

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAY 25 2005

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DAVID MADRID and DAVID MADRID)
d/b/a "TRINITY HOUSE LIVING)
SERVICES")
)
Defendants.)
_____)

MATTHEW J. DYKMAN
CLERK

CIVIL ACTION
NO. CIV-04-0683 MCA RLP

CONSENT DECREE

I. INTRODUCTION

This action was filed by the United States on June 17, 2004, 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 first claim of the United States' Complaint alleges that Defendants David Madrid and David Madrid d/b/a "Trinity House Living Services" ("Trinity House") engaged in a pattern or practice of discrimination on the basis of disability, and/or a denial of rights to a group of persons, in the rental of dwelling units he has owned and/or managed in Albuquerque, New Mexico, in violation of 42 U.S.C. § 3604(f).¹ Specifically, the United States alleges that Defendants: (1) subjected tenants with mental disabilities to unwelcome sexual and/or physical harassment and abusive and discriminatory living conditions including but not limited to verbal abuse; (2) threatened to evict and take other adverse actions against tenants with mental

¹ In August 2004, the New Mexico State Department of Health placed Trinity House Living Services into receivership. Trinity House ceased operating in October 2004.

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disabilities who objected to or reported their discriminatory conduct; and (3) created a hostile environment for tenants with mental disabilities. The United States further alleges that Defendant engaged in threatening, intimidating, and retaliatory behavior toward the mentally disabled tenants, in violation of 42 U.S.C. § 3617.

The second claim of the United States' Complaint alleges that Defendants engaged in a pattern or practice of discrimination on the basis of sex, and/or denial of rights to a group of persons, in the rental of dwelling units Defendants have owned and/or managed, in violation of 42 U.S.C. §§ 3604(a) (c). In this claim the United States specifically alleges that Defendants: (1) subjected mentally disabled female tenants with mental disabilities to pervasive, unwelcome, and uninvited sexual harassment; (2) conditioned aspects of tenancy on compliance with sexual favors; and (3) created a hostile environment for mentally disabled female tenants, in violation of 42 U.S.C. §§ 3604(a)–(c). The United States further alleges that Defendant engaged in threatening, intimidating, and retaliatory behavior toward the female tenants, in violation of 42 U.S.C. § 3617.

This Decree does not constitute an admission by Defendants or a determination of the validity of any claims asserted by the United States, which claims are specifically denied by Defendants.

The parties have agreed that in order to avoid protracted and costly litigation, this controversy should be resolved without a trial or adjudication of any of the facts alleged by the United States in its Complaint. Therefore, the parties consent to the entry of this Decree.

This agreement constitutes full resolution of the United States's claim that Defendants engaged in a pattern or practice of discrimination on the basis of disability and/or sex at properties owned and/or managed by Defendants in violation of the Fair Housing Act.

II. SCOPE AND TERM OF DECREE

1. The provisions of the Order shall apply to Defendants and Defendants' employees or agents, except that the obligation for monetary payments to the United States shall only bind Defendants and Defendant Madrid's estate.

2. This Decree is effective immediately upon its entry by the Court. For purposes of this Decree, the phrase "date of this Decree" shall refer to the date on which the Court enters this Decree.

3. This Decree shall be in effect for a period of five (5) years from the date of this Decree.

III. INJUNCTION

4. IT IS HEREBY ORDERED, ADJUDGED AND AGREED that Defendants are hereby enjoined from:

- (a) Making unavailable or denying a dwelling unit to any person because of disability and/or 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 disability and/or sex;
- (c) Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided and encouraged any other person in the exercise or enjoyment of, any right granted by 42 U.S.C. §§ 3603-3606.
- (d) Personally renting any portion of the 601 Palomas property, or any other property

in which Defendant Madrid resides to any individuals other than his family members, Randall Binstead, Andrew Tenorio, Barbara Gilles, or any such other individual as may be approved by the United States 30 (thirty) days prior to the commencement of such rental.

5. Defendant Madrid has represented that he owns no residential rental property² and has no plans to reopen any group homes for the disabled.³ In the event that Defendant Madrid decides to operate any group homes or acquires any residential rental properties, such homes or property shall be subject to the terms of paragraph 6 below.

