

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

LEE CLARK,

Intervenor-Plaintiff,

v.

No. 1:18-cv-02693-JDB-jay

DYERSBURG APARTMENTS, LTD.
AND MACO MANAGEMENT COMPANY,
INC.,

Defendants.

CONSENT ORDER

This Consent Order resolves the allegations of the United States' Complaint that the Dyersburg Apartments, Ltd. ("Dyersburg") and MACO Management Company, Inc. ("MACO") violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619, as well as Lee Clark's Complaint in Intervention for Declaratory Judgement, Injunctive Relief, Damages, Costs, and Attorney Fees ("Complaint in Intervention") involving similar claims.

I. BACKGROUND

1. Dyersburg, a Tennessee limited partnership, owns the 50-unit apartment complex located in Dyersburg, Tennessee, which is the subject property.

2. MACO, a Missouri limited liability company, manages and operates the subject property, as well as at least one other rental property in the Dyersburg, Tennessee, area.

3. MACO has established districts managed by a District Manager for the management of properties. For purposes of this Consent Order and resulting obligations, only those properties, employees, managers, agents and other MACO employees assigned to operations within the MACO-established District in which Dyersburg Apartments is located (see Appendix E) are obligated or bound, whether working on-site or off-site.

4. At all times relevant to this action, MACO imposed a policy of rejecting rental applications if any member of the household had a felony conviction within the past ten years or had engaged in certain criminal activity, such as “[a]ny conviction or adjudication other than acquittal for the sale, distribution, or manufacture of any controlled or illegal substance[.]” and “[a]ny conviction or adjudication other than acquittal, for any sexual offense.”

5. At all times relevant to this action, MACO imposed a policy of conducting a check of each applicant’s criminal record. MACO’s Rules and Regulations stated, however, that where a rental application is rejected because of the criminal history of a member of the applicant’s household, “consideration shall be given to favorable changes in the household’s pattern of behavior, a lapse of years since occurrence of an offense[,] and to other extenuating circumstances.”

6. In or around January 2012, Lee Clark, who is Black, moved into the subject property with his ex-wife, Tiffany Taylor, who is also Black, and their two children.

7. Approximately one week after Clark submitted his application, MACO rejected Clark’s rental application because he had a felony conviction.

8. MACO informed Clark that he must leave the property immediately and that he was no longer permitted to enter the property, even to see his children.

9. MACO declined to impose its policy against accepting applicants with a criminal history in at least two instances involving white residents with relevant criminal histories that were as serious, or more serious, than Clark's relevant criminal history.

10. Clark filed a timely complaint of discrimination with the United States Department of Housing and Urban Development ("HUD") on September 13, 2013.

11. After an investigation, on August 27, 2018, the Secretary of HUD issued a Charge of Discrimination, in accordance with 42 U.S.C. § 3604, charging Dyersburg and MACO with engaging in unlawful discriminatory practices in violation of 42 U.S.C. §§ 3604(a) and (b).

12. On September 6, 2018, Clark elected to proceed in federal court and HUD referred the matter to the Department of Justice for filing in accordance with 42 U.S.C. § 3612(o). The United States timely filed this action on October 9, 2018. Clark filed a Complaint in Intervention on March 15, 2019.

13. The United States and the Defendants agree that the Court has jurisdiction over the subject matter of this case under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3612(o)(1).

14. The parties agree that the claims against the Defendants should be resolved without further proceedings and an evidentiary hearing. Therefore, as indicated by the signatures below, the United States, Intervenor-Plaintiff, and the Defendants agree to the entry of this Consent Order. This Consent Order constitutes full resolution of the claims in the United States' Complaint and Intervenor-Plaintiff's Complaint in Intervention.

It is hereby ORDERED, ADJUDGED and DECREED:

II. INJUNCTIVE RELIEF

15. The Defendants, their officers, employees, agents, representatives, successors and assigns, and all other persons in active concert or participation with them, are enjoined from:

- a. Discriminating on the basis of race in any aspect of the rental or lease of a dwelling; and
- b. Discriminating in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race.

