

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Civil No. 19-2087 (JRT/LIB)

Plaintiff,

CONSENT DECREE

v.

TIM DALLY and LINDA DALLY,

Defendants.

Ana H Voss, Assistant United States Attorney, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for plaintiff.

Chad A. Staul, Dyan Ebert, **QUINLIVAN & HUGHES, PA**, PO Box 1008, Saint Cloud, MN 56302-1008, for defendants.

I. INTRODUCTION

1. The United States filed a Complaint in this action on August 2, 2019 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, 42 U.S.C. §§ 3601 to 3631 (hereinafter, the "Civil Action").

2. In its Complaint, the United States alleges that Defendants denied Candice Jallen, her two minor children, and her then-minor daughter Lauren Oseien the reasonable accommodation of an assistance animal and discriminated against them in violation of 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, 42 U.S.C. §§ 3601-3631.

3. At all times relevant to the Complaint, Defendants owned and managed several residential rental properties, including four residential units located at 420 Eagles Trails, Ottertail, Minnesota 56571.

4. On December 13, 2017, Ms. Jallen filed a fair housing complaint with the United States Department of Housing and Urban Development (HUD) alleging that Defendants had discriminated against her family on the basis of her now adult daughter Lauren Oseien's disability.

5. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated the complaint made by Ms. Jallen, attempted conciliation without success, and prepared a final investigative report. Based on information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred. On or about June 14, 2019, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), and charged the Defendants with discrimination under the Fair Housing Act, 42 U.S.C. § 3604(f)(1) and 3604(f)(3)(B).

6. On July 3, 2019, Defendants elected to have the claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). The Secretary subsequently authorized the Attorney General to file this action on behalf of aggrieved persons Ms. Jallen, her two minor children, and Ms. Oseien, pursuant to 42 U.S.C. § 3612(o).

7. The Parties agree that, to avoid costly and protracted litigation, the claims against Defendants should be resolved without further proceedings or a trial. This Consent Decree resolves the United States' claims against the Defendants.

II. INJUNCTION

8. Defendants, their officers, agents, employees, and all other persons or entities in active concert or participation with them, are hereby enjoined, with respect to the rental of dwellings owned or managed by them, from:

- a. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of disability, in violation of 42 U.S.C. § 3604(f)(1)(A); and
- 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).

III. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS

9. No later than thirty (30) days after the date of entry of this Consent Decree, Defendants shall adopt the reasonable accommodation policy ("the New Policy") set forth

in Attachment A for implementation at all dwellings owned or managed by Defendants.

10. The New Policy, once adopted, shall supersede all existing policies, procedures, and resolutions concerning or affecting approval of reasonable accommodations at dwellings owned or managed by Defendants.

11. Within forty-five (45) days after the date of entry of this Consent Decree, Defendants shall notify in writing each resident of dwellings owned or managed by Defendants of the adoption and implementation of the New Policy. Notice shall be sent via first-class mail, postage prepaid, to each tenant of the property.

12. Within thirty (30) days after the date of entry of this Consent Decree, Defendants shall post and prominently display in the laundry room of each unit, attach to the standard lease, and have available in their home office, the New Policy. Defendants have represented that, other than their home office, they do not maintain other locations where they conduct rental business.

13. No later than fourteen (14) days after adoption of the New Policy, Defendants shall apprise each of their employees, agents, and any other persons responsible for the rental of units at a dwelling owned or managed by Defendants of each person's obligations under this Consent Decree, including but not limited to the New Policy, and under the Fair Housing Act, 42 U.S.C. §§ 3601-3631. Defendants shall furnish each such employee, agent, or other person with a copy of this Consent Decree. Each employee, agent or other person covered by this paragraph shall sign a statement in the form of Attachment B acknowledging that he or she has received, read and understands the 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. §§ 3601-3631.

14. During the term of this Consent Decree, new employees, or agents who have responsibility related to the management of or rental of units at dwellings owned or managed by Defendants, shall be (a) apprised of the contents of this Consent Decree, including but not limited to the New Policy, and of their obligations under the Fair Housing Act, 42 U.S.C. §§ 3601-3631, when their term, employment, or agency commences; (b) provided copies of this Consent Decree and the New Policy, and (c) execute the statement contained in Attachment B no later than five (5) days following their first day of employment.

IV. MANDATORY EDUCATION AND TRAINING

15. Within ninety (90) days of the entry of this Consent Decree, Defendants and their employees, agents, and members who have responsibility related to the management of or rental of units at dwellings owned or managed by Defendants shall attend, at the Defendants' expense, a training program regarding the Fair Housing Act, including its disability discrimination provisions. The training, which can be conducted online, shall be conducted by a qualified third party, approved by the United States, and unconnected to Defendants, their employees, agents, or counsel.

