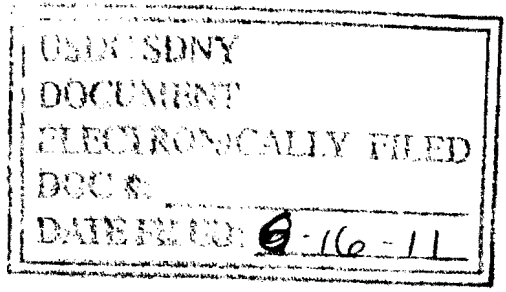


Brooklyn, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

Plaintiff,

-against-

PEARL RIVER GARDENS, LLC,

Defendant.
----- x

CONSENT DECREE

11 Civ. 1655 (VB) ✓

ECF Case

WHEREAS this action was filed by the United States to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601 – 3619;

WHEREAS Defendant owns Pearl River Gardens Apartments (“Pearl River Gardens” or the “Subject Property”) in Pearl River, New York;

WHEREAS the United States alleges that Defendant Pearl River Gardens, LLC (“Pearl River” or “Defendant”) has engaged in a pattern or practice of discrimination on the basis of race or color or a denial of rights to a group of persons, in violation of 42 U.S.C. § 3614, in the rental of dwelling units at Pearl River Gardens Apartments;

WHEREAS in its Complaint filed on March 10, 2011, the United States alleges that, on multiple occasions, Defendant has discriminated on the basis of race or color by providing false information about the availability of rental dwellings to African-Americans, refusing to negotiate with African-Americans for the rental of dwellings, and refusing to rent available dwellings to African-Americans, while negotiating with whites for the rental of dwellings;

WHEREAS the United States alleges that through this conduct Defendant has discriminated by refusing to rent, negotiate for the rental of, or by otherwise making unavailable or denying dwellings to persons because of race or color, in violation of 42 U.S.C. § 3604(a);

discriminated against persons in the terms, conditions, or privileges of rental, or in the provision of services or facilities in connection therewith, because of race or color, in violation of 42 U.S.C. § 3604(b); and discriminated by representing to persons because of race or color that dwellings are not available for rental when such dwellings are in fact so available, in violation of 42 U.S.C. § 3604(d);

WHEREAS Defendant admits to liability under the Fair Housing Act and consents to the entry of this Consent Decree; and

WHEREAS the United States and Defendant have agreed that to avoid protracted and costly litigation, this controversy should be resolved without a trial;

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED:

I. JURISDICTION

1. This Court has jurisdiction over the parties and the subject matter of this action. The Court shall retain jurisdiction over the parties to enforce and administer the terms of the Consent Decree for five years after the effective date of the Consent Decree, as defined in paragraph 27.

2. The Court may extend the term of the Consent Decree upon consent of the parties, or upon an application of the United States for good cause shown.

II. GENERAL INJUNCTION

3. Defendant, its officers, agents, employees, successors and assigns, and all other persons in active concert or participation with it, are enjoined, with respect to the rental of dwellings, from:

- a. Refusing to rent a dwelling, refusing or failing to provide or offer information about a dwelling, refusing to negotiate for the rental of a dwelling, or otherwise

- making unavailable or denying a dwelling to any person because of race or color;
- 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 race or color;
 - c. Representing to persons because of race or color that any dwelling is not available for inspection or rental when such dwelling is, in fact, so available;
 - d. Making statements with respect to the rental of a dwelling that indicate any preference, limitation, or discrimination because of race or color;
 - e. Offering to reduce rents, fees or other costs to white persons but not African-American persons because of race or color; and
 - f. Discouraging African-American persons from applying for an apartment while encouraging white persons to apply.

III. NONDISCRIMINATION POLICY

4. Upon entry of this consent decree, Defendant shall implement the Nondiscrimination Policy appearing at Appendix A at the Subject Property.

5. Within fifteen (15) days of the entry of the Consent Decree, Defendant shall distribute the Nondiscrimination Policy to all of its current tenants, employees, agents, and anyone acting under the direction of Defendant, who has responsibility for showing, renting, or managing any and all dwelling units at the Subject Property. Defendant shall review this policy, along with a question and answer session, with each employee, agent, or anyone acting under its direction, on an annual basis thereafter.

