

United States v. Village of Tinley Park, Illinois, Case No. 16-cv-10848-SLE (N.D.IL)

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
THE VILLAGE OF TINLEY PARK, ILLINOIS**

I. RECITALS

1. The United States initiated this action on November 23, 2016, seeking to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “the FHA”), 42 U.S.C. §§ 3601-3631. In its Complaint, the United States alleges that the Village of Tinley Park (“Village” or “Tinley Park”) has made unavailable or denied dwellings to persons on the basis of race or color in violation of 42 U.S.C. § 3604(a) of the FHA and has interfered with the exercise or enjoyment of rights under the FHA in violation of 42 U.S.C. § 3617.
2. In February 2015, Buckeye Community Hope Foundation (“Buckeye”) contacted the Village with a proposal to construct a 47-unit multi-family affordable housing development on a site for which it held a purchase option in the southern end of the downtown area of Tinley Park. Financing for this development was to be provided under the federal Low Income Housing Tax Credit Program (“LIHTC”), 26 U.S.C. § 42.
3. In October 2015, Buckeye submitted the proposal to the Village Planning Department. The United States alleges in its Complaint that in January 2016 the Planning Department found that it met the requirements of the zoning code and was ready for site plan approval by the Plan Commission. The Village denies this allegation.
4. The Plan Commission held its first public meeting on the proposal on January 21, 2016.
5. In February 2016, the Plan Commission tabled consideration of the project.

6. The United States' Complaint alleges that the Village's Plan Commission refused to vote on Buckeye's development in response to community opposition to the proposed development that was based on race or color.
7. The Complaint further alleges that Tinley Park took this action with the intent and with the effect of discriminating against prospective African-American tenants of Buckeye's proposed development. In so doing, the Complaint alleges that Tinley Park has engaged in a pattern or practice of discrimination on the basis of race or color, and a denial of rights to a group of persons that raises an issue of general public importance, in violation of the FHA.
8. In its Answer to the Complaint, Tinley Park has denied the foregoing allegations and the material allegations of the Complaint, in particular that it undertook any actions that constitute a violation of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* The Village denies that any of its actions were undertaken with any discriminatory motive, intent, or result, and further contends that the proposed Buckeye development did not meet the requirements of the Village's Legacy Code.
9. In order to avoid the costs and risks of further litigation, the United States and the Village have agreed to the terms of this Settlement Agreement.
10. In consideration of, and consistent with, the terms of this Settlement Agreement, the Parties will move jointly for dismissal of this action, consistent with the terms set forth in Paragraphs 30 and 33.
11. No provision of this Settlement Agreement is intended to be, nor shall any provision be construed as, an admission by the Village that its actions with respect to Buckeye's proposed affordable housing development have violated the FHA.

IT IS HEREBY AGREED:

II. DEFINITIONS

12. The following terms when used in this Settlement Agreement, shall have the following meaning:

- (a) “Affordable housing” means housing, any portion of which is income-restricted and rent-restricted and is designed to serve low-to-moderate income persons. This includes, but need not be limited to, housing financed through the federal Low Income Housing Tax Credit Program (“LIHTC”). 26 U.S.C. § 42 *et seq.*
- (b) “Multifamily Housing” means four or more dwelling units, including modular homes, attached along and sharing one or more common walls between any two units and/or stacked one above another.
- (c) “The Village” and “the Village of Tinley Park” refer to the Village of Tinley Park, its elected or appointed officials, including the Board of Trustees, Mayor and Plan Commissioners, its employees, officers, agents, consultants.

III. GENERAL NONDISCRIMINATION PROVISIONS

13. Defendant agrees that, as required by the Fair Housing Act, it will not:

- (a) make unavailable or deny a dwelling to any person because of race or color;
- (b) interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or

encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act; or

- (c) interfere with the funding, development, or construction of any affordable housing units because of race or color.

IV. FAIR HOUSING POLICY

- 14. Within thirty (30) days of execution of this Settlement Agreement, the Village shall adopt a “Fair Housing Policy,” the text of which is in the form of Appendix A. The Fair Housing Policy shall list the name and contact information for the Village’s Fair Housing Compliance Officer (Section VI). The Village shall include the Fair Housing Policy in all literature and information or application packets to residential developers, including developers of Multifamily Housing projects. The Village shall include the Fair Housing Policy as a readily accessible link on its website.
- 15. Within thirty (30) days of the execution of this Agreement, the Village shall place the phrase “Equal Housing Opportunity” or the fair housing logo on its website. The Village shall place the same in all future published notices and advertisements related to development of Multifamily Housing in the Village, and submit copies of all such notices and advertisements to the United States within six (6) months of publishing, as required by Section VII.

V. FAIR HOUSING TRAINING

- 16. Within sixty (60) days of the execution of this Settlement Agreement, the Village shall provide in-person training on the requirements of this Settlement Agreement and of the FHA to all Village employees who have duties related to the planning, zoning, permitting, construction, or occupancy of residential housing, including all members of

the Planning Department. Within ninety (90) days of the execution of this Settlement Agreement, the Village shall provide in-person training on the requirements of this Settlement Agreement and of the FHA to all Village officials who have duties related to the planning, zoning, permitting, construction, or occupancy of residential housing, including, but not limited to, the Mayor and all members of the Board of Trustees and all members of the Plan Commission.