16. Defendants shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. The certificate shall include the name of the course, the date the course was taken, the subject matters covered

in the course, and the length of the course and/or time within which the course was completed.

V. NONDISCRIMINATION POLICIES

17. Within thirty (30) days of the date of entry of this Consent Order and throughout its term, Defendants shall, pursuant to 24 C.F.R. Part 110, post and prominently display in the laundry room of each unit, have available in their home office, and attach with their standard lease , a Fair Housing Poster.

18. Defendants have represented that, other than having permanent signs at each of their rental properties that contain their phone number, they do not regularly use advertising for their rental business. Throughout the term of this Consent Decree, Defendants shall ensure that any new advertising for rental units 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, familial status or disability.

The words or logo should be prominently placed and easily legible.

VI. REPORTING AND RECORD-KEEPING

19. During the term of this Consent Decree, Defendants shall notify and provide documentation to the United States of the following events within fourteen (14) days of their occurrence:

- a. The training attended pursuant to Paragraph 15, including the certification required in Paragraph 16;
- b. Any change to any of Defendants' rules or practices affecting the keeping of assistance animals at the property;
- c. Any denial by any Defendant of a request by a tenant or prospective tenant to keep an assistance animal, including the resident's name, address, and telephone number, and the details of the request and the reason(s) for its denial;
- d. Any conditions proposed or imposed by any Defendant on a tenant or prospective tenant who keeps or requests to keep an assistance animal, including the resident's name, address, and telephone number, and the details of the request and the reason(s) for any proposed conditions; and
- e. Any written complaint alleging disability discrimination in housing received by any Defendant, including a copy of the written complaint itself and the name, address, and telephone number of the complainant. Defendants shall also promptly provide the United States with information concerning resolution of the complaint.

20. During the term of this Consent Decree, Defendants shall preserve all records relating to their obligations under this Consent Decree. Representatives of the United States shall be permitted, upon providing reasonable notice to Defendants, to inspect and copy at reasonable times any and all records related to Defendants' obligations under this Decree.

VII. MONETARY DAMAGES TO AGGRIEVED PERSONS

21. No later than thirty (30) days after the date of entry of this Consent Decree, Defendants shall pay the sum of twenty-three thousand five hundred dollars (\$23,500), which includes monetary damages and any attorneys' fees, to Ms. Jallen by delivering to Ms. Jallen one check payable to "Candice Jallen and Lauren Oseien" in the amount of \$23,500.

22. As a prerequisite to receiving such payment, Ms. Jallen and Ms. Oseien shall each execute a release of all claims, legal or equitable, that they may have against Defendants relating to the claims asserted in this lawsuit. Such release shall take the form of Attachment C. Counsel for the United States shall deliver the original release form to counsel for Defendants.

VIII. JURISDICTION, DURATION, MODIFICATION, AND REMEDIES

23. The parties stipulate, and the Court finds, 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).

24. This Consent Decree is effective immediately upon its entry by the Court.

25. This Court shall retain jurisdiction over this action and the parties thereto for the duration of this Decree for the purpose of enforcing and modifying its terms. This Decree shall be in effect for a period of two (2) years from its effective date.

26. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

27. Each party shall notify the other party of any dispute or difference regarding interpretation and compliance with this Decree, whether willful or otherwise, and shall attempt to resolve such dispute informally. 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, Plaintiff may move this Court to impose any remedy authorized by law or equity, including but not limited to an order requiring performance of such act or deeming such act to have been performed, as well as an award of damages, costs and reasonable attorney's fees occasioned by the violation or failure to perform.

28. All parties shall be responsible for their own attorney's fees and costs, except as otherwise provided in this Decree.

Dated: December 30, 2019
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
Chief Judge
United States District Court

The undersigned hereby apply for and consent to the entry of this Consent Decree:

For the Defendants,

QUINLIVAN & HUGHES, P.A.