IV. NOTICE TO PUBLIC OF NONDISCRIMINATION POLICY

6. Within fifteen (15) days of the entry of the Consent Decree, Defendant shall take the following steps to notify the public of its Nondiscrimination Policy:

- a. Prominently post at all rental offices that Defendant currently or subsequently uses for the rental of dwellings, 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 dwelling unit at any of the Subject Property is available for rent, the Defendant shall prominently post an easily readable "For Rent" or "Vacancy" sign or notice at the apartment building in which the dwelling unit is available. The sign or notice shall include the slogan "Equal Housing Opportunity" and the fair housing logo. Such slogan and logo shall be prominently displayed and easily readable.
- c. Include the words "Equal Housing Opportunity" and the fair housing logo in all rental advertising conducted by Defendant, or its 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 Defendant to advertise in any of these media, but does require compliance with this provision whenever Defendant so advertises. The words and 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 rental dwelling units in boldface type, 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. TRAINING

7. Within thirty (30) days of the entry of this Consent Decree, Defendant shall provide a copy of this Consent Decree to its agents and employees involved in showing, renting, or managing any dwelling unit at the Subject Property. Defendant shall secure a signed statement from each such agent or employee acknowledging that he or she has received and read the Consent Decree and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Decree and Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Decree and the Policy. This statement shall be in the form of Appendix B.

8. During the term of this Consent Decree, within thirty (30) days after each new agent or employee becomes involved in showing, renting, or managing units at the Subject Property, Defendant shall provide a copy of this Consent Decree and the Nondiscrimination Policy to each such agent or employee and secure a signed statement from each agent or employee acknowledging that he or she has received and read the Consent Decree and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Decree and Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Decree and the policy. This statement shall be in the form of Appendix B.

9. Within ninety (90) days from the date of entry of this Consent Decree, Defendant and its managers, agents, and employees shall undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race or color. 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 Defendant. Each individual who receives the training shall execute the Certificate of Training and Receipt of Consent Decree, appearing at Appendix C.

10. At a minimum, the training required in the preceding paragraph shall consist of the following:

- a. Instruction on the requirements of all applicable federal and state housing discrimination laws; and
- b. A question and answer session for the purpose of reviewing the foregoing areas.

11. All managers must receive the fair housing training, described in Paragraphs 9 and 10, within 90 days of entry of this Consent Decree or within 30 days of beginning their work as manager(s), whichever shall occur later.

VI. NONDISCRIMINATORY STANDARDS AND PROCEDURES FOR SHOWING AVAILABLE DWELLING UNITS TO PROSPECTIVE TENANTS

12. Within thirty (30) days from the date of entry of this Consent Decree, Defendant shall develop and submit to the United States, with respect to the Subject Property, objective, uniform, non-discriminatory standards and procedures for informing persons about and showing available dwelling units to prospective tenants. Such standards and procedures shall be approved by the United States in advance of their implementation and shall be consistent with the provisions of this Section. Within five (5) days of when the United States approves the standards and procedures, Defendant shall implement and prominently display them in any office where

there is rental activity and/or personal contact with applicants. Defendant shall make available a copy of these standards and procedures upon request to any applicant for the rental of a dwelling. For the duration of this Consent Decree, these standards and procedures may be modified only if written notice is given to counsel for the United States thirty (30) days before the proposed modifications are to take effect and the United States makes no objection thereto.

13. The nondiscriminatory standards and procedures discussed in Paragraph 12, above, shall include at a minimum the use of the following documents, which Defendant shall update as new information becomes available, and retain for the duration of the Consent Decree:

- a. Guest Cards: Defendant shall ensure that, for all prospective tenants who inquire in person about dwelling units, a Guest Card is completed, either by the prospective tenant and/or the Defendant, that contains:
 - i. The date of the prospective tenant's visit and, when the prospective tenant agrees to provide the information, the prospective tenant's name, address, daytime, and evening telephone numbers;
 - ii. The race of the prospective tenant, based on the good faith observation of Defendant or its employee or agent;
 - iii. The apartment size the prospective tenant requests and the date on which the prospective tenant wishes to move;
 - iv. Whether the prospective tenant filled out an application;
 - v. Whether the prospective tenant was invited to see available dwelling units and the address and unit number of each one shown and, if not, an explanation why not; and
 - vi. The names of all employees/agents who assisted the prospective tenant.

- b. Availability List: Defendant shall ensure that it maintains and timely updates an Availability List that includes the addresses and unit numbers, and unit sizes, of all dwelling units known to be available or reasonably expected to be available for rental within thirty (30) days, including the date either Defendant or Defendant's agent was first informed each would be available for rental and the first date it would be available for rental or occupancy by a new tenant. Defendant, its agents and employees shall share the complete information on the Availability List with each person who visits or calls to inquire about the availability of dwelling units.
- c. Rental Applications: Defendant, its agents and employees, shall provide and process rental applications on a non-discriminatory basis and shall maintain all rental applications, whether deemed complete or incomplete, and any correspondence about the availability of dwelling units.
- d. Waiting Lists: Defendant, its agents and employees, shall maintain waiting lists in a non-discriminatory manner and develop uniform standards for selecting individuals from the list, whether formally or informally maintained.

