

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

and

CHERYL MARTINEZ,

Plaintiff/
Intervenor

20-cv-06949 (EAW)

v.

MIDTOWN MOTEL, LLC,
DAVID OLDFIELD,
BARBARA OLDFIELD,

Defendants.

I. INTRODUCTION

1. The United States filed a Complaint in this action on November 7, 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 (hereinafter, the "Civil Action"). The United States alleges that Defendants denied Cheryl Martinez ("Plaintiff/Intervenor") a reasonable accommodation for an assistance animal and discriminated against her in violation of the Fair Housing Act.

2. On April 1, 2021, Plaintiff/Intervenor filed a Complaint in Intervention alleging that Defendants unlawfully discriminated against her based on disability when they refused to rent housing to her based on her request for a reasonable accommodation for an assistance animal.

3. During the time period referenced in the Complaint and the Complaint in Intervention, Midtown Motel LLC owned and managed the residential rental property known as the Midtown Motel located at 80 Main Street, Dansville, NY (the "subject

property"). The subject property was owned by Midtown Motel LLC, a limited liability company whose membership interests were entirely owned by Momo Associates, LLC. David and Barbara Oldfield owned membership interests in Momo Associates, LLC. David and Barbara Oldfield did not own the subject property, individually, and did not individually own membership interests in Midtown Motel, LLC. Prior to January 1, 2017, Barbara Oldfield acted on behalf of Midtown Motel, LLC in connection with the operation of the subject property, including by communicating with tenants and prospective tenants. Effective January 1, 2017, after all of the events and allegations described in the Complaint and Complaint in Intervention had occurred, all of the membership interests in Midtown Motel, LLC were sold to a limited liability company with which David and Barbara Oldfield were not affiliated. After the sale of the membership interests in Midtown Motel, LLC effective January 1, 2017, Barbara Oldfield has not participated in the operation of the subject property on behalf of Midtown Motel, LLC. In connection with this action, the United States does not allege that the current operator of Midtown Motel, LLC committed any discriminatory acts or wrongdoing, as all alleged acts giving rise to this action occurred prior to January 1, 2017.

4. On or about November 17, 2017, Plaintiff/Intervenor filed with the United States Department of Housing and Urban Development (HUD) a complaint of discrimination against Defendants David and Barbara Oldfield. On November 25, 2019, the complaint was amended to add Defendant Midtown Motel, LLC as a respondent.

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 Plaintiff/Intervenor, 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 25, 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) and (f)(3)(B).

6. On October 7, 2020, 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 an aggrieved person, Cheryl Martinez, pursuant to 42 U.S.C. § 3612(o).

II. AGREEMENT

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' and the Plaintiff/Intervenor's claims against the Defendants.

III. INJUNCTION

8. Defendant Barbara Oldfield and Midtown Motel, LLC, 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);
- b. 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);
and

- c. 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).

IV. DEFENDANT BARBARA OLDFIELD WILL NOT ENGAGE IN RENTAL ACTIVITIES

9. Defendant Barbara Oldfield is not currently engaged in or responsible for activities related to the management of or rental of units at a dwelling owned or managed by her or any entity. Defendant Barbara Oldfield agrees that she will not engage in activities related to the management of or rental of units at a dwelling during the term of this Consent Decree, either personally or through any agent, employee, or other person or entity.

V. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS

10. No later than thirty (30) days after the date of entry of this Consent Decree, Defendant Midtown Motel, LLC shall adopt the reasonable accommodation policy ("the New Policy") set forth in Attachment A for implementation at all dwellings owned or managed by Midtown Motel, LLC.

11. 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 Midtown Motel, LLC.

12. Within forty-five (45) days after the date of entry of this Consent Decree, Midtown Motel, LLC shall notify in writing each resident of dwellings owned or managed by

it 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.

13. Within thirty (30) days after the date of entry of this Consent Decree, Midtown Motel, LLC shall post and prominently display the New Policy in each and every location where activity related to the management or rental of dwellings occurs.