6. It is further ORDERED, ADJUDGED AND AGREED that for the term of this Decree, Defendants shall retain an independent company, approved by the United States (hereinafter "Management Company"), to operate all group homes for persons with disabilities that Defendant Madrid owns or establishes, and manage all of the residential rental properties that Defendant Madrid owns, leases, or otherwise acquires ("subject properties").⁴ Defendants shall retain the Management Company and shall continue to retain such company for the duration

² "Residential rental property" includes those properties covered by the Complaint identified in Attachment A, except that the property at 601 Palomas shall not be considered a "residential rental property" governed by Paragraph 6 herein so long as Defendant Madrid resides in a portion of that property. Should Defendant Madrid cease to reside at 601 Palomas, Defendant Madrid shall give the United States immediate notice of such, and the 601 Palomas property shall be included in the definition of "residential rental property."

³ See attached declaration of Defendant David Madrid.

⁴ The definition of "subject properties" includes the properties covered by the Complaint, identified in Attachment A. It also includes any additional homes for the disabled that Defendant Madrid may own or operate or any residential rental properties that Defendant Madrid may purchase, lease, or otherwise acquire during the term of this Decree.

of this Decree.⁵ The Management Company shall be responsible for all aspects of management of the subject properties, including showing and renting units, making repairs, collecting rents, determining whom to rent to and/or evict, and all other aspects of the rental process. The Management Company shall also be responsible for all aspects of the provision of services at any group homes for the disabled. Defendant David Madrid shall refrain from entering the premises of the subject properties except that he may do so, when accompanied by a Management Company representative, when it is necessary for him to inspect the property or show it to a prospective buyer and that function cannot be reasonably delegated to an agent. However, in exigent circumstances requiring immediate aid or action, Defendant Madrid may enter the premises unaccompanied for the period of the exigency. For the duration of this Decree that Defendant Madrid owns any interest in the subject properties, Defendant shall require the Management Company to do the following:

- (a) Implement, subject to the United States' approval, a written policy against sexual harassment and disability discrimination, including a formal complaint procedure. A copy of this policy and procedure shall be provided to counsel for the United States. If this policy and procedure is satisfactory to the United States, it shall be implemented fifteen (15) days after it is provided to the United States, and at that time the Manager shall notify all new and current tenants at the subject properties of the policy and procedure.
- (b) The Management Company shall ensure that all of its employees who will be performing any duties in relation to the subject properties are familiar with the

⁵ If, after retaining an independent company, Defendant Madrid wishes to change companies, he may do so, provided that any subsequent company must also be approved by the United States and comply with the requirements for the company as described in this Decree.

requirements of the Fair Housing Act, particularly as they pertain to disability discrimination, sex discrimination and sexual harassment.

(c) Post an "Equal Housing Opportunity" sign in any rental office through which the subject properties are rented, which sign indicates that all apartments are available for rent on a nondiscriminatory basis. An 11-inch-by-14-inch poster substantially equivalent to the reduced sample appended to this Decree as Attachment B will satisfy this requirement. Such poster shall be placed in a prominent, well-lit, and easily readable location.

(d) Require that all advertising conducted for any of the subject properties in newspapers, telephone directories, radio, television or other media, and all billboards, signs (including at the entrance to the property), pamphlets, brochures and other promotional literature, include either a fair housing logo, the words "equal housing opportunity provider," and/or 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 or logo should be legible and prominently placed.

(e) Send to the United States every six (6) months, a list of all tenants at the subject properties and their telephone numbers. Maintain all rental records kept in relation to rental of the subject properties, and allow the United States to inspect and copy all such records upon reasonable notice.

(f) Notify the United States in the event it obtains any information indicating that Defendant Madrid is in violation of this Decree.

- (g) Provide any information reasonably related to compliance with this Decree that is requested by the United States.

7. Defendant Madrid shall report to the United States in the event that he attempts to establish any group homes for the disabled or purchases, inherits, or otherwise acquires an interest in any residential real estate property, or in the event that he sells, transfers or otherwise disposes of any interest in any of the subject properties. Such notification shall be made within thirty (30) days after the purchase, inheritance, acquisition, sale, or transfer of interest and shall include the identity of the potential purchaser(s) or person(s) to whom the interest is being transferred.