III. NOTICE TO PUBLIC OF NONDISCRIMINATION POLICY

16. Within fifteen (15) days of the date of entry of this Consent Order, the Defendants shall post and prominently display within Dyersburg's leasing offices, and within the offices of all the Defendants' management officials within the district organized by MACO for the management of properties which includes Dyersburg, a sign no smaller than ten (10) inches by fourteen (14) inches indicating that all dwellings are available for rental on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

17. The Defendants shall ensure that all rental advertising within the district organized by MACO for the management of properties which includes Dyersburg in newspapers, in telephone directories, on radio, on television, on the internet, or in other media, and any signs, pamphlets, brochures, or other promotional literature, include a fair housing logo, the phrase "Equal Housing Opportunity Provider," and/or the following sentences:

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).

18. The Defendants shall include the following phrase in the standard rental application and the standard rental agreement used for rental dwelling units within the district organized by MACO for the management of properties which includes Dyersburg 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).

19. Within fifteen (15) days of the date of entry of this Consent Order, the Defendants shall provide via first class mail, postage pre-paid, to the head of the household for each of the Defendants' occupied rental units within the district organized by MACO for the management of properties which includes Dyersburg, a written notice, attached as Appendix B, which describes Defendants' policy of nondiscrimination ("Nondiscrimination Policy").

IV. TRAINING

20. Within fifteen (15) days of the date of entry of this Consent Order, the Defendants shall provide a copy of the Consent Order and the Nondiscrimination Policy to all their employees and agents within the district organized by MACO for the management of properties which includes Dyersburg whose duties, in whole or in part, involve showing, renting, managing, or marketing of rental units ("Covered Employees"). The Defendants shall secure signed statements conforming to Appendix C from each Covered Employee acknowledging that he or she has received, has read, and understands the Consent Order and the Nondiscrimination Policy,

and has had his or her questions about these documents answered. Copies of the signed statements shall be provided to the United States.¹

21. Within fifteen (15) days of hiring a new Covered Employee or changing an existing non-Covered Employee's duties within the district organized by MACO for the management of properties which includes Dyersburg, each new Covered Employee shall be given a copy of this Consent Order and the Nondiscrimination Policy. The Defendants shall secure signed statements conforming to Appendix C from each new Covered Employee within the district organized by MACO for the management of properties which includes Dyersburg acknowledging that he or she has received, has read, and understands the Consent Order and the Nondiscrimination Policy, and has had his or her questions about these documents answered. Copies of the signed statements shall be provided to the United States in accordance with the provisions of Paragraph 20, footnote 1.

22. Within ninety (90) days of the date of entry of this Consent Order, the Defendants shall provide in-person training to all Covered Employees within the district organized by

¹ The parties agree that unless specified otherwise, any communications referenced in this Consent Order, shall be made by email and overnight mail by private carrier to the following individuals and addresses:

United States of America
c/o Amie Murphy
DJ # 175-72-142
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
4 Constitution Square
150 M Street, NE
Washington, DC 20002
Email: amie.murphy2@usdoj.gov

MACO for the management of properties which includes Dyersburg focused on the prohibition of race discrimination under the Fair Housing Act. The training shall be conducted by a qualified third party, approved by the United States and unconnected to the Defendants or their employees, agents or counsel. Any expenses associated with this training shall be borne by the Defendants. Those who attend the training shall be required to sign a certification of completion conforming to Appendix D. Copies of those signed certifications shall be provided to the United States in accordance with the provisions of Paragraph 20, footnote 1.

23. 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 applicable federal and state housing discrimination laws.

**V. NONDISCRIMINATORY STANDARDS AND PROCEDURES
FOR LEASING APARTMENTS**

24. MACO's Rules and Regulations provide that in conducting a criminal history check, "consideration shall be given to favorable changes in the household's pattern of behavior, a lapse of years since occurrence of an offense[,] and to other extenuating circumstances." In accordance with the Nondiscrimination Policy, the Defendants shall apply that provision of the rules and regulations to every applicant without regard to his or her race, color, national origin, religion, sex, disability or familial status (having children under age 18).

