

United States v. Christine Irvin

Case No. 5:17-cv-01233-M (W.D. Okla.)

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND CHRISTINE IRVIN**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered into by and between Plaintiff, the United States of America (“the United States”), through the U.S. Department of Justice, and Defendant Christine Irvin, through her authorized representatives. The Plaintiff and the Defendant are herein referred to collectively as the “Parties.”

II. RECITALS

2. This Agreement resolves a Complaint filed by the United States on November 16, 2017, captioned *United States v. Christine Irvin*, Civil Action No. 17-1233-M (W.D. Okla.) (hereinafter “Civil Action”), to enforce Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. §§ 3601-3619. The Civil Action is brought on behalf of Complainant Nicola Mariott (“the Complainant”) pursuant to 42 U.S.C. § 3612(o).

3. On April 21, 2016, the Complainant filed a timely complaint against the Defendant with the U.S. Department of Housing and Urban Development (“HUD”).

4. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD conducted and completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe the Defendant violated the Fair Housing Act. Therefore, on August 10, 2017, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendant with engaging in discriminatory housing practices on the basis of disability.

5. On August 18, 2017, the Complainant elected to have the claims asserted in the HUD Charge resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On August 21, 2017, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on the complaint.

6. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).

7. On April 11, 2018, the Complainant filed a complaint in this District captioned, *Nicola Mariott v. Christine Irvin & Jim Irvin*, Civil Action No. CIV-18-327-D (“the Private Action”). On May 3, 2018, the Court consolidated that case with the Civil Action for all purposes.

8. The Defendant operates and manages Shady Oaks Mobile Home Park (“Subject Property”), located at 9900 SE 44th Street, Oklahoma City, OK. The Subject Property consists of approximately twenty lots that the Defendant makes available to rent for the placement thereon of mobile homes and other moveable residences.

9. The lots at the Subject Property are dwellings within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

10. The United States alleges that the Complainant resided at the Subject Property from September 2010 until June 2016.

11. The United States alleges that, at all relevant times, the Defendant maintained a policy that permitted residents of the Subject Property to keep “one small dog per family” (“the Pet Policy”).

12. The United States alleges that, at all relevant times, the Complainant is and was a person with a disability within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h). The

United States further alleges that the Complainant disclosed that she was a person with a disability to the Defendant.

13. The United States alleges that in April 2016, the Complainant made oral and written requests for a reasonable accommodation, asking that she be allowed to live with her assistance animal, Bell, a Blue Heeler-Labrador Retriever mix-breed dog. The United States alleges that the Complainant made this request after the Defendant informed her that her assistance animal was in violation of the Pet Policy due to the animal's size.

14. The United States alleges that the Defendant was given sufficient information, including a letter from the Complainant's treating psychiatrist, that the Complainant was a person with a disability.

15. The United States alleges that the Complainant's requested accommodation was reasonable and necessary.

16. The United States alleges that the Defendant denied the Complainant's request for a reasonable accommodation.

17. The United States alleges that, after the Defendant received notice that the Complainant had filed a complaint of housing discrimination with HUD, she retaliated against the Complainant by issuing a notice of eviction and demanding that the Complainant vacate the Subject Property by June 20, 2016. The United States further alleges that the Defendant refused to rescind her demand that the Complainant vacate the Subject Property even though the Complainant informed her that she had removed her assistance animal from the Subject Property.

18. The United States alleges that the Complainant vacated the Subject Property as a result of the Defendant's denial of the Complainant's request for a reasonable accommodation and the Defendant's demand that she vacate the Subject Property.

19. In its Civil Action, the United States alleges that, by the actions and statements described above, the Defendant has:

- a. Discriminated in the rental, or otherwise made unavailable or denied a dwelling to a renter because of a disability of that renter, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminated in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a disability of that renter, in violation of 42 U.S.C. § 3604(f)(2);
- c. Refused to make reasonable accommodations in rules, policies, practices, or services, when such an accommodation was necessary to afford a person with a disability equal opportunity to use and enjoy her dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- d. Coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, rights granted by Section 804 of the FHA, in violation of 42 U.S.C. § 3617.

20. As a result of the Defendant's conduct, the Complainant has been injured and is an "aggrieved person" as defined by 42 U.S.C. § 3602(i).

21. The United States alleges that the Defendant's conduct was intentional, willful, and/or taken in reckless disregard of the rights of others.

