

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF ARLINGTON, TEXAS,

Defendant.

CIVIL ACTION NO. 4:22-CV-30-P

CONSENT DECREE

I. INTRODUCTION

1. The United States filed this action on behalf of Commonwealth Development, Inc. (“CDI”), pursuant to 42 U.S.C. §§ 3612(o) and 3614(a), and to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (the “Fair Housing Act” or “FHA”).
2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).
3. In its Complaint, the United States alleges that the City of Arlington, Texas (the “City” or “Arlington”) violated the FHA in 2017 when it refused to issue a Resolution of Support or a Resolution of No Objection in support of CDI’s application for Low Income Housing Tax Credits (“LIHTCs”) from the State of Texas to build the Cooper Street Apartments, a multi-family development that would have served families with children. Specifically, the United States alleges that the City declined to issue a Resolution of Support or a Resolution of No Objection in support of CDI’s application because the City preferred to

support only applications for new LIHTC developments of senior housing. Such senior housing developments are intended for persons fifty-five (55) years of age or older and are not required to accept families with children. CDI's proposal, however, was for the development of general workforce housing, which has no such age restrictions and would have served families with children.¹ The United States alleges that because Arlington declined to issue a Resolution of Support or a Resolution of No Objection in connection with CDI's pre-application, CDI's proposal did not score high enough to receive LIHTCs from the State. The United States alleges that through this conduct the City prevented the Cooper Street Apartments from being developed and thereby: (a) made housing unavailable because of familial status, in violation of 42 U.S.C. § 3604(a); and (b) interfered with CDI's ability to develop the Cooper Street Apartments because CDI had exercised its right to develop housing that would be open to families with children, in violation of 42 U.S.C. § 3617.

4. The City denies the United States' allegations that it violated the Fair Housing Act and nothing in this Consent Decree should be construed as an admission, finding, or determination that the City or any of its agents, employees, or elected or appointed officials violated the Fair Housing Act.
5. The United States and the City (collectively, the "Parties") agree that this matter should be resolved without further litigation. The Parties therefore consent to and request that the Court enter this Consent Decree.

¹ For purposes of this Decree the term "senior housing" means "housing for older persons" within the meaning of the Fair Housing Act.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. INJUNCTIVE RELIEF

A. Prohibited Conduct

6. The City of Arlington, its City Council, all of its boards, commissions, agencies, and all employees are enjoined from:
 - a. Enacting, adopting, implementing, or otherwise enforcing any policy regarding its support of applications for LIHTC developments that express or provide a preference for senior housing or that otherwise disfavor or disadvantage workforce housing;
 - b. Otherwise denying or making unavailable housing because of familial status (having one (1) or more children under eighteen (18) years of age); or
 - c. Interfering with any developer or individual 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 developer or individual in the exercise or enjoyment of, any right protected by the Fair Housing Act.

B. Housing Tax Credit Review Policy

7. During the term of this Decree, the City of Arlington shall maintain and implement a "Housing Tax Credit Review Policy," reflecting the criteria the City shall apply to determine whether it will issue Resolutions of Support or Resolutions of No Objection in connection with proposed LIHTC developments. The Policy shall:
 - a. Make clear the City's support for both the new development and the rehabilitation of affordable housing through LIHTCs, including the new development and rehabilitation of workforce housing;

- b. Contain a statement in the form of Appendix A, affirming that it is the policy of the City of Arlington to comply with the Fair Housing Act in all of its actions regarding LIHTC developments, and that it shall apply its Housing Tax Credit Review Policy in a manner that does not discriminate based on race, color, religion, national origin, sex, disability, or familial status (having one (1) or more children under eighteen (18) years of age);
 - c. Not contain any provision that expresses or provides any preference for senior developments or that otherwise disfavors the development or rehabilitation of workforce housing; and
 - d. Otherwise complies with paragraph 6 of this Decree.
8. The Housing Tax Credit Review Policy, and any amendments thereto during the term of this Decree, shall be subject to review and approval by the United States to ensure that it complies with this Order and the Fair Housing Act, and such approval shall not be unreasonably withheld.

C. Mandatory Education and Training

9. The City shall provide training on the requirements of this Decree and the FHA to the Mayor and all members of the Arlington City Council, as well as all members of the Planning and Zoning Commission, the members of the Arlington Housing Finance Corporation Board of Directors, the Director of the Department of Planning and Development Services, the Assistant Director of the Department of Planning and Development Services, the Planning Manager of Development Planning, any Deputy City Manager whose oversight responsibilities include the Department of Planning and

Development Services or the Housing Department. The City shall provide such training in the following manner:

- a. Within ninety (90) days of the entry of this Decree, the City shall provide the training specified above to all persons covered by this paragraph. The training shall be conducted by a qualified, independent third-party trainer or organization selected by the City and approved by the United States in advance. The City shall maintain an attendance log evidencing that those individuals required to receive such training have done so and shall require each individual attending the training to sign the log. The City shall ensure that the training is video-recorded so that it can be used for future trainings as required by subparagraph 9(c). The City shall bear all expenses associated with the training.
- b. The City shall obtain a signed statement in the form of Appendix B, from each individual covered by this Section stating that the individual attended the training, received and understands this Decree and its mandates, and understands that a violation of this Decree may result in further court action against the City.
- c. During the term of this Decree, the City shall require any newly elected, appointed, or retained individuals covered by this Section to watch a recording of the training described in subparagraph 9(a) and shall obtain the signed statement in the form of Appendix B within thirty (30) days after such individuals enter office or begin service or employment.