Date: 12/20/2019

s/ Chad A. Staul

BY: Dyan J. Ebert
Attorney ID No. 0237966
Chad A. Staul
Attorney ID No. 0387961
PO Box 1008
St. Cloud, MN 56302-1008
(320) 251-1414
(320) 251-1415 (Fax)

For Plaintiff United States of America,

ERICA H. MacDONALD
United States Attorney

s/ Ana H. Voss

Date: 12/20/2019

BY: ANA H. VOSS
Assistant United States Attorney
Attorney ID No. 483656DC
600 U.S. Courthouse, 300 S. Fourth Street
Minneapolis, MN 55415
(612) 664-5600
Ana.voss@usdoj.gov

ATTACHMENT A

Reasonable Accommodation Policy

The Federal Fair Housing Act and other state and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. The owner and managers, Tim Dally and Linda Dally (the Dallys) and their employees, agents, and designees, are committed to granting reasonable accommodations when necessary to afford persons with disabilities the equal opportunity to use and enjoy a dwelling at any and all of their rental units.

Reasonable accommodations may include waiving or varying rules or policies to allow a resident with a disability to keep an “assistance animal.” An assistance animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that may be necessary to afford the person an equal opportunity to use and enjoy housing (“Assistance Animal”). The most common Assistance Animals are dogs, although other animals may qualify as assistance animals. Assistance Animals are not considered “pets” under the Dallys’ policies. The Dallys recognize the importance of Assistance Animals and is committed to ensuring that its tenants with Assistance Animals – whether owners, occupants or renters – may keep them in their units.

If a resident with a disability requests a reasonable accommodation for an Assistance Animal, Tim and Linda Dally will determine whether the animal may be necessary to afford the resident an equal opportunity to enjoy living at one of the Dallys’ properties. In some cases, both the disability and the necessity for the Assistance Animal are obvious – for example, a dog guiding an individual who is blind or has low vision, or a dog pulling the wheelchair of a person with a mobility disability. If this is the case, no further inquiry will be made and the Dallys will grant the resident the accommodation unless the presence of the animal (1) imposes an undue financial and administrative burden; (2) fundamentally alters the nature of the Dallys’ operations; or (3) would pose a direct threat to the health and safety of other people.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal and the disability of the resident and/or the necessity for the Assistance Animal is not obvious, the Dallys may require a written verification from a health or social service professional¹ indicating that the applicant has a disability² and the presence of the animal may be necessary to provide the resident an equal opportunity to use and enjoy his/her apartment.

The Dallys will not require:

¹ “Health or social service professional” means a person who provides medical care, therapy or counseling to persons with disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers.

² Under fair housing laws, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, is regarded as having such an impairment, or has a record of such an impairment.

- i. That the Assistance Animal have any special training or certification;
- ii. That the Assistance Animal be subject to breed or age restrictions;
- iii. That the Assistance Animal be required to wear a vest or other insignia that identifies it as an Assistance Animal; or
- iv. That the resident pay any fee, deposit, or other charge for keeping the animal, or obtain insurance as a condition of keeping the animal.

If the Dallys seeks verification of a tenant's disability and the need for an Assistance Animal, the Dallys will not:

- i. Request whether a health or social service professional would be willing to testify in a court proceeding regarding the request for accommodation;
- ii. Require the health or social service professional to provide a curriculum vitae;
- iii. Require an interview with the health or social service professional.

In processing requests for Assistance Animals, the Dallys will take reasonable measures to protect the confidentiality of any information or documentation disclosed in connection with the requests. Such measures may include limiting access to such information to persons specifically designated to deal with requests for reasonable accommodations, who will disclose information only to the extent necessary to determine whether to grant the request, and keeping all written requests and accompanying documentation in a secure area to which only those designated persons have access, except as otherwise required by law.

A person with a disability may request a reasonable accommodation orally, but the Dallys may ask the person with the disability to complete or assist in completing a "Form to Request An Assistance Animal" (attached to this Policy). The Dallys will evaluate the requested accommodation regardless of whether the person completes the written form, but the person must cooperate in providing all information needed to complete the form.

If the applicant requires assistance in completing the form, the Dallys, a property manager, on-site property caretaker or his or her designee will provide assistance or will fill out the form based on an oral request. The Dallys are using the form to record reasonable accommodation requests so that they can obtain only the information necessary to make a reasonable accommodation decision and not obtain confidential information that they do not need to make a reasonable accommodation decision.

Once the Dallys receive the request for an assistance animal and, if applicable, additional verifying information, it will provide a response within fourteen days. If a request is denied, an explanation for the denial will be included in the written notification of denial. If a person with a disability believes that a request has been denied unlawfully or that the response is delayed unreasonably, he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Washington, DC 20410
(800) 669-9777

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

United States Attorney's Office-District of Minnesota
Attn: Civil Rights-Fair Housing
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

FORM TO REQUEST AN ASSISTANCE ANIMAL

The Federal Fair Housing Act and other state and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Tim and Linda Dally and their employees, agents, or designees are committed to granting reasonable accommodations when necessary to afford persons with disabilities the equal opportunity to use and enjoy a dwelling at any and all of their rental units.