17. The training shall be conducted by a qualified, independent third-party person or organization that has been approved by the United States in advance. The Village shall bear all costs associated with this training.
18. The Village shall provide a copy of the attendance log evidencing that those persons required to receive such training hereunder have done so. Each person attending the training shall provide his or her original signature on the log. Such log shall be provided with the Village's reports pursuant to Section VII.
19. Within thirty (30) days of the date a Village official or employee is newly hired for a position or undertakes new duties that would require him or her to attend fair housing training under the terms of this Settlement Agreement, the Village shall distribute to each such person a copy of this Settlement Agreement and copies of all written materials from the most recent fair housing training session.

VI. COMPLIANCE AND RECORD-KEEPING

20. Within thirty (30) days of execution of this Settlement Agreement, the Village shall designate a Village employee or official as its Fair Housing Compliance Officer ("FHCO"). In addition to any responsibilities set forth above, the FHCO shall be the Village official designated to receive complaints of alleged housing discrimination

against the Village, participate in fair housing meetings and training, and coordinate compliance with the Settlement Agreement. The FHCO shall maintain copies of the Settlement Agreement, the Fair Housing Policy, the HUD Complaint Form, and the HUD pamphlet entitled “Are you a victim of housing discrimination?” (HUD official form 903 and 903.1, respectively) and make these materials freely available to anyone, upon request, including all persons making a fair housing complaint.

21. During the term of this Settlement Agreement, the FHCO shall report every six months on his or her activities taken in compliance with this Settlement Agreement. The Village shall, in its first Compliance Report, as set forth in Section VII, notify the United States of the name, address, and title of the FHCO.
22. For the duration of this Settlement Agreement, the Village shall notify counsel for the United States in writing within thirty (30) days of receipt by the FHCO of any complaint, whether written, oral, or in any other form, against the Village of Tinley Park, or against any of its employees or agents, regarding discrimination based on race or color in housing. If complaints are made verbally, the Village shall make a contemporaneous written record of those complaints. The Village shall inform counsel for the United States of any efforts the Village undertook or plans to undertake to resolve each complaint, and shall promptly inform the United States of the terms of the resolution of the complaint or the failure to resolve the complaint.
23. The Village shall preserve all records, including, but not limited to, electronic records and files created in association with complying with this Settlement Agreement. The Village shall be responsible for maintaining and preserving, or supervising the maintenance and preservation of, these records.

24. The Village will notify individual Trustees and Plan Commissioners of their obligation to maintain and preserve records related to compliance with this Settlement Agreement.

VII. REPORTING

25. The Village shall be responsible for the preparation of semi-annual reports, beginning six months after the execution of this Settlement Agreement, to be submitted to counsel for the United States identifying all actions taken by the Village to comply with the terms of this Settlement Agreement. These reports will include, at a minimum:

- (a) A copy of the Fair Housing Policy distributed by the Village of Tinley Park pursuant to Paragraph 14, and a print-out from the Village's website showing a link to this Policy;
- (b) Representative copies of the advertising, notices, and print-out of the website showing the "Equal Housing Opportunity" logo or language referenced in Paragraph 15;
- (c) The training log referenced in Paragraph 18;
- (d) The name and contact information for the FHCO as set forth in Paragraph 20, and any reports prepared by the FHCO for the Village, as required by Paragraph 21;
- (e) Any complaints of housing discrimination based on race or color made to the Village, as described in Paragraph 22; and
- (f) Any written requests for any type of action by the Village related to Multifamily Housing during the preceding six months, and, if known, whether such Multifamily Housing includes any Affordable Housing units.

26. Upon reasonable notice to counsel for the Village, the United States shall be permitted to inspect and copy any records associated with compliance with this Settlement Agreement or, upon request by the United States, the Village shall provide copies of such documents.

VIII. CIVIL PENALTY

27. Within thirty (30) days after the entry of this Settlement Agreement, the Village shall pay a total of \$50,000 to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.5. This payment shall be delivered to counsel for the United States, by overnight mail, in the form of a cashier's check payable to the "United States Treasury."

IX. AMY CONNOLLY

28. The Department of Justice claims Amy Connolly is an "aggrieved party" under 42 U.S.C.A. § 3602(i). The Village disputes this. The Village and Amy Connolly have resolved all claims between them, and the Village approved the payment of \$360,000 in monetary damages, pursuant to a separate agreement.

X. IMPLEMENTATION, ENFORCEMENT, AND DISMISSAL OF THE UNDERLYING ACTION

29. The United States and the Village shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Settlement Agreement. After such good faith efforts, if the United States contends that there has been a failure by the Village to perform in a timely manner any act required by this Settlement Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the United States will notify the Village in writing of its concerns. The Village will have fifteen (15) days from the date of notification to cure the breach.