VI. REPORTING AND RECORD KEEPING REQUIREMENTS

25. Within ninety (90) days of the date of entry of this Consent Order, and every six (6) months thereafter, the Defendants within the district organized by MACO for the management of properties which includes Dyersburg shall submit a compliance report to counsel for the United States in accordance with the provisions of Paragraph 20, footnote 1. The compliance report shall include: (a) the signed statements and certifications of each Covered Employee referred to in Paragraph 19-22 obtained since the entry of Consent Order or submission of the prior compliance report; (b) copies of any advertising for the rental properties owned or managed by the Defendants in newspaper, telephone directories, radio, television, internet, or in any other media; and copies of signs, pamphlets, brochures, or other promotional literature concerning the Defendants published since the submission of the prior report; and (c) photographs showing the Nondiscrimination Policy described in Paragraphs 15-18 posted and prominently displayed in the Defendants' leasing offices, and within the offices of all the Defendants' management officials.

26. The Defendants shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against either Defendant or any of the Defendants' agents or employees within the district organized by MACO for the management of properties which includes Dyersburg regarding race discrimination. If the complaint is written, the Defendants 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 Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States in writing within fifteen (15) days of the terms of any resolution of any such complaint.

27. The Defendants shall provide the United States a copy of any Letter of Banishment (“Letter”) issued by the Defendants within the district organized by MACO for the management of properties which includes Dyersburg within fifteen (15) days of issuance. At the same time, the Defendants shall provide the recipient’s name, address, and telephone number; a written statement of the reason(s) for issuing the Letter; and the recipient’s race. The Defendants shall also promptly provide the United States all information it may request concerning any such Letter, including a copy of the resident file.

28. The Defendants shall provide a copy of any application denied due to criminal history or criminal record to the United States within fifteen (15) days of denial within the district organized by MACO for the management of properties which includes Dyersburg. At the same time, the Defendants shall provide the applicant’s name, address, and telephone number; and the applicant’s race and the race of any individual applying with the applicant. The Defendants shall also promptly provide the United States all information it may request concerning any such application file.

29. The Defendants shall preserve all records related to this Consent Order within the district organized by MACO for the management of properties which includes Dyersburg. Such documents include, but are not limited to, advertisements, applications, leases, resident assessment materials, resident files, and the Defendants’ policies and procedures. Upon reasonable notice to the Defendants, representatives for the United States shall be permitted to inspect and copy any records related to this Consent Order.

VII. MONETARY DAMAGES

30. Within thirty (30) days of the date of entry of this Consent Order, the Defendants shall pay Lee Clark Forty-Two Thousand Two Hundred and Fifty dollars (\$42,250.00) in

monetary damages. The Defendants shall pay this money by sending to counsel for Lee Clark a check for Forty-Two Thousand Two Hundred and Fifty dollars (\$42,250.00), payable to West Tennessee Legal Services.

31. Upon receipt of the check, counsel for Lee Clark shall send the Defendants an executed release in the form of Appendix A of all claims, legal or equitable, that Clark might have against the Defendants relating to the claims asserted in this lawsuit.

VIII. SCOPE OF CONSENT ORDER

32. The provisions of this Consent Order shall apply to the Defendants and any subsidiaries, acquired companies, or successor entities within the district organized by MACO for the management of properties which includes Dyersburg. They shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with any of those entities within the district organized by MACO for the management of properties which includes Dyersburg.

33. In the event that the Defendants are acquired by or merge with another entity, the Defendants shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order.

34. The United States may take steps to monitor the Defendants' compliance with this Consent Order, including conducting fair housing tests at rental housing owned and/or managed by the Defendants within the district organized by MACO for the management of properties which includes Dyersburg.