VII. COMPLIANCE TESTING

14. The United States may take steps to monitor Defendant's compliance with this Consent Decree including, but not limited to, conducting fair housing tests at any office(s) in which the Defendant conducts rental activities.

VIII. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

15. Defendant shall, no later than fifteen (15) days after occurrence, provide to the United States notification and documentation of the following events:¹
- a. Any change to the rules or practices regarding the nondiscrimination policy discussed in Paragraph 4 or the nondiscriminatory standards and procedures discussed in Paragraph 12;
 - b. Proof of notification of the nondiscrimination policy described in paragraphs 7 and 8, including executed copies of the Employee Acknowledgment forms, appearing at Appendix B, and a list of the names and addresses for all tenants to whom the policy was provided, pursuant to paragraph 5; and
 - c. Any written or oral complaint against Defendant or any of Defendant's agents or employees, regarding discrimination in housing. If the complaint is written, Defendant shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. Defendant 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 the substance of any resolution of such complaint.

¹ All documents or other communications required by this Consent Decree to be sent to counsel for the United States shall be sent by overnight delivery service addressed as follows: Chief, Civil Rights Unit, United States Attorney's Office, 86 Chambers Street, New York, New York 10007, or as otherwise directed by the United States. Facsimile transmissions shall be sent to (212) 637-2717.

16. Within ninety (90) days of the date of entry of this Consent Decree, and every six (6) months thereafter for the duration of this Consent Decree,² Defendant shall deliver to counsel for the United States a report containing information about its compliance efforts during the preceding reporting period, including but not limited to:

- a. All executed copies of the Certificate of Training and Receipt of Consent Decree, appearing at Appendix C;
- b. Notification and documentation of the adoption and implementation of the nondiscriminatory standards and procedures discussed in Paragraph 12;
- c. Photographs of each office in which rental activity is conducted, showing the fair housing signs and Nondiscrimination Standards and Procedures, pursuant to Sections IV and VI of this Consent Decree;
- d. Copies of standard rental applications and rental agreements, pursuant to Section IV of this Consent Decree;
- e. Copies of all guest cards, availability lists, rental applications, and other information recorded by any means related to any inquiries regarding the availability of rental dwellings, maintained pursuant to Section VI of this Consent Decree;
- f. A list of all rental properties in which Defendant or its members have an ownership or management interest, in whole or in part, including the street address, the number of rental units at each property, and a description of the interest in the property; and
- g. Notification of any purchase, inheritance, or acquisition involving Defendant or

² Except that Defendant shall deliver to counsel for the United States the final report no later than 60 days before the expiration of this Consent Decree.

the members of Pearl River Gardens L.L.C. of an ownership or management interest in any rental property which is used or intended to be used as a dwelling defined by 42 U.S.C. § 3602(b), and any sale, transfer, or other disposition of any interest in rental properties, including the identity of the purchaser(s) to whom the interest is being transferred.

17. During the period in which this Consent Decree is in effect, Defendant shall preserve all records that are the source of, contain, or relate to any of the information pertinent to its obligations under this Decree, including, but not limited to, all guest cards, availability lists, waiting lists, rental applications, leases, rental roll ledgers, and occupancy lists. Upon reasonable notice to counsel for Defendant, 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, Defendant shall provide copies of such documents.

IX. COMPENSATION OF AGGRIEVED PERSONS

18. Nothing in this Consent Decree shall bar any action by any aggrieved person against Defendant, its agents, or employees.

X. CIVIL PENALTY

19. Defendant hereby consents to the entry of judgment against it in the amount of \$55,000 (the "Penalty Judgment"). This Penalty Judgment shall be satisfied by the payment of \$1,100 within twenty (20) days after the entry of this Consent Decree, and an additional payment of \$1,100 on the anniversary of the effective date of this Consent Decree, for four years, for a total payment of \$5,500 (the "Satisfaction Amount"). Defendant shall pay the Satisfaction Amount to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C). These payments shall be delivered to counsel for the United States in the form of a cashier's check

payable to the "United States Treasury." Upon payment of the Satisfaction Amount, the United States shall deliver an acknowledgment to Defendant within 5 business days.

