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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

United States of America,
Plaintiff,

Case No. CV 08-1106-MO

and

CONSENT DECREE

Marilyn Dirks,
Plaintiff-Intervenor,

vs.

Ronald A. Lucas and
R.A. Lucas Developments, LLC,
Defendants.

I. INTRODUCTION

The United States brought this action of housing discrimination on behalf of Ms. Marilyn Dirks to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 - 3619, against defendants Ronald A. Lucas and R.A. Lucas Developments, LLC. The United States' complaint was filed on September 22, 2008 after a charge of discrimination was issued by the Secretary of Housing and Urban Development, and a timely notice of election was filed by Ms. Dirks. On October 16,

2008, Ms. Dirks filed a complaint against Defendants in intervention. On October 24, 2008, the Court granted Ms. Dirks' motion to intervene in this action.

The United States and Marilyn Dirks (hereinafter "Plaintiffs") allege in their complaints that Defendants discriminated on the basis of disability violating the Fair Housing Act, 42 U.S.C. § 3604(f).

In the interest of conserving time and expense, the parties agree that this matter should be resolved without further litigation. Therefore, as indicated by the signatures below, the parties agree to the entry of this Consent Decree. The parties acknowledge that resolution of this matter is not to be construed as an admission of liability by any party. This Consent Decree along with the separate Confidential Settlement Agreement between Ms. Dirks and Defendants, constitutes full resolution of the Plaintiffs' claims that Defendants discriminated against Ms. Dirks on the basis of disability.

II. GENERAL INJUNCTION

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

A. Discriminating in the rental, or otherwise making unavailable or denying, a dwelling to any renter because of disability, in violation of 42 U.S.C. § 3604(f)(1);

B. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and

C. 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, their rights under the Fair Housing Act.

III. AFFIRMATIVE RELIEF

2. No later than thirty (30) days after the date of entry of this Consent Decree, Defendants shall adopt and implement a written policy that permits a resident in their Rental Properties with a disability¹, as defined in section 802(h) of the Act, 42 U.S.C. § 3602(h), to keep an assistance animal in his or her rental property and on the premises as a reasonable accommodation to Defendant's "no pets" policy.

A. For the purposes of this section:

i. An "assistance animal" means an animal that does work or performs tasks for the benefit of a person with a physical disability, or that may be necessary as a reasonable accommodation to assist, support, or provide service to persons with a mental disability.

ii. A "licensed health professional" means a person licensed by a public regulatory authority to provide medical care, therapy, or counseling to persons with mental or physical disabilities.

B. The policy may be conditioned on the fact that the resident has requested an assistance animal based on his or her disability.

¹ The Fair Housing Act uses the term "handicap" instead of the term "disability." Both terms however have the same legal meaning. *See Bragdon v. Abbott*, 524 US 624, 631 (1998) (noting that the definition of "disability" in the American with Disabilities Act is almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This Consent Decree uses the term "disability," which is more generally accepted in society.

C. In the case of an assistance animal that may be necessary as a reasonable accommodation to assist, support, or provide service to a resident with a mental disability, the policy may be conditioned upon the need for a statement from a licensed health professional indicating:

- i. That the applicant has a mental disability, and
- ii. Why the designated animal may be necessary as a reasonable accommodation to assist, support, or provide service to the applicant;
- iii. A description of the disability; and
- iv. A description of how the disability substantially limits one or more of the applicant's major life activities.

If a mental disability is not obvious, and Defendants reasonably believe that more information is needed beyond the statement in subparts (i-iv) above, Defendants may request additional supporting documentation only to the extent that such information is necessary to evaluate whether the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons outside of the decision making process, unless required by law. In most cases, an applicant's medical records or detailed information about the nature of the applicant's disability is not necessary to determine whether a reasonable accommodation will be afforded to the applicant.²

² See Joint Statement of The Department of Housing and Urban Development and The Department of Justice, *Reasonable Accommodations Under The Fair Housing Act*, Dated May 17, 2004. Available at http://www.usdoj.gov/crt/housing/jointstatement_ra.php.

D. In the case of an assistance animal that does work or performs tasks for the benefit of a person with a physical disability that is readily apparent, the policy may be conditioned upon the need for documentation that the animal is able to do work or perform tasks for the benefit of an individual with a disability. If the physical disability is not readily apparent, the policy may be conditioned upon the need for a statement from a licensed health professional indicating:

- i. That the applicant has a physical disability, and
- ii. Why the designated animal may be necessary as a reasonable accommodation to do work or perform tasks for the applicant;
- iii. A description of the disability; and
- iv. A description of how the disability substantially limits one or more of the applicant's major life activities.