**IX. MODIFICATIONS, ATTORNEY'S FEES AND COSTS,
AND REMEDIES FOR NON-COMPLIANCE**

35. Except as provided for in Paragraph 36, the parties shall be responsible for their own attorney's fees and court costs.

36. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order 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 the Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees that may have been occasioned by the Defendants' violation or failure to perform.

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

38. The terms of this Consent Order shall not be modified, revised, or altered unless mutually agreed upon in writing by the parties and approved by the Court, except as provided in Paragraph 36.

X. DURATION

39. This Consent Order shall be in effect for a period of three (3) years from its date of entry. The case is hereby dismissed with prejudice, except that the Court shall retain jurisdiction to enforce the terms of this Consent Order. Therefore, the Clerk is DIRECTED to

administratively close the case. The United States may move the Court to extend the duration of this Consent Order in the interests of justice.

XI. TERMINATION OF LITIGATION HOLD

40. The parties agree that, as of the effective date of this Consent Order, litigation is not “reasonably foreseeable” concerning the matters described 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 in the complaints, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any of the parties of any other obligations imposed by this Consent Order.

IT IS SO ORDERED this 13th day of August, 2019.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

APPENDIX A

RELEASE OF ALL CLAIMS

In release for the parties' agreement to the terms of the Consent Order by the Court in United States of America v. Dyersburg Apartments, Ltd. and MACO Management Company, Inc., Civil Action No. 2:18-cv-022693 and Dyersburg Apartments, Ltd.'s and MACO Management Company, Inc.'s payment to me for \$42,250.00 in accordance with the Consent Order, I hereby release, and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to this litigation, and any other claims arising from the discrimination alleged in the litigation, and from any and all other claims, up to and including the date of execution of this release, that I may have against Dyersburg Apartments, Ltd. and MACO Management Company, Inc. and any and all past and present owners, directors, officers, agents, managers, supervisors, employees, insurers (including Federal Insurance Company), and attorneys of Dyersburg Apartments, Ltd. and MACO Management Company, Inc., and their heirs, executors, administrators, successors and assigns.

Executed this ___ day of _____, 2019.

APPENDIX B
NONDISCRIMINATION POLICY

It is the policy of Dyersburg Apartments, Ltd. and MACO Management Company, Inc. to comply with Title VIII of the Civil Rights Act of 1968 (commonly known as the Fair Housing Act) by ensuring that dwelling units are available to all persons without regard to race, color, religion, national origin, disability, familial status, or sex. The policy means, among other things, that Dyersburg Apartments, Ltd. and MACO Management Company, Inc. and all agents and employees of Dyersburg Apartments, Ltd. and MACO Management Company, Inc. with the responsibility for renting, managing or administering any dwelling units must not discriminate on the basis of race in any aspect of the rental dwellings to qualified applicants or residents. Such agents and employees must refrain from:

- A. Discriminating against a person in the terms, conditions, or privileges of the rental of a dwelling or in the provisions of services or facilities in connections with such dwelling, because of the race of that person, a person residing or intending to reside in the dwelling after it is rented, or any person associated with that person; and
- B. Coercing, intimidating, threatening, or interfering with that person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by section 804 of the Fair Housing Act.

Any agent or employee who fails to comply with this Nondiscrimination Policy shall be subject to appropriate disciplinary action. Any action taken by an agent or employee that results in the unequal service, treatment or behavior to residents on the basis of race may constitute a violation of state and federal fair housing laws. Any resident who believes that any of the above policies have been violated by Dyersburg Apartments, Ltd. and MACO Management Company, Inc. or any of its agents or employees, may contact the U.S. Department of Housing and Urban Development at 1-800-669-9777, or the U.S. Department of Justice at 1-800-896-7743.