22. The Parties stipulate that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o). The Parties further stipulate that venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions

giving rise to the United States' claims occurred in the Western District of Oklahoma, and the Defendant resides and/or does business in the Western District of Oklahoma.

III. STATEMENT OF CONSIDERATION

23. The Parties agree that the claims against the Defendant should be resolved without further proceedings or a trial. Therefore, the United States and the Defendant agree to this Settlement Agreement (the "Agreement"). The Agreement constitutes full resolution of the claims in the United States' Complaint in this case against the Defendant.

24. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal of the Civil Action, consistent with the terms set forth in Paragraphs 42 and 48. The parties agree and acknowledge that this consideration is adequate and sufficient.

THEREFORE, the Parties, through their authorized representatives, hereby stipulate and agree as follows:

IV. TERMS AND CONDITIONS

A. GENERAL NONDISCRIMINATION PROVISIONS

25. The Defendant, her officers, employees, agents, successors and assigns, and all other persons or entities in active concert or participation with the Defendant in her ownership, operation, or management of the Subject Property, shall not:

- a. Discriminate in the rental of, or otherwise make unavailable or deny, a dwelling to any renter on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in

connection with the rental of such a dwelling on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2);

- c. Refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a resident with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3); or
- d. Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, rights granted by Section 804 of the FHA, in violation of 42 U.S.C. § 3617.

B. NOTICE OF NONDISCRIMINATION POLICY

26. Within thirty (30) days of the entry of this Agreement, the Defendant shall take the following steps to notify the public that they have a nondiscrimination policy:

- a. Post in any and all rental offices through which lots at the Subject Property are rented an “Equal Housing Opportunity” sign, which indicates that all rental properties are available for rent on a nondiscriminatory basis. The sign must be posted in a prominent, well-lit location in which it is easily readable. An 11-by-14 inch posted that comports with 24 C.F.R. Part 110 will satisfy this requirement. The Defendant may use HUD Form 928, copies of which are available free of charge by calling HUD directly at 800-669-9777, or online at <https://www.hud.gov/sites/documents/928.1.PDF>; and
- b. In all advertisements for rentals, including advertisements in newspapers, Internet web pages, flyers, handouts, telephone directories, signs (including

signs at or near to the Subject Property) and all 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, religion, sex, disability, familial status (having children under age 18), or national origin.” The words and/or logo should be legible and prominently placed.

C. REASONABLE ACCOMMODATION POLICY

27. Within thirty (30) days after the effective date of this Agreement, the Defendant shall establish and adopt a specific written policy, the “Reasonable Accommodation Policy for Persons with Disabilities,” for receiving and handling requests for reasonable accommodations made by residents with disabilities. This policy shall comply with the requirements of 42 U.S.C. §§ 3601-3619 and all other applicable federal and state laws and shall include the following provisions:

- a. A description of where and how requests for accommodations in rules, policies, practices, or services are to be accepted and processed;
- b. Each request for a reasonable accommodation and the response thereto shall be fully documented by the Defendant, including copies of any written requests or decisions;
- c. All requests for a reasonable accommodation shall be acknowledged, in writing, within fourteen (14) days of the Defendant’s receipt of an oral or written request;

- d. Those requesting a reasonable accommodation shall be notified in writing of the decision regarding their request within thirty (30) days of the receipt of that request, including an explanation if the request is denied;
- e. The Defendant shall consider all requests for accommodations because of a disability and shall grant those requests that are reasonable within the meaning of the Fair Housing Act; and
- f. The Defendant shall not impose any additional fees or costs, or otherwise retaliate against any person who has exercised his/her rights under the Fair Housing Act to make one or more reasonable accommodation requests and, if applicable, to receive a reasonable accommodation.

28. No later than ten (10) days after adoption of the policy referenced in the preceding paragraph, the Defendant shall notify in writing each resident of the Subject Property or any other rental property subject to this Agreement of the policy. Notice shall be sent via first-class mail, postage prepaid.

29. No later than ten (10) days after any new resident moves to the Subject Property or any other rental property subject to this Agreement, the Defendant shall notify that resident in writing of the policy. The resident shall acknowledge, in writing, receipt of the notification.