D. Reporting, Record-Keeping, and Monitoring

10. Within one hundred twenty (120) days of the court's entry of this Decree ("the Effective Date"), the City shall certify to the United States that it has complied with the training

requirements set forth in paragraph 9 and shall provide copies of the attendance logs and signed statements evidencing that compliance.²

11. Within one year of the Effective Date, and annually year thereafter,³ the City shall provide a report to the United States containing the following information:

- a. A list of any new persons required to be trained pursuant to paragraph 9(c), along with the signed statements obtained from such persons.
- b. Copies of complaints of housing discrimination pertaining to the implementation of the City's Housing Tax Credit Review Policy or development regulations that the City has received during the reporting period, along with any documents associated with the complaint, any written response to the complaint by the City, and a description of the status of the Complaint, including any efforts the City has taken to resolve the complaint.
- c. A summary of each application seeking the City's consideration or approval for a Resolution of Support or Resolution of No Objection to a developer's request for the state's LIHTCs,⁴ indicating: (i) the application date; (ii) the developer's name; (iii) the developer's current address and contact information; (iv) the street address of the proposed project; (v) the intended tenant population of the proposed project (*i.e.*, elderly, workforce/general); (vi) whether the proposed

² All documents, instruments, and written materials required by this Consent Decree to be sent by email to Counsel of Record for the United States.

³ The last annual report shall be submitted sixty (60) days before the expiration of the Decree.

⁴ Such requests and applications include, but are not limited to, applications for zoning changes, site plan approval, building permits, planned development approval, and any other applications developers of multi-family housing are required by the City to complete.

project is a new structure or a rehabilitation project; (vii) the City's decision on the application or request, including any decision on appeal; and (ix) complete copies of any minutes and audio or video recordings from all meetings or hearings discussing the request or application.

- d. Items identified in subparagraph 11(c) that the City received during the preceding six (6) months, prior to the entry of the Consent Decree.

- 12. The City shall retain all records related to applications for Resolutions regarding LIHTCs for the duration of this Decree. These records shall include, but are not limited to, correspondence received by or generated by the City concerning LIHTC proposals; City Council meeting minutes, recommendations, and city staff reports; complaints made to the City code enforcement, planning, zoning, law enforcement, or any other departments regarding developers seeking LIHTCs; and, any law enforcement, regulatory, or investigative action taken by the City.
- 13. Upon reasonable notice to counsel for the Defendant, the City shall permit representatives of the United States to inspect and copy all non-privileged, pertinent records related to the claims asserted in the Action, including, but not limited to, those records referenced in Section II.

III. MONETARY DAMAGES FOR AGGRIEVED PERSON

- 14. Within thirty (30) days of the Effective Date, the City shall make a payment in the amount of **THREE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$395,000)** to Commonwealth Development, Inc. by sending a check using an overnight delivery service with tracking capability for that amount to Counsel for CDI, Brock K. Bales,

Esq., Elizabeth Morgan & Associates, 10415 Morado Circle, Building I, Suite 310,
Austin, Texas 78759.

15. Prior to receiving such payment, CDI shall execute a Release of all claims, legal or equitable, that it may have against the City related to the claims asserted in this lawsuit. Such release shall take the form of Appendix C. Counsel for the United States shall deliver the original Release to counsel for the City prior to disbursement of payment.
16. Within forty-five (45) days of the Effective Date, the City shall submit proof to the United States that it made payment to CDI.

IV. DURATION AND ENFORCEMENT

17. This Decree shall remain in effect for a period of three (3) years after the Effective Date. The case is hereby dismissed with prejudice except that the Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree. Prior to the expiration of the Decree's term, in the interest of justice and for good cause shown, the United States may move the Court to extend the duration of the Decree.
18. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of, and compliance with, this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the City to perform in a timely manner any act required by this Decree, or otherwise to act in conformance with any provision thereof, the United States 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, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the violation or failure to perform.

V. LITIGATION HOLD

19. The Parties agree that, as of the Effective Date, litigation is not “reasonably foreseeable” concerning the matters described in Section I of this Decree. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matter described in Section I, the Party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either Party of any other obligations imposed by this Consent Decree.

So ordered in Fort Worth, Texas this 18 day of January, 2022.

A handwritten signature in blue ink, appearing to read "Mary T. Gith", is written over a horizontal line.