If a physical disability is not obvious, and Defendants reasonably believe that more information is needed beyond the statement in subparts (i-iv) above, Defendants may request additional supporting documentation only to the extent that such information is necessary to evaluate whether the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons outside of the decision making process, unless required by law. In most cases, an applicant's medical records or detailed information about the nature of the applicant's disability is not necessary to determine whether a reasonable accommodation will be afforded to the applicant.³

³ *Id.*

E. In the case of an assistance animal which may be necessary both as a reasonable accommodation to assist, support, or provide service to a person with a mental disability and does work or performs tasks for the benefit of a person with a physical disability, the policy may require compliance with either paragraph 2(C) or 2(D), above, but not both.

F. The policy may not be conditioned upon compliance with any of the following requirements:

i. In the case of an assistance animal that may be necessary as a reasonable accommodation to assist, support, or provide service to a person with a mental disability, that the animal has been trained or has a certification of its efficacy, or

ii. That the resident pay any fee, deposit, or other charge for keeping the animal.

G. The policy may be conditioned upon the tenant's compliance with a reasonable policy regarding the maintenance of animals residing on the property. If Defendants choose to develop such a policy, Defendants shall, not later than fifteen (15) days after implementation, provide a copy of the pet maintenance policy to the U.S. Attorney's Office.

3. Defendants shall, not later than ten (10) days after adoption of the policy referenced in paragraph 2, notify in writing each resident of Defendants' Rental Properties of the adoption and implementation of the policy referred to in paragraph 2, above. The notification shall be sent via first-class mail, postage pre-paid, to the head(s) of the household.

4. Defendants shall, not later than ten (10) days after the adoption of the policy referenced in paragraph 2, apprise each of their employees, agents, or any other persons who

have responsibility for the management of their Rental Properties of such persons' obligations under the consent decree, including but not limited to paragraph 2, above, and under the Fair Housing Act, 42 U.S.C. §§ 3601, et seq. Defendants shall furnish each such employee, agent, or other person covered by this paragraph with a copy of the consent decree. Each employee, agent, or other person covered by this paragraph shall sign a statement in the form of Attachment A acknowledging that he or she has received, read, and understood this Consent Decree, and declaring that he or she will perform his or her duties in accordance with this Consent Decree and the Fair Housing Act, 42 U.S.C. §§ 3601, et seq.

5. New employees or new agents who have responsibilities related to the management or rental of Defendants' Rental Properties shall (a) be apprised of the contents of this Consent Decree, including but not limited to paragraph 2, above, and of their obligations under the Fair Housing Act, 42 U.S.C. §§ 3601, et seq., when their employment or agency commences; (b) be provided copies of the Consent Decree and the policy required by paragraph 2, above; and (c) execute a statement such as the sample provided as Attachment A no later than five (5) days following their first day of employment or agency.

6. Within thirty (30) days of the entry of this Consent Decree, Defendants shall post and prominently display in each and every location where activity related to the management or rental of Defendant's Rental Properties occurs, a poster no smaller than 11 inches by 14 inches that indicates that all dwellings are available for rent on a nondiscriminatory basis. The poster shall comply with the requirements set out in 24 C.F.R. Part 110.

7. Within thirty (30) days of the entry of this Consent Decree, in all advertising conducted by the Defendants related to their Rental Properties in newspapers, telephone directories, radio, or other media, and on all signs, pamphlets, brochures, and other promotional literature, Defendants shall include the words "Equal Housing Opportunity," the fair housing logo, 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 shall be prominently placed and easily legible.

IV. MANDATORY EDUCATION AND TRAINING

8. Within six (6) months of the entry of this Consent Decree, Defendants and their employees, agents, or any other persons who have responsibilities related to the management or rental of their Rental Properties shall attend, at Defendants' expense, a training program regarding the protected class discrimination provisions of federal, state, and local fair housing laws. The training shall be conducted by a qualified third party (i.e. the Fair Housing Council of Oregon or HUD), approved by the United States, and unconnected to Defendants or their employees, agents, or counsel.

9. Defendants must notify the Plaintiffs of the name(s), address(es), and telephone number(s) of the trainer(s) as well as the time and location of each such training program at least thirty (30) days prior to the program.

V. REPORTING AND RECORD-KEEPING REQUIREMENTS

10. Defendants shall, no later than 15 days after occurrence, provide to the United States notification and documentation of the following events:

A. The adoption and implementation of the policy referred to in paragraph 2, above, to be documented by a complete statement of the rules and regulations of Defendants' Rental Properties;

B. The written notification to residents of Defendants' Rental Properties, required in paragraph 3, above;

C. The executed copies of a statement like Attachment A;

D. The training attended pursuant to Section IV, including a certification executed by the trainer(s) confirming attendance;

E. A copy of the sign that was posted indicating that dwellings are available for rent on a nondiscriminatory basis, as set forth in paragraph 6;

F. Any change in Defendants' rules or practices affecting the keeping of animals by residents in Defendants' Rental Properties;

G. Any denial by Defendants of a request by a resident or prospective resident to keep an assistance animal in one of their Rental Properties pursuant to the exception referred to in paragraph 2, above, including the resident's name, address, and telephone number and details of the request and the reason(s) for its denial; and

H. Any written or oral complaint against the Defendants regarding discrimination on the basis of disability, or conduct prohibited by 42 U.S.C. § 3617, including a copy of the written complaint itself or a written summary of an oral complaint and the name, address, and telephone number of the complainant. The Defendants shall also promptly provide the United States information concerning the complaint's resolution.