D. MANDATORY TRAINING

30. Within ninety (90) days after the effective date of this Agreement, any and all individuals who perform advertisement, rental, management, and/or administrative duties with respect to the rental of dwellings at the Subject Property, or at any other residential rental property subject to this Agreement, shall attend an education program offering instruction regarding their obligations under this Agreement and the federal Fair Housing Act. The

Defendant shall pay the cost of this educational program. The United States shall review and approve the content and form of the program. The trainer or training entity shall be (1) qualified to perform such training, (2) independent of the Defendant and her counsel, and (3) approved in advance by the United States.

31. In the event the Defendant resumes the performance of any advertisement, rental, management, and/or administrative duties with respect to the rental of dwellings at the Subject Property, or at any other residential rental property subject to this Agreement, she shall attend a fair housing training program, consistent with the requirements of Paragraph 30, within thirty (30) days of resuming such duties. The Defendant shall bear any costs associated with this training.

32. Any individuals hired or contracted to perform advertisement, rental, management, and/or administrative duties with respect to the rental of dwellings at the Subject Property, or at any other residential rental property subject to this Agreement, shall attend a fair housing training program, consistent with the requirements of Paragraph 30, within thirty (30) days of the start of their employment or contract. The Defendant shall bear any costs associated with this training.

33. Within ten (10) days of completing the educational program described in the preceding three paragraphs, each individual shall certify that he or she has participated in the educational training program, and that he or she understands and acknowledges his or her duties and responsibilities under this Agreement and the federal Fair Housing Act, by completing an acknowledgment in the form of Appendix A to this Agreement.

E. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

34. Within 120 days of the effective date of this Agreement, and thereafter on the anniversary of the effective date of this Agreement, the Defendant shall submit to counsel for the United States a compliance report, except that the final report shall be submitted sixty (60) days prior to the expiration of this Agreement.¹ The compliance report shall include: (a) copies of any training certifications completed as required by Section VI.D of this Agreement; (b) copies of any advertising for rental housing owned and/or managed by the Defendant in newspapers, in telephone directories, on radio or television, on the Internet, or in other media published since the effective date of this Agreement or the submission of the prior compliance report; (c) photographs showing the Non-Discrimination Policy posted as required by Section IV.B of this Agreement; and (d) proof of written notification of the Reasonable Accommodation Policy as required by Section IV.C of this Agreement provided since the effective date of this Agreement or the submission of the prior compliance report.

35. The Defendant shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against the Defendant regarding housing discrimination. If the complaint is made orally, the Defendant shall maintain a log upon which she records the name of the complainant; the address and telephone number of the complainant; the date the complaint was received; and a general description of the complaint. If the complaint

¹ All correspondence required to be sent to the United States under the provisions of this Agreement shall be sent to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, Attn: *U.S. v. Irvin*, DJ 175-60-181, via overnight delivery, at the following address: 1800 G Street NW, Suite 7002, Washington, DC 20006. Notice via facsimile is to be sent to (202) 514-1116. Notice via email is to be sent to undersigned counsel of record for the United States, unless otherwise directed. Any submission must reference the case name "*U.S. v. Irvin*" and/or DJ # 175-60-181.

is written, the 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. The 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.

36. The Defendant shall preserve all records related to this Agreement and to the rental housing she owns and/or manages. Such documents include, but are not limited to, advertisements, applications, leases, and tenant files. Upon reasonable notice to the Defendant, the Defendant shall permit representatives for the United States to inspect and copy any non-privileged records related to this Agreement so as to determine compliance with the Agreement; provided, however, that the United States shall endeavor to minimize any inconvenience to the Defendant.

37. The United States may take steps to monitor the Defendant's compliance with the Agreement, including conducting fair housing tests at the rental housing owned and/or managed by the Defendant.

F. ACQUISITION OR TRANSFER OF INTEREST IN DWELLINGS

38. If, at any time before the expiration of this Agreement, the Defendant acquires a direct or indirect management, ownership, financial, or control interest in any other residential rental property, such property shall become subject to the applicable provisions of this Agreement. Within thirty (30) days of acquiring such an interest, the Defendant shall notify counsel for the United States of the nature of the Defendant's interest in the dwelling or property; the address of the property; the number of individual dwelling units at the property; and any

other information required under the Agreement. The Defendant shall further provide a copy of the documents memorializing the transfer in interest.

39. If, at any time before the expiration of this Agreement, the Subject Property or any other property subject to this Agreement has been or is sold or transferred to a bona fide, independent, third-party purchaser in an arms-length transaction,² such property shall cease to be subject to this Agreement. For purposes of this paragraph, a “bona fide, independent, third-party purchaser” is one in which neither the Defendant nor a corporation or entity of which she is an officer, partner, employee, or agent, has any current or past financial, contractual, personal, or familial relationship.