United States District Judge
Northern District of Texas
Fort Worth Division

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

Dated: January 13, 2022

FOR THE UNITED STATES OF AMERICA:

Respectfully submitted,

CHAD E. MEACHEM
United States Attorney
Northern District of Texas

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

SAMEENA SHINA MAJEED
Chief

TIMOTHY J. MORAN
Deputy Chief

/s/ Tami C. Parker
TAMI C. PARKER, TX Bar No. 24003946
Assistant United States Attorney
United States Attorney's Office
Northern District of Texas
Burnett Plaza, Suite 1700
801 Cherry Street, Unit #4
Fort Worth, TX 76102
Phone: (817) 252-5230
Fax: (817) 252-5458
tami.parker@usdoj.gov

/s/ Willistine Tarsha Harris
MARTA CAMPOS, DC Bar No. 440680
WILLISTINE TARSHA HARRIS,
DC Bar No. 1735388
Trial Attorneys
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. – 4CON
Washington, D.C. 20530
Phone: (202) 514-4713
Fax: (202) 514-1116
marta.campos@usdoj.gov
willistine.harris@usdoj.gov

Attorneys for Plaintiff United States

FOR THE CITY OF ARLINGTON, TEXAS:



KATIE ANDERSON,
TX Bar No. 00789631
Attorney for City of Arlington, Texas
Clark Hill Strasburger
901 Main Street
Suite 6000
Dallas, TX 75202
Phone: (214) 651-4685
Fax: (214) 659-4020
kanderson@clarkhill.com



LEMUEL RANDOLPH
Deputy City Manager
101 W. Abram Street
Arlington, TX 76010
Phone: (817) 459-6111
Fax: (817) 459-6116
lemuel.randolph@arlingtontx.gov

APPENDIX A

NON-DISCRIMINATION POLICY

It is the policy of the City of Arlington to comply with Title VIII of the Civil Rights Act of 1968, as amended (commonly known as the Fair Housing Act) by ensuring that its Housing Tax Credit Review Policy does not discriminate against a person based on race, color, religion, national origin, sex, disability, or familial status. This policy means that, among other things, the City and all of its officials, agents and employees will not discriminate in any aspect of housing based on the protected class characteristics, including by:

- (a) making unavailable or denying a dwelling to any individual based on familial status;
- (b) discriminating against any individual in the terms, conditions or privileges of a dwelling, or in the provision of services or facilities in connection therewith based on familial status;
- (c) making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to a dwelling that indicates any preference, limitation, or discrimination based on familial status;
- (d) representing to individuals because of familial status that any dwelling is not available when such dwelling is in fact so available;
- (e) interfering with any person in the exercise or enjoyment of, or on account of them having exercised or enjoyed, or on account of them having aided or encouraged any other developer or individual in the exercise or enjoyment of, any right protected by the Fair Housing Act;
- (f) interfering with the funding, development, or construction of any affordable housing units because of familial status; and
- (g) discriminating on the basis of familial status in any aspect of the administration of its Housing Tax Credit Review Policy, zoning, land use, or building ordinances, policies, practices, requirements, or processes relating to the use, construction, or occupancy of dwellings.

Any developer or individual who believes that any of the above policies have been violated by the City of Arlington, may contact the City's Fair Housing Officer at _____ . Developers or individuals may also contact the:

U.S. Department of Housing and Urban Development
Fort Worth Regional Office
307 W. 7th Street
Fort Worth, TX 76102

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint
(800) 669-9777 or (817) 978-5600

or

U.S. Department of Justice
Civil Rights Division
Housing & Civil Enforcement Section
150 M Street, NE
8th Floor
Washington, D.C. 20002
<https://civilrights.justice.gov/>
(833) 591-0291 and (202) 514-4713

APPENDIX B

RECEIPT OF CONSENT DECREE AND CERTIFICATION OF FHA TRAINING

I, _____, certify that I have received a copy of the Consent Decree resolving *United States v. City of Arlington, Texas*, Case No. _____ (N.D. Tex.), filed in the United States District Court for the Northern District of Texas in the Fort Worth Division. I have read and understand the Consent Decree and had an opportunity to have my questions about the Decree answered. I understand my legal responsibilities under the Consent Decree and will comply with those responsibilities. I further understand that the Court may impose sanctions against the City of Arlington in the underlying action if I violate any provisions of the Decree. I further certify that I attended training on the federal Fair Housing Act ("FHA"), which included training on the FHA's provisions related to familial status discrimination, including discriminatory statements and actions prohibited by the FHA. I have had all of my questions concerning this topic answered to my satisfaction. I further understand that the Court may impose sanctions against the City of Arlington in the underlying action if I violate the FHA.

Name of Course & Instructor: _____

Training Date: _____ Number of hours spent taking the course: _____

Signature

Print name

Title/Department

Date Executed

APPENDIX C

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the Parties' agreement to the terms of the Consent Decree entered in the case of *United States v. City of Arlington, Texas*, Case No. _____ (N.D. Tex.) in the United States District Court for the Northern District of Texas in the Fort Worth Division, and in consideration of the payment of **THREE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$395,000)**, Commonwealth Development, Inc. ("CDI"), does hereby fully release and forever discharge the City of Arlington, as well as their insurers, attorneys, agents, employees, former employees, heirs, and executors from any and all fair housing claims based on the facts alleged in the Complaint in this lawsuit that CDI may have had against the City of Arlington, for any of their actions or statements related to those claims through the date of the entry of the Consent Decree.

Executed this _____ day of _____, 202__.

Signature

Print name

Title