

SETTLEMENT AGREEMENT BETWEEN UNITED STATES OF AMERICA AND
AMIE KELLY

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered between Plaintiff, the United States of America (“the United States”) and Defendant Amie Kelly (“Defendant”), through undersigned counsel. Together, the United States and Defendant are referred to herein as “the Parties.”

2. This Agreement resolves a Complaint filed by the United States on November 2, 2016, on behalf of Jennifer Seiler (“Ms. Seiler”), to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (“the Fair Housing Act”), as amended by the Fair Housing Amendments Act of 1988.

3. In its Complaint, the United States alleges that Defendant discriminated against Ms. Seiler on the basis of sex and familial status in violation of 42 U.S.C. §§ 3604(a), 3604(b), 3604(c), and 3604(d). Specifically, the United States alleges that on July 20, 2015, Defendant sent Ms. Seiler a copy of a lease agreement that contained the following provision: “No minor under the age of 18 is to be allowed to be on or about the premises without adult supervision.” The United States further alleges that on July 23, 2015, after a series of correspondence with Ms. Seiler, Defendant denied Ms. Seiler the opportunity to rent a housing unit. Defendant communicated the denial by email, therein representing that she had decided to rent to a bachelor, instead: “In the past, I have always rented to bachelors, that has worked best.” Lastly, the United States alleges that on or around July 28, 2015, five days after Defendant represented to Ms. Seiler that a particular housing unit was unavailable, Defendant made the same unit available to a bachelor.

II. RECITALS

4. The Parties agree that at all times relevant to the Complaint, Defendant was the sole owner and manager of a three-unit residential property located at 636 Adams Street in Rapid City, South Dakota (“Subject Property”). The Subject Property is a “dwelling” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

5. The Parties agree that the United States District Court for the District of South Dakota has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §3612(o).

6. This Agreement is neither an admission of liability by Defendant nor a concession by the United States that its claims are not well founded.

III. STATEMENT OF CONSIDERATION

7. The Parties agree that the claims against Defendant should be resolved without further proceedings or a trial. The Parties therefore agree to the entry of this Agreement. This Agreement constitutes full resolution of the claims in the United States’ Complaint in this case against Defendant.

8. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal with prejudice of the lawsuit entitled *United States of America v. Amie Kelly*, No. 5:16-cv-05099-JLV (“Civil Action”), as set forth in Section XII, Paragraph 26.

THEREFORE, in consideration of the promises set forth below, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

IV. GENERAL NON-DISCRIMINATION PROVISIONS

9. The Defendant, her officers, employees, agents, successors, and assigns, and all other persons or entities in active concert or participation with Defendant in her ownership, operation, or management of rental housing, will not:

- a. Refuse to rent after the making of a bona fide offer, or refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of sex or familial status, in violation of 42 U.S.C. § 3604(a);
- b. Discriminate 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 familial status, in violation of 42 U.S.C. § 3604(b);
- c. Make, print, or publish, or cause to be made any notice, statement, or advertisement with respect to the rental of a dwelling unit that states any preference, limitation, or discrimination based on sex or familial status, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c); nor
- d. Represent to any person because of sex or familial status that a dwelling is not available for rental when such dwelling is in fact so available, in violation of 42 U.S.C. § 3604(d).

V. SPECIFIC NON-DISCRIMINATION PROVISIONS

10. Defendant will remove from her lease agreement any provision related to the care or supervision of minors, including the particular provision at issue in this case: “No minor under the age of 18 is to be allowed to be on or about the premises without adult supervision.”

VI. NOTICE OF NON-DISCRIMINATION POLICY

11. Within thirty (30) days of the effective date of this Agreement, Defendant will take the following steps to notify the public that she has a non-discrimination policy:

- a. Post an “Equal Housing Opportunity” sign in each of her rental properties in a prominent, well-lit location in which it is easily readable, and in any rental office through which her rental properties are rented, and at all other places on said properties in which announcements are vacancies are posted, which indicates that all rental units are available for rent on a nondiscriminatory basis. A sign no smaller than eleven inches by fourteen inches (10” x 14”) that comports with 24 C.F.R. Part 110 will satisfy this requirement.
- b. In all advertisements for rentals, including advertisements in newspapers, Internet web pages, flyers, handouts, telephone directories, signs (including at or near to the rental properties), and other written materials, and on all rental applications and all leases, include either: (1) a fair housing logo and the words “Equal Housing Opportunity Provider,” *or* (2) the words “We are an Equal Opportunity Housing Provider. We do not discriminate on the basis of race, color, national origin, religion, sex, disability, or familial status (having children under age 18).” The logo and/or words should be legible and prominently placed.