20. Defendant and Defendant's owner Frank Kapiti ("Kapiti") have both provided financial disclosure statements and other financial information ("Financial Statements") to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in entering into this Consent Decree, particularly paragraphs 18 through 23. Defendant and Kapiti warrant that the Financial Statements are thorough, accurate, and complete. Defendant and Kapiti further warrant that they do not own or have an interest in any asset(s) that has not been disclosed in the Financial Statements, and that they have made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of: (a) asset(s) in which Defendant or Kapiti has an interest at the time of this Agreement that would change the estimated net worth of Defendant or Kapiti set forth in the Financial Statements by ten thousand dollars (\$10,000) or more, and which was not disclosed in the Financial Statements; or (b) a misrepresentation by Defendant or Kapiti on, or in connection with, the Financial Statements, and in the event such non-disclosure or misrepresentation changes the estimated net worth of any Defendant or Kapiti as set forth on the Financial Statements by ten thousand dollars (\$10,000) or more; the United States may at its option: (i) rescind this Agreement and reinstate its Complaint; or (ii) let the Consent Decree stand and collect the full \$55,000 civil penalty, to which will automatically be added two hundred percent (200%) of the value of the net worth of such individual or entity as previously undisclosed or concealed or dissipated, if such latter amount(s) can be determined. This additional amount, however, shall not exceed \$100,000. To the extent that the United States discovers the occurrence of an event(s) encompassed by subparts (a) through (b) of this Paragraph, Defendant

agrees not to contest any collection action undertaken by the United States pursuant to this provision.

21. In the event that the United States, pursuant to paragraph 20, opts to rescind this Consent Decree, Defendant expressly agrees not to plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which: (a) are reinstated or filed by the United States within thirty (30) calendar days of written notification to Defendant that this Consent Decree has been rescinded; and (b) relate to the allegations of the Complaint.

22. In the event that Defendant engages in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" as to Defendant pursuant to 42 U.S.C. § 3614(d).

XI. ACQUISITION OR TRANSFER OF INTEREST IN RENTAL PROPERTIES

23. If at any time while this Decree remains in effect, Defendant decides to sell or otherwise transfer the entirety of Defendant's interest in the Subject Property to an unrelated party in an arms-length transaction,³ Defendant shall take the following steps:

- a. At least thirty (30) days prior to completion of the sale or transfer, provide each prospective purchaser or other transferee a copy of this Consent Decree along with written notice that the subject property remains subject to Sections II-VIII and XI-XV of the Decree;
- b. At least thirty (30) days prior to completion of the sale or transfer, provide the United States written notice of Defendant's intent to sell or otherwise transfer

³ For purposes of this Decree, "arms-length transaction" is defined as a transaction that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that transaction.

Defendant's interest in the property, along with a copy of the notice sent to each prospective purchaser or transferee, containing the latter's name, address and telephone number;

- c. Within thirty (30) days following completion of the sale or other transfer, Defendant shall provide the United States a copy of the documents memorializing the transfer in interest of the property; and
- d. Defendant shall require the transferee, as a condition of the sale or other transfer, to agree in writing to perform all obligations and be liable for compliance with Sections II-VIII and XI-XV of this Consent Decree for the duration of the Decree, with respect to the property.

24. If Defendant complies with Paragraph 23a-d, and transfers all of Defendant's ownership, management, and other financial interest in the Subject Property to an arms-length purchaser or other transferee, then Defendant shall thereafter be relieved of further obligations under this Consent Decree with regard to the Subject Property.

25. If the proposed transfer of interest is not an arms-length transaction, the Defendant must comply with the requirements of Paragraph 23a-d. In addition, Defendant shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of Sections II-VIII and XI-XII of this Decree for its duration.

XII. SCOPE AND DURATION OF CONSENT DECREE

26. The provisions of this Consent Decree shall apply to all of Defendant's officers, agents, employees, successors and assigns, and all persons acting in active concert or participation with them.

27. This Consent Decree shall remain in effect for five (5) years after the date of its entry.

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

XIII. REMEDIES FOR NON-COMPLIANCE

29. The Parties 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 Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance 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 reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

XIV. TIME FOR PERFORMANCE

30. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties. The other provisions of this Decree may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective upon filing of the written agreement with the Court, and shall remain in effect for the duration of the Decree or until such time as the Court indicates through written order that it has not approved the modification.

XV. COSTS OF LITIGATION

31. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

Dated: New York, New York

~~April~~ __, 2011
May 19

PREET BHARARA
United States Attorney
Attorney for the United States of America

By: Daniel P. Filor

DAVID S. JONES
DANIEL P. FILOR
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel. No. (212) 637-2726
Fax No. (212) 637-2717
Daniel.Filor@usdoj.gov

Dated: New City, New York

April __, 2011

Pearl River Gardens, LLC:

Frank Kapiti

FRANK KAPITI
Managing Member
Pearl River Gardens
101 North Middletown Road
Pearl River, New York 10965
Phone: (917) 597-8092

SO ORDERED this 15 day of June, 2011.

[Signature]
United States District Judge