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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Case No.: 6:20-cv-03343-MDH
BRIAN SMOLNIK AND MARY HUNTER,) CONSENT DECREE
Defendants.)
)

I. INTRODUCTION

- 1. The United States filed a Complaint in this action on October 30, 2020 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 (the "Civil Action"). Scotty and Mary Beth Witham allege the Defendants denied the reasonable accommodation of an assistance animal, imposed different terms and conditions related to the requirements for animals, subjected them to severe or pervasive harassment, made housing unavailable, and discriminated against them based on disability in violation of the Fair Housing Act.
- 2. At all times relevant to the Complaint, Defendants owned and managed the residential rental property located at 2588 County Road 4210, Lot 14, West Plains, Missouri 65775 (the "subject property").
- 3. The Withams filed a complaint with the U.S. Department of Housing and Urban Development ("HUD") on or about November 13, 2018, alleging they were discriminated against based on Mr. Witham's disability. The complaint was subsequently amended.

- 4. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated the complaint made by the Withams, 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 September 29, 2020, 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), (f)(2), (f)(3), 3604(c), and 3617.
- 5. On October 1, 2020, the Withams 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 Civil Action on behalf of aggrieved persons, Scotty and Mary Beth Witham, pursuant to 42 U.S.C. § 3612(a). The Defendants deny the factual allegations in this Civil Action.
- 6. This Consent Decree is neither an admission of liability by the Defendants nor a concession by the United States that its claims are not well founded.

II. AGREEMENT

7. The Parties agree that, to avoid the delay, uncertainty, and cost of 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.

III. 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. Making statements with respect to a rental of a dwelling that indicates any preference, limitation, or discrimination based on disability, in violation of 42 U.S.C. § 3604(c);
 - b. Discriminating in the sale or rental, or otherwise making unavailable or denying a dwelling to any person because of disability, in violation of 42 U.S.C. § 3604(f)(1);
 - c. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities connected with such dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
 - d. Refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
 - e. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

IV. 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 properties.
- 12. Within thirty (30) days after the date of entry of this Consent Decree, Defendants shall post and prominently display the New Policy in each and every location where activity related to the management or rental of dwellings occurs.
- 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 the provisions of Sections III, IV, and V of this Consent Decree. 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 provisions of Sections III, IV, and V of this Consent Decree, 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.

V. 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 a dwelling 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 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.

VI. NONDISCRIMINATION POLICIES

17. Within fourteen (14) 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 at any place of business where Defendants conduct rental activity and/or have personal contact with applicants for rental of their property, a Fair Housing Poster. See https://www.hud.gov/sites/documents/928.1.PDF.

18. 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.

VII. 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;
 - Any change to any of Defendants' rules or practices affecting the keeping of assistance/support animals at the property;
 - c. Any denial by Defendants 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 Defendants 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

 Defendants, 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.

VIII. MONETARY DAMAGES TO AGGRIEVED PERSONS

- 21. No later than fourteen (14) days after the date of entry of this Consent Decree, Defendants shall pay the sum of Forty Thousand dollars (\$40,000.00), which includes monetary damages to the Withams. The payment shall be made payable to Scotty Witham and Mary Beth Witham and delivered to the United States Attorney's Office for the Western District of Missouri in Springfield, Missouri at Hammons Tower, 901 St. Louis, Suite 500, Springfield, MO 65806.
- 22. As a prerequisite to receiving such payment, the Withams shall execute a release of all claims, legal or equitable, that they may have against Defendants relating to the claims asserted in this lawsuit. Such releases shall take the form of Attachment C. Counsel for the United States shall deliver the original release forms to counsel for Defendants.

IX. OTHER RELIEF FOR AGGRIEVED PERSONS

22. No later than fourteen (14) days after the date of entry of this Consent Decree, if Defendants have reported negative information about the Withams to any credit bureaus or rental databases, they shall modify such reporting in a manner satisfactory to the Withams and provide the United States with documentation showing such modification.

X. JURISDICTION, DURATION, MODIFICATION, AND REMEDIES

25. 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).

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

27. This Court shall retain jurisdiction over this action and the parties thereto for the

duration of this Decree for the purpose of enforcing its terms. This Decree shall be in effect for a

period of three (3) years from its effective date. The Defendants understand that the expiration of

this Consent Decree does not terminate their obligation to comply with the Fair Housing Act.

28. Any time limits for performance imposed by this Decree may be extended by

mutual written agreement of the parties.

29. 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.

30. All parties shall be responsible for their own attorney's fees and costs, except as

otherwise provided in this Decree.

IT IS SO ORDERED.