40. If at any time while this Agreement remains in effect, the Defendant maintains that her obligations under this Agreement have terminated or changed because she has sold or transferred the Subject Property or any other property subject to this Agreement to a bona-fide third party purchaser in an arms-length transaction, the Defendant shall inform the United States within thirty (30) days of such transaction and provide the date of the sale or transfer, copies of the sale or transfer documents, and the name(s) and contact information for the subsequent purchaser.

41. If any transfer of interest in all or a portion of the Subject Property or any other property subject to this Agreement is not an arms-length transaction, the Defendant shall remain

² For purposes of this Agreement, “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. A transaction involving a corporate entity in which the Defendant, or any person related to the Defendant by blood or marriage, is an officer, agent, employee, or partner, or has any ownership, financial, or control interest, shall not be considered an arms-length transaction.

jointly and severally liable, along with the purchaser or other transferee, for any violations of this Agreement for its duration.

G. MONETARY DAMAGES FOR NICOLA MARIOTT

42. Within ten (10) days after the effective date of this Agreement, the Defendant shall pay a total sum of **\$50,000** in settlement of the Civil Action and the Private Action to Nicola Mariott. Payment shall be made pursuant to the agreement reached between the parties to the Private Action.

V. IMPLEMENTATION, ENFORCEMENT, AND DISMISSAL OF UNDERLYING ACTION

43. The United States may review compliance with this Agreement at any time. The Defendant agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, the Defendant shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

44. Should the Defendant fail to timely make the required settlement payment described herein or materially breach any other provision of this Agreement, the Parties agree that upon any such claim of breach as made by the United States, the United States may move to restore the present Civil Action to the active docket for purposes of resolution of any such claim of breach, or may file a separate action in the United States District Court for the Western District of Oklahoma to remedy the breach. In the event of such a claim of breach as made by the United States, the Defendant consents to and agrees not to contest the United States' motion to restore the Civil Action. In such action, the United States may seek to have the Court impose any remedy authorized at law or equity. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. The Parties consent to and agree not to

contest the jurisdiction of this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.

45. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or 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 in writing of its concerns and the Parties will attempt to resolve those concerns in good faith. The Defendant shall have thirty (30) days from the date the United States provides notification of any breach of this Agreement to cure the breach.³

46. In the event the United States files a civil action as contemplated by Paragraph 44 of this Agreement 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 Settlement 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 a breach of this Agreement; and (3) any additional relief that may be authorized by law or equity. If the Civil Action is reinstated or any other civil action to remedy breach of this Agreement is filed, the 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.

³ The United States shall send such notice to: Shady Oaks Mobile Home Park, Attn: Jim Irvin, 9900 SE 44th Street, Oklahoma City, OK 73150

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

48. Upon the Defendant's completion of performance of the obligations set forth in Section IV.G of this Agreement, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

V. TERMINATION OF LITIGATION HOLD

49. The Parties agree that, as of the date of the dismissal of the Civil Action, litigation is not "reasonably foreseeable" concerning the matters described above or in the United States' Complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, that 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.

VI. DURATION, EXECUTION, AND OTHER TERMS

50. 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 shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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

52. Except as provided in Paragraph 46 of this Agreement, each Party shall bear its own legal and other costs incurred in connection with this litigation, including in the preparation and performance of this Agreement.

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

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

55. This Agreement constitutes the complete agreement among the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

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

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

58. 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 shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

59. 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.

60. 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 shall not be affected thereby and said illegal or invalid part, term or provision shall 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.

61. This Agreement may be modified only with the written consent of the parties. Any modification must be in writing and signed by the parties through their authorized representatives.

FOR THE PLAINTIFF, UNITED STATES:

DATED: August 8, 2018

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FOR THE DEFENDANT, CHRISTINE IRVIN:

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APPENDIX A

CERTIFICATION AND ACKNOWLEDGMENT

I certify that on _____, 20___, I received _____ minutes of in-person training on the requirements of the federal Fair Housing Act. I understand and acknowledge my duties and responsibilities under the federal Fair Housing Act and under the Settlement Agreement entered into by the United States and Christine Irvin.

Signature

Print Name

Job Title/Position

Date