11. Defendants shall submit annually, for three years, on the anniversary date of the entry of this Consent Decree a written report that includes the following information:

A. The information requested in paragraph 10, above, if not yet reported;

B. For every request made to keep an animal pursuant to the policy referred to in paragraph 2, above, during the preceding year:

i. The name and address of the requester;

ii. The date of the request;

iii. The kind of animal requested and the type of disability the animal was requested to treat;

iv. All documents provided to the Defendants in support of this request, including documents provided pursuant to paragraphs 2(C) and 2(D) above; and

v. The disposition of the request.

C. The purchase, inheritance, or acquisition by Defendants of an interest in any residential rental property, and any sale, transfer, or other disposition of any interest in their rental properties, including the identity of the purchaser(s) or person(s) to whom the interest is being transferred; and

D. A sample of any new leases executed for Defendants' Rental Properties, identifying any changes in the portion of the lease that outlines Defendants' pet policy.

12. For the duration of the consent decree, Defendants shall preserve all records relating to the following:

A. Complaints against them or their agents or employees of discrimination in

housing on the basis of disability;

B. All rental records maintained in the normal course of their business –including, but not limited to, inquiry logs, applications, tenant files, leases, and all records relating to actual or threatened evictions – created from the date of the entry of this Consent Decree;

C. Any advertising conducted by the Defendants pursuant to paragraph 7; and

D. The receipt and processing of requests for reasonable accommodation of animals by residents of Defendants.

13. Upon reasonable notice to Defendants, the U.S. Attorney's Office for the District of Oregon shall be permitted to inspect and copy any of Defendants' records relating to Defendants' compliance with the terms of the consent decree, provided, however, that the U.S. Attorney's Office shall endeavor to minimize any inconvenience and administrative burden to the Defendants from such inspections.

V. ADDITIONAL SETTLEMENT TERMS AND SETTLEMENT OF ALL CLAIMS

14. Plaintiff-Intervenor has agreed to a separate Confidential Settlement Agreement to resolve all monetary and non-monetary claims against all Defendants. The monetary relief will be in the amount indicated in the Confidential Settlement Agreement entered into between Plaintiff-Intervenor and Defendants, filed under seal with the Court, and subject to the terms set forth therein. The United States agrees that the relief specified in the Confidential Settlement Agreement and in this Consent Decree fully satisfies the United States' claims in this litigation.

VI. COURT JURISDICTION, SCOPE, AND DURATION OF CONSENT ORDER

15. The Parties stipulate that the Court has subject matter jurisdiction over this action

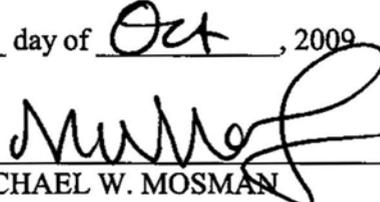
pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §3612(o) and that this Consent Decree be effective immediately upon its entry by the Court.

16. The Court shall retain jurisdiction over the action and over the Defendants for three (3) years from the date of entry of the 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.

17. 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 of a failure by Defendants to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance with any provision thereof, Plaintiffs may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees if applicable, which may have been occasioned by the violation or failure to perform.

18. If the United States Supreme Court or the Court of Appeals for the Ninth Circuit publishes a ruling that is inconsistent with the terms of this agreement, either party can seek a modification from the Court.

IT IS SO ORDERED this 14 day of Oct, 2009



MICHAEL W. MOSMAN
United States District Judge

Attorneys for Plaintiffs:

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/s/ Adrian L. Brown
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Attorneys for Defendants:

/s/ Allyson S. Krueger
ALLYSON S. KRUEGER
Hitt Hiller Monfils Williams LLP
Attorney for Defendants

Attachment A

CERTIFICATION OF RECEIPT OF CONSENT ORDER

I have been given and I have read a copy of the Consent Decree entered in *United States, et al v. Ronald A Lucas, et al*, Case No. 09-CV-1106-MO. I understand my legal responsibilities and will comply with those responsibilities. I further understand that the Court may impose sanctions on me if I violate any provision of this Order.

Dated: _____

R.A. Lucas Developments, LLC

Signature

Printed Name

Address