Under fair housing laws, a person is entitled to a reasonable accommodation if he or she has a disability that is defined as a physical or mental impairment that substantially limits one or more major life activities. The person also must show that he or she may need the accommodation because of the disability. Reasonable accommodations may include waiving or varying rules or policies to allow a resident to keep an assistance animal. An assistance animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that may be necessary to afford the person an equal opportunity to use and enjoy housing ("Assistance Animal").

If you or someone associated with you has a disability and you believe that there is a need for an Assistance Animal as a reasonable accommodation for the person with a disability to use and enjoy a dwelling unit at any property owned by the Dallys, please complete this form and return it to Tim or Linda Dally. Please check all items that apply and answer all questions. The Dallys will answer this request in writing within 14 days of receiving the request for an assistance animal and, if applicable, the verification from the health care provider. All information provided to Tim or Linda Dally or their agent in connection with this request will be kept confidential, except as otherwise required by law. If you require assistance in completing this form, please call the management office at (telephone number) for assistance or to make an oral request for a reasonable accommodation.

1. Do you require assistance filling out this form?

Yes No

If your answer is "Yes," and you do not have someone who can assist you, please ask [name and phone number] to assist you in filling out this form.

If your answer is "No," continue on to Question No. 2.

2. Today's Date: _____

3. I am (please check one):

____ **The person who has a disability and is requesting an Assistance Animal.** If so, continue to Question 4.

____ **A person making a request on behalf of or assisting the person with a disability** who needs an Assistance Animal. Please fill out the information below:

Name of person filling out form: _____

Address: _____

Telephone number: _____

Relationship to person needing Assistance Animal: _____

4. Name of person with a disability for whom a reasonable accommodation is being requested:

Phone number: _____

Address: _____

5. Identify the species of animal for which you are making a reasonable accommodation request e.g., "dog," "cat":

6. Provide the name and physical description (size, color, weight, any tag and/or license) of the animal for which you are making a reasonable accommodation request:

Signature of person making request

Date

Signature of person with disability

Date

Applicant Name: _____

TO BE COMPLETED BY THE PHYSICIAN, PSYCHIATRIST, OR OTHER HEALTH OR SOCIAL SERVICE PROFESSIONAL:

1. Please provide a statement verifying that the person has an impairment that substantially limits one or more of the person's major life activities.

2. Please state whether the animal is necessary for the person to have an equal opportunity to use and enjoy housing or alleviate one or more of the effects of the person's disability. If so, please explain how it helps.

Name: _____

Title: _____

Address: _____

Telephone: _____

Signature

Date

TO BE COMPLETED BY MANAGEMENT:

Form accepted by: _____

Signature

Date

ATTACHMENT B
Certification of Receipt of Consent Decree

I certify that I have received a copy of the Consent Decree entered by the Court in *United States of America v. Tim Dally, Linda Dally*, 19-cv-2087 (JRT/LIB) (D. Minn.). I further certify that I have read and understand the Consent Decree, that any questions I had concerning it were answered, and that I understand that the Defendants may be sanctioned or penalized if I violate the Consent Decree.

(Signature)

(Printed name)

(Title)

(Date)

ATTACHMENT C
Release

In consideration of the Consent Order entered in *United States of America v. Tim Dally, Linda Dally*, Civil Action No. 19-cv-2087 and of the payment of the sum of \$23,500 jointly to me and Lauren Oseien pursuant to that Consent Order, I, Candice Jallen, hereby release Defendants named in this action (Civil Action No. 19-cv-2087 (JRT/LIB) (D. Minn.)) from any and all liability for any claims, legal or equitable under state or federal law, I may have against Defendants arising out of the issues alleged in the action as of the date of the entry of the Consent Decree. I fully acknowledge and agree that this release of Defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated:

CANDICE JALLEN

Release

In consideration of the Consent Order entered in *United States of America v. Tim Dally, Linda Dally*, Civil Action No. 19-cv-2087 and of the payment of the sum of \$23,500 jointly to me and Candice Jallen pursuant to that Consent Order, I, Lauren Oseien, hereby release Defendants named in this action (Civil Action No. 19-cv-2087 (JRT/LIB) (D. Minn.)) from any and all liability for any claims, legal or equitable under state or federal law, I may have against Defendants arising out of the issues alleged in the action as of the date of the entry of the Consent Decree. I fully acknowledge and agree that this release of Defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated:

LAUREN OSEIEN