8. For the duration of the Decree, Defendant Madrid shall not manage rental property except as set forth in paragraph 6.

9. For the duration of this Decree, for properties in which Defendant Madrid resides with co-tenants (including the 601 Palomas property), Defendant Madrid shall submit to counsel for the United States quarterly reports verifying the following: (1) the name of each co-tenant, including Defendant Madrid, Barbara Gilles and any Madrid family member, and (2) the total amount of rent for the property and the amount each co-tenant is contributing to the total rent.⁶

IV. COMPENSATION OF AGGRIEVED PERSONS

10. Within thirty (30) days of the entry of this order, Defendants shall pay the total sum of sixty-seven thousand five hundred dollars (\$67,500), for the purpose of compensating the

⁶ The United States reserves the right to conduct, upon reasonable notice, inspections of any group homes and residential rental properties Defendant Madrid owns or manages, and any properties in which he resides to ensure full compliance with the terms of this Consent Decree.

allegedly aggrieved persons listed in Attachments C, D and E. As part of this payment, Defendants shall disburse one check payable to the ARC of New Mexico in the sum of seven hundred dollars (\$700) for purposes of administering and acting as Trustee for the Master Trust I, ARC of New Mexico, Pooled Trust ("Master Trust"), for accounts established for each of the persons listed in Attachment C; the check made payable to ARC shall specify that the check is for the purposes of establishing the Master Trust accounts for each of the allegedly aggrieved persons listed in Attachment C. In addition, for the purposes of compensating the allegedly aggrieved persons listed in Attachments C, D and E, Defendants shall make checks payable to the following: (1) the Master Trust I, ARC of New Mexico, Pooled Trust, for accounts established for each of the persons listed in Attachment C in the amounts indicated; (2) the New Mexico Legal Aid Client Trust Account, for accounts established for each of the persons listed in Attachment D in the amounts indicated; (3) directly to the person listed in Attachment E.

11. No money shall be deposited into the allegedly aggrieved person's account in the Master Trust as listed in Attachment C, or into the New Mexico Legal Aid Client Trust Account as listed Attachment D until he/she has executed the release appended hereto as Attachment F, or the release has been executed by a person legally authorized to do so on his/her behalf. Similarly, the person listed in Attachment E shall not receive her check until she has executed the release appended hereto as Attachment F. Counsel for the United States shall then deliver true and correct copies of all such executed releases to counsel for Defendants.

V. CIVIL PENALTY

12. Within thirty (30) days after the date of this Order, Defendant shall issue a check or money order in the amount of seven thousand five hundred dollars (\$7,500) payable to the United

States Treasury as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Defendant shall deliver the check or money order to counsel for the United States.

13. By consenting to entry of this Decree, the United States and Defendants agree that in the event it is determined in any future action or proceeding brought by the United States or any agency thereof that Defendants have discriminated on the basis of disability and/or sex in violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

VI. MISCELLANEOUS PROVISIONS

14. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties.

VII. DISMISSAL

15. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Plaintiff may move the Court to extend the duration of the Decree in the interests of justice.

16. The parties to this Consent 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 of a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Order or in the event of any other act violating any provision hereof, any party may move this Court to reopen the case and impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts and an award of any damages, costs, and attorneys' fees which may have been occasioned by non-actions or actions.

Ordered this 23rd day of May, 2005.

A handwritten signature in black ink, appearing to read 'M. Christina Armijo', written over a horizontal line.

M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE

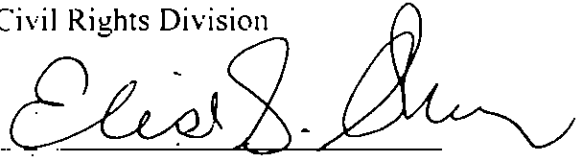
The undersigned apply for and consent to the entry of this Decree:

FOR PLAINTIFF THE UNITED STATES:

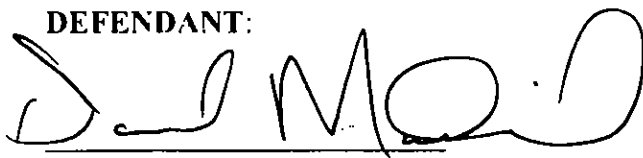
DAVID C. IGLESIAS
United States Attorney


ELIZABETH MARTINEZ
Assistant United States Attorney
United States Attorney's Office
201 Third St., Suite 900
Albuquerque, New Mexico 87012
Tel.: (505) 224-1469
Fax: (505) 346-7205

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division


STEVEN H. ROSENBAUM
Chief
NICOLE PORTER
Deputy Chief
ELISE S. SHORE
ANDREA STEINACKER
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Housing and Civil
Enforcement Section (NWB)
950 Pennsylvania Ave., NW
Washington, D.C. 20530
Tel.: (202) 514-4701
Fax: (202) 514-1116

DEFENDANT:


