIEVED PERSONS

14. Within ten (10) days of the date of this Consent Decree, Defendants shall jointly pay to the United States two thousand, five-hundred dollars (\$2,500) into a monetary damages fund for persons whom the United States has identified as aggrieved persons within the meaning of the Fair Housing Act. Payment into this fund shall be made within fifteen (15) days of the date of the entry of this Consent Decree by delivering to counsel for the United States a certified check or money order made payable to the United States Treasury. Defendants shall deliver this payment to counsel for the United States, via overnight mail, at the address listed in footnote 1, above.

15. The monetary damages fund shall be distributed to aggrieved persons in amounts to be determined by the United States and approved by the Court. Within sixty (60) days of the resolution of all of its claims in this case, the United States shall submit a proposed distribution of the monetary damages fund to the Court for approval, and identify the aggrieved persons and the amount of damages that the United States concludes should be paid to each. The Defendants waive the right to challenge the United States' proposed distribution. However, no money from the fund shall be distributed to an aggrieved person unless he/she has executed and delivered to the United States the release attached to this Consent Decree as Appendix C. Should any aggrieved person refuse to execute the release attached as Appendix C, his or her share of the monetary damages fund will be distributed, in the United States' discretion, among the aggrieved persons who executed releases.

16. The monetary damages amount required to be paid pursuant to paragraph 14, above, is a debt for willful and malicious injury by the Defendants within the meaning of 11 U.S.C. § 523(a)(6). The Defendants shall not seek to discharge any part of that debt in bankruptcy.

17. Interest shall accrue on any amount not paid within the time mandated by paragraph 14, as provided in 28 U.S.C. § 1961.

VIII. CIVIL PENALTY

18. Within ten (10) days after the date of the entry of this Consent Decree, the Defendants shall jointly issue a certified check or money order in the amount of five hundred (\$500), payable to the United States Treasury as a civil penalty to vindicate the public interest pursuant to 42 U.S.C. § 3614(d)(1)(C). The Defendants shall jointly deliver this payment to counsel for the United States, via overnight mail, at the address listed in footnote 1, above.

19. In the event that either Defendant or his or her agents or employees engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d).

20. The civil penalty payment referenced in paragraph 18 is a debt for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C. § 523(a)(7), and is not compensation for actual pecuniary loss. The Defendants shall not seek, individually or jointly, to discharge any part of that debt in bankruptcy.

21. Interest shall accrue on any sum that is not paid within the time mandated by paragraph 18, as provided in 28 U.S.C. § 1961.

IX. ENFORCEMENT

22. The parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree 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 either Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree, or in the event of any other act violating any provision of this Consent Decree, 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 or non-performance of such acts or deeming such acts to have been performed, and an award of any damages, costs, and attorneys' fees which may have been occasioned by either Defendant's non-actions or actions, or violation or failure to perform.

X. COSTS OF LITIGATION

23. All parties shall be responsible for their own attorney's fees and court costs, except as provided in paragraph 22, above.

XI. DURATION

24. This Consent Decree shall be in effect for a period of five years from the effective date. The United States' Complaint against the Defendants is dismissed with prejudice except that the Court shall retain jurisdiction for the duration of this Consent Decree to enforce its terms. Any time limits for performance imposed by this Consent Decree may be extended by mutual, written agreement of the United States and the Defendants. The United States may move the Court to extend the duration of the Consent Decree against the Defendants if either Defendant violates one or more provisions of the Decree, or in the interests of justice. The expiration of the Consent Decree shall not extinguish or otherwise affect James Clark's or Barbara Clark's debt for any

unpaid portion of the monetary judgments in paragraphs 14 and 18, including any accrued interest. Nor shall the expiration of the Consent Decree extinguish or otherwise affect the United States' ability to collect such unpaid sums.

IT IS SO ORDERED:

This 14th day of July, 2011.



MARK E. FULLER
UNITED STATES DISTRICT JUDGE

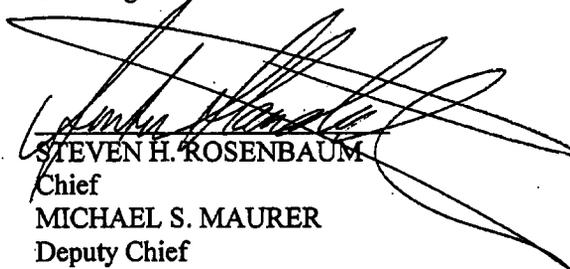
Respectfully submitted this 12 day of July, 2011.

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APPENDIX A

NONDISCRIMINATION POLICY AND PROCEDURES

It is the policy of James Clark and Barbara Clark to comply with Title VIII of the Civil Rights Act of 1968 (commonly known as the Fair Housing Act) by ensuring that housing is available to all persons without regard to race, color, religion, national origin, disability, familial status or sex. This policy means, among other things, that James and Barbara Clark, as well as all their agents or employees with the responsibility for renting, managing or administering any dwelling units must not discriminate on the basis of sex or otherwise engage in sexual harassment in any aspect of the rental of dwellings to qualified applicants or tenants. Such agents and employees must refrain from—

- a. Denying or otherwise making unavailable housing to any person because of sex;
- b. Discriminating against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
- c. Making statements with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based on sex; or
- d. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.

Any action taken by an agent or employee that results in unequal service, treatment or behavior to tenants on the basis of sex may constitute a violation of state and federal fair housing laws. Any tenant who believes that any of the above policies has been violated by any owner, agent or employee may contact the U.S. Department of Housing and Urban Development at 1-800-669-9777, the Central Alabama Fair Housing Center at 334-263-HOME or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.

APPENDIX B

**Employee/Agent Acknowledgment of Receiving and Reviewing Decree
and Nondiscrimination Policies and Procedures**

I have received a copy of the Consent Decree entered in *United States v. Gumbaytay, et al.*, Case No. 2:08-CV-00573-MEF-SRW (M.D. Ala.), between the United States and James and Barbara Clark. I have also received a copy of my employer's Nondiscrimination Policies and Procedures. The Consent Decree 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 Decree and the Nondiscrimination Policies and Procedures.

DATE

EMPLOYEE/AGENT NAME (PRINT)

EMPLOYEE/AGENT SIGNATURE

APPENDIX C

Release

In consideration for the parties' agreement to the terms of the Consent Decree entered in *United States v. Gumbaytay, et al.*, CASE NO. 2:08-CV-00573-MEF-SRW (M.D. Ala.), I hereby agree, to remise, release, and forever discharge any and all claims of any kind, nature or description whatsoever, related to the facts at issue in the litigation referenced above, or in any way related to that litigation, up to and including the date of execution of this release, that I may have against James Clark or Barbara Clark and their agents, employees, officers, members, heirs, executors, spouses, administrators, successors, insurers, and assigns.

I acknowledge and understand that, by signing this Release, I am waiving any right to pursue my own legal action against James and Barbara Clark based on the discrimination alleged by the United States in this case.

I also acknowledge that I have been informed that I may review the terms of this Release with an attorney of my choosing, and to the extent that I have not obtained legal advice, I voluntarily and knowingly waive my right to do so.

This Release constitutes the entire agreement between James and Barbara Clark and me, without exception or exclusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 2011.

PRINT NAME