Dated: September 1, 2021

/s/ Douglas Harpool

DOUGLAS HARPOOL

United States District Judge

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

ON BEHALF OF THE UNITED STATES OF AMERICA

Teresa A. Moore

Acting United States Attorney

Dated: 8-30-2021

BY:

Charles M. Thomas Matthew N. Sparks

Assistant United States Attorneys

Dated: 8-30-21

BY:

Heather M.F. Ousle

Trial Attorney

Office of Regional Counsel, Region VII

U.S. Department of Housing and Urban Development

ON BEHALF OF DEFENDANTS

BY:

Kregg T. Keltner Franke Schultz & Mullen, P.C.

Counsel for Defendants

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. Brian Smolnik and Mary Hunter, and their employees, agents, and designees, are committed to granting reasonable accommodations when necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling at any and all of his 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 our policies. We recognize the importance of Assistance Animals and are committed to ensuring that our tenants with Assistance Animals — whether occupants or renters — may keep them in their units.

If a resident with a disability requests a reasonable accommodation for an Assistance Animal, a determination will be made as to whether the animal may be necessary to afford the resident an equal opportunity to enjoy living in one of its units. 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 we 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 our 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, we may require a written verification from a health or social service professional indicating that the applicant has a disability and the presence of the animal may be necessary to provide the resident an equal opportunity to use and enjoy his/her apartment.

We 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, weight 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 we seek verification of a tenant's disability and the need for an Assistance Animal, we will not:

- i. Ask 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, we 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 we may ask the person with the disability to complete or assist in completing a "Form to Request An Assistance Animal" (attached to this Policy). We 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, we will provide assistance or will fill out the form based on an oral request. We are using the form to record reasonable accommodation requests so that we can obtain only the information necessary to make a reasonable accommodation decision and not obtain confidential information that we do not need to make a reasonable accommodation decision.

Once we receive the request for an assistance animal and, if applicable, additional verifying information, we 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/onlinecomplaint

United States Attorney's Office-Western District of Missouri
Attn: Civil Division
400 E. Ninth Street, Room 5510
Kansas City, Missouri 64106
(816) 426-3130

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. Brian Smolnik and Mary Hunter 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 his 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 at a property owned or managed by Brian Smolnik and Mary Hunter please complete this form and, if applicable, the verification from the health care provider, and return them to Brian Smolnik. Please check all items that apply and answer all questions. Brian Smolnik will answer this request in writing within 14 days of receiving the request. All information provided to Brian Smolnik 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.

□ Yes □ Ño	
If your answer is "Yes," and you do not have someone who can assist you, please ask [phone number] to assist you in filling out this form.	name and
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.	0,

Do you require assistance filling out this form?

1.

CA DWA	A person making a request on behalf an Assistance Animal. Please fill out th	of or assisting the person with a disability who e information below:
	Name of person filling out form:	
	Address:	
	Telephone number:	
	Relationship to person needing Assista	nce Animal:
4. reques	eted:	or whom a reasonable accommodation is being
Phone		
Addre	ss:	
5. reques	Identify the species of animal for what e.g., "dog," "cat":	ich you are making a reasonable accommodation
6. the an	imal for which you are making a reason	otion (size, color, weight, any tag and/or license) of able accommodation request:
Signat	ture of person making request	Date
Signat	ture of person with disability	Date
Appli	cant Name:	a constant

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

1. Please provide a statement verifying that the	
limits one or more of the person's major life activities	S.
2. Please state whether the animal is necessary for use and enjoy housing or alleviate one or more of the explain how it helps.	
Name:	
Title:	
Address:	
Telephone:	
Signature	Date
TO BE COMPLETED BY MANAGEMENT:	
Form accounted have	
Form accepted by:	
Signature	Date
DIBINION	Daw

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. Brian Smolnik and Mary Hunter*. 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)

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ATTACHMENT C

Release

In consideration of the Consent Order entered in *United States of America v. Brian Smolnik and Mary Hunter*, Civil Action No. 6:20-cv-03343-MDH (W.D. Missouri), and of the payment of the sum of \$40,000 to me and my wife jointly, pursuant to that Consent Order, I, Scotty Witham, hereby release Defendants named in this action (Civil Action No. 6:20-cv-03343-MDH (W.D. Missouri)) from any and all liability for any claims, legal or equitable, 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:			
	3	Scotty Witham	

Release

In consideration of the Consent Order entered in *United States of America v. Brian Smolnik and Mary Hunter*, Civil Action No. 6:20-cv-03343-MDH (W.D. Missouri), and of the payment of the sum of \$40,000 to me and my husband jointly, pursuant to that Consent Order, I, Mary Beth Witham, hereby release Defendants named in this action (Civil Action No. 6:20-cv-03343-MDH (W.D. Missouri)) from any and all liability for any claims, legal or equitable, 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:		
	Mary Beth Witham	