VII. MANDATORY TRAINING AND EDUCATION

12. Within ninety (90) days of the effective date of this Agreement, Defendant will undergo an in-person training on the Fair Housing Act, with specific emphasis on discrimination

on the basis of sex and familial status. The training will be conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with this training will be borne by the Defendant. Defendant will obtain from the trainer a certification of attendance, in a form acceptable to the United States. This confirmation will include the name of the course, the date the course was taken, the length of the course, and/or the time within which the course was completed. Defendant will send the certification of attendance by mail or email to Alison J. Ramsdell, Assistant U.S. Attorney, P.O. Box 2638, 325 S. 1st Avenue, Suite 300, Sioux Falls, SD 57101-2638, Alison.Ramsdell@usdoj.gov.

13. Defendant will provide copies of this Agreement to all of Defendant's agents and employees whose duties, in whole or in part, involve the management of rental units, within ten (10) days after they begin employment or agency with Defendant, and secure the signed statement, conforming to Attachment B, from each agent or employee acknowledging that he or she has received, read, and understands the Agreement, and has had his or her questions about the Agreement answered. The questions will be answered by Defendant or her counsel.

VIII. REPORTING REQUIREMENTS

14. During the period in which this Agreement is in effect, Defendant will notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against the Defendant or Defendant's officers regarding sex or familial status discrimination in housing. If the complaint is written, Defendant will provide a copy of it with the notification. The notification will include the full details of the complaint, including the complainant's name, address, and telephone number. Defendant will also promptly provide the United States all information it may request concerning any such complaint and will inform the United States within fifteen (15) days of any resolution of such complaint.

15. During the period in which this Agreement is in effect, Defendant will preserve all records that are the source of, contain, or relate to any of the information pertinent to their obligations under this Agreement and any other documents related to the management or rental of units at Defendant's property or properties. Such documents include, but are not limited to, applications, leases, tenant files, policies and procedures, and unit availability logs. Upon reasonable notice to counsel for Defendant, representatives of the United States will be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, Defendant will provide copies of such documents.

IX. MONETARY DAMAGES TO AGGRIEVED PERSON

16. No later than ten (10) days after the date of execution of this Agreement, Defendant will pay the sum of three thousand dollars (\$3,000) in monetary damages to Jennifer Seiler by delivering one check to the United States, payable to Jennifer Seiler.

17. As a prerequisite to receiving such payment, Ms. Seiler will execute and deliver to counsel for Defendant a release of all claims, legal or equitable, that she may have against Defendant relating to the claims asserted in this lawsuit. Such release will take the form of Attachment A. The United States will deliver the original release form to counsel for Defendant.

X. IMPLEMENTATION AND ENFORCEMENT

18. During the period in which this Agreement is in effect, the United States may review compliance with this Agreement. Defendant agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, Defendant will permit

counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

19. The Parties will endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Agreement prior to initiating any court action. If the United States believes that there has been a failure by the Defendant to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the United States will notify Defendant and her attorney of record in writing of its concerns and the Parties will attempt to resolve those concerns in good faith. The Defendant will have twenty-one (21) days from the date the United States provides notification of any breach of this Agreement to cure the breach.

20. If the Parties are unable to reach a resolution within twenty-one (21) days, the United States may seek appropriate relief from the Court prior to dismissal of the United States' action, or, if this action has been dismissed, move the Court to restore this action to the Court's active docket for purposes of any such claim of breach. In the event of such a claim of breach as made by the United States, Defendant consents to and agrees not to contest the Government's motion to restore the present Civil Action to the Court's active docket without waiving any defenses to the alleged breach, and consents to and agrees not to contest the exercise of personal jurisdiction over Defendant by this Court.