DAVID MADRID
DERON KNONER, Esq.
Conway, P.C.
P.O. Box 1190
Albuquerque, NM 87103
Tel.: (505) 244-0021
Fax: (505) 244-1372
Attorney for Defendants

ATTACHMENT A
SUBJECT PROPERTIES

All properties are located in Albuquerque, New Mexico:

601 Palomas, SE
544 Palomas, SE
536 Palomas, SE
421 Charleston, SE, apartments A, B, C, and D
323 Española, NE
316 Charleston, NE and SE
320 Española, NE

ATTACHMENT B



We do Business in Accordance With the Fair Housing Act
(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE,
COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE
CHILDREN), OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

or

U.S. Department of Housing and Urban Development
Fair Housing Enforcement Center
801 North Cherry Street, 27th Floor
Fort Worth, Texas 76102
1-888-560-8913

ATTACHMENT C

Pursuant to Paragraph 10 of the Consent Decree, within thirty (30) days of entry of this order, Defendants, represented by the law firm Conway, P.C., shall send to counsel for the United States,⁷ via overnight express mail, separate checks made payable to the Master Trust I, ARC of New Mexico, Pooled Trust, for accounts established for following persons in the amounts indicated:⁸

Gail Wofford c/o Desert State (guardian for Ms. Wofford)	\$12,400.00
Shadow Wolf	\$ 9,400.00
Gloria Gutierrez	\$ 7,600.00
Melodi Torres	\$14,400.00
Kimberly Comstock	\$ 3,900.00

⁷ For purposes of this Decree, counsel for the United States is Chief, Housing and Civil Enforcement Section, Attention: Elise S. Shore and Andrea Steinacker, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Ave., N.W., Housing & Civil Enforcement Section - G St. Washington, D.C. 20530, Attention: DJ# 175-49-57.

⁸ Pursuant to Paragraph 10 of the Consent Decree, Defendants shall also send to counsel for the United States the check in the amount of \$800 made payable to ARC. Pursuant to Paragraph 11 of the Consent Decree, the United States shall not distribute a check to an allegedly aggrieved person until the United States is possession of a signed release from that person or a person legally authorized to sign the release on behalf of that person.

ATTACHMENT D

Pursuant to Paragraph 10 of the Consent Decree, within thirty (30) days of entry of this order, Defendants, represented by the law firm Conway, P.C., shall send to counsel for the United States, via overnight express mail, separate checks made payable to the New Mexico Legal Aid Client Trust Account, for accounts established for following persons in the amounts indicated:⁹

Becky Tobey	\$11,500.00
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Walter Binford	\$ 5,000.00
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⁹ Pursuant to Paragraph 11 of the Consent Decree, the United States shall not distribute a check to an allegedly aggrieved person until the United States is possession of a signed release from that person or a person legally authorized to sign the release on behalf of that person.

ATTACHMENT E

Pursuant to Paragraph 10 of the Consent Decree, within thirty (30) days of entry of this order, Defendants, represented by the law firm Conway, P.C., shall send to counsel for the United States, via overnight express mail, a check made payable to following person in the amount indicated:¹⁰

Janet Torres

\$ 3,000.00

¹⁰ Pursuant to Paragraph 11 of the Consent Decree, the United States shall not distribute a check to an allegedly aggrieved person until the United States is possession of a signed release from that person or a person legally authorized to sign the release on behalf of that person.

ATTACHMENT F
FULL AND FINAL RELEASE OF CLAIMS

WHEREAS, I, _____ claim to be an aggrieved person within the meaning of 42 U.S.C. § 3614(d)(1)(B) and allege discrimination by David Madrid and David Madrid d/b/a Trinity House Living Services, in connection with my residency in rental property owned or managed by Mr. Madrid and Trinity House Living Services; and

WHEREAS, the United States and Mr. Madrid have voluntarily entered into a resolution of this matter and which resolution provides for payment by David Madrid to the United States of a sum of money for the settlement of claims of aggrieved persons;

NOW, THEREFORE, in consideration of the amount of \$_____, paid to me from the above-mentioned settlement funds, I therefore agree to release and discharge David Madrid and David Madrid d/b/a Trinity House, their representatives, employees, agents, successors and assigns from any and all damages, actions, causes of action, claims, charges and demands of any kind in law or equity relating to residency in any property owned or managed by David Madrid and David Madrid d/b/a Trinity House Living Services, howsoever originating and existing to the date hereof.

Date: _____