14. No later than fourteen (14) days after adoption of the New Policy, Midtown Motel, LLC shall apprise each of its employees, agents, and any other persons responsible for the rental of units at a dwelling owned or managed by it 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. Midtown Motel, LLC shall furnish each such employee, agent, or other person, if any, 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.

15. 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 Midtown Motel, LLC, if any, 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.

VI. MANDATORY EDUCATION AND TRAINING

16. Within ninety (90) days of the entry of this Consent Decree, Midtown Motel, LLC and its employees, agents, and members who have responsibility related to the management of or rental of units at a dwelling owned or managed by it shall attend, at Midtown Motel, LLC's 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. The training may be virtual or online.

17. Midtown Motel, LLC shall obtain from the trainer or training entity a certificate of attendance confirming attendance. 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.

VII. NONDISCRIMINATION POLICIES

18. Within fourteen (14) days of the date of entry of this Consent Decree and throughout its term, Midtown Motel, LLC shall, pursuant to 24 C.F.R. Part 110, post and prominently display at any place of business where it conducts rental activity and/or have personal contact with applicants for rental of its property, a Fair Housing Poster.

19. Throughout the term of this Consent Decree, Midtown Motel, LLC 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.

VIII. REPORTING AND RECORD-KEEPING

20. During the term of this Consent Decree, Midtown Motel, LLC 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 16, including the certification required in Paragraph 17;
- b. Any change to any rules or practices affecting the keeping of assistance/support animals at the property;
- c. Any denial by Midtown Motel, LLC 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 Midtown Motel, LLC 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 Midtown Motel, LLC, including a copy of the written complaint itself and the name, address, and telephone number of the complainant. Midtown Motel, LLC shall also promptly provide the United States with information concerning resolution of the complaint.

21. During the term of this Consent Decree, Midtown Motel, LLC shall preserve all records relating to its obligations under this Consent Decree. Representatives of the United States shall be permitted, upon providing reasonable Midtown Motel, LLC, to inspect and copy at reasonable times any and all records related to its obligations under this Decree.

IX. MONETARY DAMAGES TO AGGRIEVED PERSONS

22. In exchange for Plaintiff/Intervenor's release of claims, Barbara Oldfield has delivered payment of the sum of Thirty Thousand dollars (\$30,000.00), which includes all monetary damages and amounts payable to Plaintiff/Intervenor as agreed by the parties in connection with the resolution of this matter, by check made payable to Cheryl Martinez delivered to counsel for Plaintiff/Intervenor to: Attention: Laurie M. Lambrich/Lisa A. Pantuso, Legal Assistance of Western New York Inc., 1 West Main Street, Suite 400, Rochester, NY 14614, and has provided proof of payment to counsel for the United States to: Kathryn L. Smith, Office of the U.S. Attorney, 100 State Street, Suite 500, Rochester, NY 14610. Counsel for Plaintiff/Intervenor agree to hold the check in their possession until Plaintiff/Intervenor complies with Paragraph 22 and this Consent Decree is entered by the Court. Upon Plaintiff/Intervenor's compliance with Paragraph 22 and the entry of this Consent Decree by the Court, Counsel for Plaintiff/Intervenor will distribute the check to the Plaintiff/Intervenor subject to the terms of this Consent Decree. The check shall be returned to counsel for Barbara Oldfield if Plaintiff/Intervenor does not comply with Paragraph 22 or if the Consent Decree is not entered by the Court.

23. As a prerequisite to receiving the payment specified in Paragraph 22, Plaintiff/Intervenor Cheryl Martinez shall execute a release of all claims, legal or equitable, that she may have against Defendants relating to the claims asserted in this lawsuit. Counsel

for the Plaintiff/Intervenor shall deliver the original release executed by Plaintiff/Intervenor to counsel for Defendants.

X. OTHER RELIEF FOR AGGRIEVED PERSONS

24. No later than fourteen (14) days after the date of entry of this Consent Decree, if Barbara Oldfield or Midtown Motel, LLC have reported negative information about Plaintiff/Intervenor Cheryl Martinez to any credit bureaus or rental databases, they shall modify such reporting in a manner satisfactory to Plaintiff/Intervenor Cheryl Martinez and provide the United States with documentation showing such modification.