21. In the event the United States reinstates the Civil Action as contemplated by Paragraph 20, above, to remedy breach of this Agreement, the United States may seek the following: 1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; 2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and 3) any

additional relief that may be authorized by law or equity. If the Civil Action is reinstated, Defendant expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

22. Failure by the United States to enforce any provision of this Agreement will not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

XI. TERMINATION OF LITIGATION HOLD

23. The Parties agree that, as of the date of the dismissal of the present Civil Action, litigation is not "reasonably foreseeable" concerning the matters described above or in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information ("ESI"), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations imposed by this Agreement.

XII. DURATION, EXECUTION, AND OTHER TERMS

24. This Agreement is effective on the date of signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together will be considered an original but all of which will constitute one Agreement. Facsimiles of signatures will constitute acceptable, binding signatures for purposes of this Agreement.

25. The duration of this Agreement will be for a period of three (3) years from the date of execution of this Agreement.

26. Upon Defendant's completion of performance of the obligations set forth in Section IX, the Parties will promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with Prejudice of the Civil Action pursuant to Rule 41(a)(1), subject to reinstatement pursuant to Paragraph 20.

27. Except as set forth in Paragraph 21 above, each party will bear its own attorneys' fees, costs, and disbursements in connection with this litigation including the preparation, performance, and execution of this agreement.

28. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

29. This Agreement constitutes the complete agreement among the Parties. No prior or contemporaneous communications, oral or written, or prior drafts will be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding. This Agreement may not be amended except by written consent of all of the Parties.

30. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

31. This Agreement is binding on the Parties and their transferees, heirs, and assigns.

32. This Agreement is governed by and will be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it will be deemed to have been drafted by all Parties and will not be construed or interpreted against any Party for that reason in any subsequent dispute.

33. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another Party, the performance

of one Party's duties or obligations under this Agreement will not be discharged or excused by the actual or alleged breach of the duties and obligations by another Party.

34. This Agreement is a public document. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

35. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions will not be affected thereby and said illegal or invalid part, term or provision will be deemed not to be a part of this Agreement. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

ON BEHALF OF THE UNITED STATES OF AMERICA:

RONALD A. PARSONS, JR.
United States Attorney



ALISON J. RAMSDELL
Assistant U.S. Attorney
P.O. Box 2638
Sioux Falls, SD 57101-2638
Phone: (605) 357-2338
Alison.Ramsdell@usdoj.gov

Dated: 6/29/2018

ON BEHALF OF DEFENDANT AMIE KELLY:



GREGORY J. SPERLICH

PO Box 1820

Rapid City, SD 57709

Phone: (605) 342-2814

gjs@demjen.com

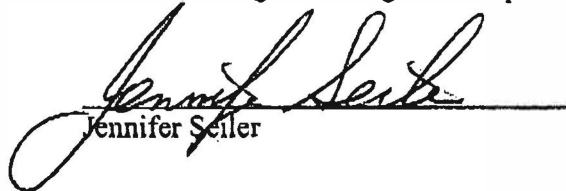
Dated:

22 June 18

ATTACHMENT A
Release

In consideration of the Settlement Agreement entered in *United States of America v. Amie Kelly*, No. 5:16-cv-05099-JLV and the payment of \$3,000 to me pursuant to that Agreement, I, Jennifer Seiler, hereby release, remise and forever discharge the Defendant named in this action (Civil Action No. 5:16-cv-05099-JLV), her successors and assigns, and any person known or unknown, including but not limited to Defendant's respective agents, members, governors, representatives, shareholders, employees, owners, officers, insurers, attorneys, and any related companies, members, officers, owners and directors from any and all liability for any claims, demands, actions, damages indebtedness whatsoever, legal or equitable, I may have against them arising out of the issues and facts alleged in this action as of the date I sign this Release. I fully acknowledge and agree that this Release will be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understood this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated: 6/30/2018


Jennifer Seiler

ATTACHMENT B

ATTACHMENT B
Employee Acknowledgement

I acknowledge that on 22nd June, 2018 I received a copy of the Settlement Agreement resolving *United States of America v. Amie Kelly*, No. 5:16-cv-05099-JLV. I have read and understand the Settlement Agreement, and I have had my questions about this document answered. I understand my legal responsibilities and will comply with those responsibilities.

Amie Kelly
Signature

Amie Kelly
Printed name

Owner
Title

6.22.18
Date