30. If the Parties are unable to reach a resolution within fifteen (15) days, the United States may seek appropriate relief from the Court prior to dismissal of the United States' action. If the action has been dismissed pursuant to Paragraph 33, the United States may file a separate action for breach of this Settlement Agreement, or any provision thereof, in the United States District Court for the Northern District of Illinois. In any action filed under this paragraph, the Village agrees not to contest the exercise of personal jurisdiction over them by this Court and not to raise any challenge on the basis of venue.
31. In an action or proceeding brought by the United States to enforce this Settlement Agreement, the United States may seek, and the Court may grant as relief, any or all of the following: (1) an order mandating specific performance of any term or provision in this Settlement Agreement, without regard to whether monetary relief would be adequate; (2) an award of reasonable attorneys' fees and costs incurred in bringing an action or proceeding to remedy breach of this Settlement Agreement; and (3) any additional relief that may be authorized by law or equity.
32. Failure by the United States to enforce any provision of this Settlement Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Settlement Agreement.
33. After the payments in Paragraphs 27 and 28 have been made, the Parties shall jointly move the Court for dismissal with prejudice of the underlying civil action.

XI. DURATION, EXECUTION, AND OTHER TERMS

34. The effective date of this Settlement Agreement is the date of the last signature below. The Settlement Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement.

Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

35. This Settlement Agreement shall remain in effect for three (3) years after the effective date. The United States and the Village agree that in the event the Village engages in any future violation of the Fair Housing Act, such violation shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1) (C)(ii), regardless of whether there was sufficient evidence to establish an initial violation. This provision applies to any future violation, whether resolved voluntarily or through judicial proceedings.
36. This Settlement Agreement, including Appendix A, constitutes the complete agreement between the Parties relating to the claims made in the Complaint. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.
37. All Parties and signatories to this Settlement Agreement represent that they freely and voluntarily enter into this Settlement Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.
38. The undersigned represent and warrant that they are fully authorized to execute this Settlement Agreement on behalf of the persons and entities indicated below.
39. The provisions of this Settlement Agreement shall apply to the Village and their officers, employees, agents, successors and assigns.
40. This Settlement Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Settlement Agreement, it

shall be deemed to have been drafted by all Parties and shall not be construed or interpreted against any Party for that reason in any subsequent dispute.

41. Except where this Settlement Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Settlement Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.
42. Should any provision of this Settlement Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be a part of this Settlement Agreement.
43. The Parties agree that they will defend this Settlement Agreement against any challenge by any third party. In the event that this Settlement Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the Northern District of Illinois, the Parties agree that they will seek removal and/or transfer to the United States District Court for the Northern District of Illinois.
44. This Settlement Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.
45. This Settlement Agreement is a public document. The Parties agree and consent to the United States' disclosure to the public of this Settlement Agreement and information about this Settlement Agreement.

XII. TERMINATION OF LITIGATION HOLD

46. The Parties agree that, as of the effective date of this Settlement Agreement, 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 Complaint, they are no longer required to maintain such a hold. Nothing in this paragraph relieves any of the Parties of any other obligations imposed by this Settlement Agreement.

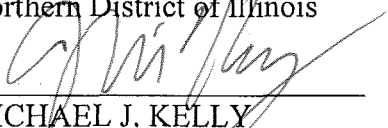
XIII. COSTS OF LITIGATION


47. The United States and the Village will each bear their own costs and attorneys' fees associated with this litigation.

Dated: 0-24-10

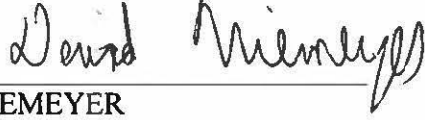
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For the Village of Tinley Park:

A handwritten signature in cursive script, reading "David Niemeyer", written over a horizontal line.

DAVID NIEMEYER
Village Manager of Tinley Park
6250 Oak Park Ave,
Tinley Park, IL 60477

Dated: August 23, 2018

APPENDIX A

NONDISCRIMINATION POLICY

It is the policy of the Village of Tinley Park (“the Village”) 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 zoning and land use decisions do not discriminate against persons based on race, color, religion, national origin, disability, familial status or sex. This policy means that, among other things, the Village and all its officials, agents and employees will not discriminate in any aspect of housing based on these protected class characteristics, including by:

- (a) making unavailable or denying a dwelling to any person based on race or color;
- (b) discriminating against any person in the terms, conditions or privileges of a dwelling, or in the provision of services or facilities in connection therewith based on race or color;
- (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 race or color;
- (d) representing to persons because of race or color 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 his having exercised or enjoyed, or on account of his having aided or encouraged any other person 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 race or color; and
- (g) discriminating on the basis of race or color in any aspect of the administration of its zoning, land use, or building ordinances, policies, practices, requirements, or processes relating to the use, construction, or occupancy of dwellings.

Any person who believes that any of the above policies have been violated by the Village may contact the Village’s Fair Housing Compliance Officer at _____. That person may also contact the U.S. Department of Housing and Urban Development at 1-888-799-2085, or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.