XI. 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 two (2) year from its effective date.

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.

31. It is contemplated that this Consent Decree may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

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

DATED: 1/10/22

Barbara Oldfield
BARBARA OLDFIELD
Defendant

DATED: 1/10/22

David Oldfield
DAVID OLDFIELD
Defendant

DATED: _____

For MIDTOWN MOTEL, LLC
Defendant

DATED: 1/28/22

John C. Nutter, Esq.
JOHN C. NUTTER, ESQ.
1900 Bausch & Lomb Place
Rochester, New York 14604
Attorneys for Defendants

DATED: January 7 2022

TRINI E. ROSS
United States Attorney
Kathryn L. Smith
KATHRYN L. SMITH
Assistant U.S. Attorney
U.S. Attorney's Office
100 State Street, Suite 500
Rochester, New York 14614
Attorneys for Plaintiff
United States of America

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

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

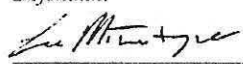
DATED: _____

BARBARA OLDFIELD
Defendant

DATED: _____

DAVID OLDFIELD
Defendant

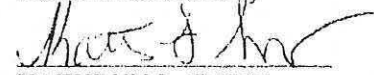
DATED: 1-14-22


For MIDTOWN MOTEL, LLC
Defendant

DATED: _____

JOHN C. NUTTER, ESQ.
1900 Bausch & Lomb Place
Rochester, New York 14604
Attorneys for Defendants


DATED: January 7 2022

TRINI E. ROSS
United States Attorney

KATHRYN L. SMITH
Assistant U.S. Attorney
U.S. Attorney's Office
100 State Street, Suite 500
Rochester, New York 14614
Attorneys for Plaintiff
United States of America

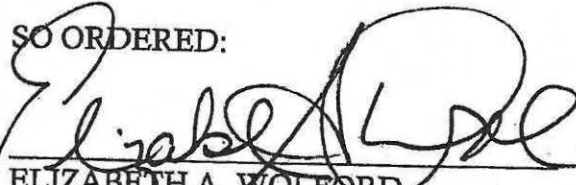
DATED: 1-11-2022


CHERYL MARTINEZ.
Plaintiff/Intervenor

DATED: 01/11/2022


LAURIE M. LAMBRIX
LISA A. PANTUSO
Legal Assistance of Western New York
Fair Housing Enforcement Project
1 West Main Street, Suite 400
Rochester, NY 14614
Attorneys for Plaintiff/Intervenor

SO ORDERED:


ELIZABETH A. WOLFORD
Chief Judge, United States District Court
Dated: February 7, 2022

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. _____ 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 []'s policies. [] recognizes the importance of Assistance Animals and is committed to ensuring that its 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, [] will determine 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 [] 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 []'s 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, [] 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.

[] will not require:

- i. That the Assistance Animal have any special training or certification;

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.

- 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 ☐ seeks verification of a tenant's disability and the need for an Assistance Animal, ☐ 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, ☐ 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 ☐ may ask the person with the disability to complete or assist in completing a "Form to Request An Assistance Animal" (attached to this Policy). ☐ 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 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. ☐ is using the form to record reasonable accommodation requests so that it can obtain only the information necessary to make a reasonable accommodation decision and not obtain confidential information that it does not need to make a reasonable accommodation decision.

Once ☐ receives 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_opportunity/line-complaint

United States Attorney's Office - Western District of New York

100 State Street, Suite 500

Rochester, NY 14610

585-263-6780

ATTN: Kathryn L. Smith, Assistant United States Attorney

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. [] 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 by [], please complete this form and, if applicable, the verification from the health care provider, and return them to []. Please check all items that apply and answer all questions. [] will answer this request in writing within 14 days of receiving the request. All information provided to [] 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
Employee 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. Midtown Motel, LLC*, 20-cv-06949 (W.D.N.Y.). 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)

(Print)

(Title)

(Date)