APPENDIX C

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20____, I was provided a copy of the Consent Order entered by the Court in United States of America v. Dyersburg Apartments, Ltd. and MACO Management Company, Inc., Civil Action No. 2:18-cv-022693, and provided with a copy of Dyersburg Apartments, Ltd.'s and MACO Management Company, Inc.'s Nondiscrimination Policy. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

(PRINT NAME)

(SIGNATURE)

(JOB TITLE)

APPENDIX D
EMPLOYEE TRAINING CERTIFICATION

I certify that on _____, 20____, I received training with respect to my responsibilities under the Consent Order entered by the Court in United States of America v. Dyersburg Apartments, Ltd. and MACO Management Company, Inc., Civil Action No. 2:18-cv-022693, and the Federal Fair Housing Act. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to discriminate under the federal fair housing laws, including the Fair Housing Act, and shall comply with those responsibilities.

(PRINT NAME)

(SIGNATURE)

(JOB TITLE)

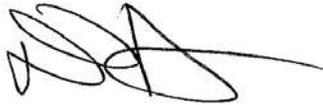
Appendix E

Ridgely Properties, L.P	Blue Ridge	210 S. Main St. (1775 Vaughn Dr)	Ridgely	TN	38080
Tiptonville Elderly Hsng	Lake Point	1775 Vaughn Dr	Tiptonville	TN	38079
Lake Ridge Apts, LP	Lake Ridge	900 Vaughn Dr	Tiptonville	TN	38079
Ridgely Elderly Housing, L.P.	Sun Valley	498 Riley Road	Ridgely	TN	38080
South Fulton Housing Assoc. LP	Eaglewood Estates	305 Connell Dr	South Fulton	TN	38257
Union City Associates, L.P.	Union City	2810 Lynn St.	Union City	TN	38261
Harper Associates, LTD IV	Eaglewood IV	300 Eaglewood Drive	Kenton	TN	38233
Rachell Square	Rachell Sqaure	115 Edd's Drive	Rutherford	TN	38369
Gibson House Apartments	Gibson House	2220 HWY 45 Bypass S	Trenton	TN	38382
Dyer Apartments, LTD.	Dyer Apartments	174 Rocky Point Dr / P.O. Box 282	Dyer	TN	38330
Creekwood Manor, LTD.	Creekwood Apartments	1045 Tammbells / P.O. Box 284	Brownsville	TN	38012
Decatur Properties, LTD	Kensington Place	92 Kensington Place	Parsons	TN	38363
Brownsville Associates LTD	Brownsville Apartment	1045 Tammbell S/ P.O. Box 284	Brownsville	TN	38012
Whitehall Apartments, LTD	Whitehall Apts.	215 W. Main Ave P.O. Box 315	Whiteville	TN	38075
Dogwood Place Apts LTD	Dogwood Place	253 Dogwood Cove #3	Middleton	TN	38052
Harper Assocaites	Eaglewood III	195 Bethesda Rd	Selmer	TN	38375
Ripley Elderly Housing, L.P.	Spring Forest	223 Keller Ave	Ripley	TN	38063
Dyersburg Apatments LTD.	Meadow Lane Apts	625 HWY 51 Bypass E	Dyersburg	TN	38024
Arlington Housing Assoc. I LP	Arlington Manor	11216 Marquis Ct	Arlington	TN	38002
Eaglewood V. L.P	Eaglewood V	600 Eaglewood DR	Dyersburg	TN	38024

WE SO MOVE and agree to abide by the terms of this Order

For the United States:

D. MICHAEL DUNAVANT
United States Attorney
Western District of Tennessee



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For the Defendants:

MATTHEW WAYNE WILLIS
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322 Church Ave. N., P.O. Box H
Dyersburg, Tennessee 38025

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For the United States:

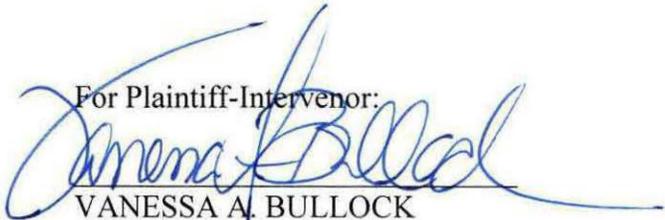
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