

Eastern District of Kentucky
FILED

FEB 26 2016

AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DANNIE R. PENDYGRAFT and)
RITA BALLARD-PENDYGRAFT,)
)
Defendants.)
_____)

CIVIL ACTION NO. 5:15-cv-00293-JMH

CONSENT ORDER

1. On September 29, 2015, the United States filed this action to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (hereinafter "Fair Housing Act" or "FHA"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619. The United States brought this action on behalf of Kimberly Clark pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).
2. In its complaint, the United States alleges that the Defendants violated the FHA by:
 - a. discriminating in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of Section 804(b) (42 U.S.C. § 3604(b));
 - b. making statements with respect to the rental of dwellings that indicated a preference, a limitation, or discrimination based on sex, in violation of Section 804(c) (42 U.S.C. § 3604(c)); and

- c. coercing, intimidating, threatening or interfering with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of Section 818 (42 U.S.C. § 3617).
3. Specifically, the United States alleges that in 2011, Defendants Dannie Pendencygraft (hereinafter “Pendencygraft”) and Rita Ballard-Pendencygraft (hereinafter “Ballard-Pendencygraft”) jointly owned a boarding house in Lexington, Kentucky, which Defendant Pendencygraft managed. Between March and August 2011, Pendencygraft subjected Ms. Clark, a tenant, to severe, pervasive, and unwelcome sexual harassment, including but not limited to:
 - a. repeated unwelcome sexual advances, gestures, and comments;
 - b. sexual touching of Ms. Clark;
 - c. repeated requests for sexual favors while wearing his Fayette County Deputy Constable badge and carrying his service weapon;
 - d. repeatedly entering her room without notice or permission to do so while Ms. Clark was sleeping and requesting sexual favors;
 - e. offering tangible housing benefits, including forgiveness or reduction of rent, in exchange for sexual favors;
 - f. refusing to provide an air conditioner for her room in the summer months because she resisted his sexual advances; and
 - g. threatening to evict or otherwise condition housing benefits if Ms. Clark refused his requests for sex acts.
4. The United States and the Defendants agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3612(o).

5. The parties agree that, to avoid further litigation, the claims against the Defendants should be resolved without additional proceedings and an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and the Defendants agree to the entry of this Consent Order.

It is hereby ORDERED, ADJUDGED and DECREED:

I. INJUNCTIVE RELIEF

A. General Injunction

6. The Defendants, their employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with them are hereby enjoined from:
- a. Discriminating against any person in the terms, conditions, or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
 - b. Making, printing, publishing, or causing to be made, printed, or published any notice, statement, or advertisement with respect to the rental of a dwelling unit that states any preference, limitation, or discrimination based on sex; or
 - c. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.
7. The Defendants have represented that they do not currently own, rent or manage any residential rental properties. If at any point during the effective date of this Consent Order the Defendants acquire any ownership interest, in whole or in part, of any property offered for rent, the Defendants must notify the United States within ten (10) days of the

acquisition in writing of the address of the property and include a copy of the deed or other instrument showing the ownership of the property. Defendant Pendygraft is hereby enjoined from operating, consulting, managing, staffing, participating in, working in (whether paid or unpaid), or otherwise having any involvement in the management, rental, or maintenance of any other residential rental units not owned, in whole or in part, by the Defendant(s).

B. Contingent Injunction

8. In the event that Defendant Pendygraft owns, in whole or in part, any residential rental properties in the future, then he shall retain an independent management company, approved by the United States (hereinafter “the Management Company”), to manage the rental of any and all residential rental properties owned, in whole or in part, by Defendant Pendygraft. The Management Company shall be familiar with the requirements of the Fair Housing Act. Defendant Pendygraft is enjoined from managing any residential rental property except under the conditions specified in paragraphs 9 through 17 below.

i. Management Requirements

9. Defendant Pendygraft shall retain the Management Company within fourteen (14) days of acquiring ownership, in whole or in part, of any residential rental properties and shall continue to retain such company for as long as he owns, in whole or in part, such properties. If, after retaining the Management Company, Defendant Pendygraft wishes to change companies, he may do so. However, each and every independent management company retained by Defendant Pendygraft must be approved by the United States and must comply with the requirements for the Management Company as described in this Consent Order.

10. The Management Company shall be responsible for all aspects of management of the future properties that are rented or available for rent, including showing and renting units, making repairs, collecting rents, determining whom to rent to and/or evict, and all other aspects of the rental process.
11. Defendant Pendency shall refrain from entering the premises of the rental properties except that he may do so only when accompanied by a Management Company representative, if it is necessary for Defendant Pendency to inspect the property or show it to a prospective buyer and that function cannot be reasonably delegated to an agent.
12. For as long as Defendant Pendency owns, in whole or in part, any residential rental properties, he shall require the Management Company to do the following:
 - a. Implement, subject to the United States' approval, a written nondiscrimination policy against sexual harassment, including a formal complaint procedure. A copy of this policy and procedure shall be provided to counsel for the United States within fourteen (14) days of the date that Defendant Pendency commences to own, in whole or in part, or lease any residential rental property.¹ This policy and procedure shall be implemented within fourteen (14) days after counsel for the United States indicates that the policy and procedure are satisfactory to the United States. At that time, the Management Company shall notify all new and current tenants at the residential rental property(ies) of the policy and procedure.
 - b. Ensure that all its employees who will be performing any duty in connection with any residential rental property that Defendant Pendency owns, in whole or in part, or

¹ Any and all documents, instruments, or written materials required by this Consent Order to be sent to the United States shall be sent by commercial (non-USPS) overnight delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street, N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ# 175-30-86.

leases are familiar with the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment, and have received copies of this Consent Order, nondiscrimination policy, and complaint policy. Every employee or agent of Defendant Pendency must sign an Employee Acknowledgement form stating they received these documents.

- c. Post an "Equal Housing Opportunity" sign indicating that all apartments are available for rent on a non-discriminatory basis in all rental offices through which any residential rental property owned, in whole or in part, or leased by Defendant Pendency are rented. A sign no smaller than eleven (11) inches by fourteen (14) inches that comports with 24 C.F.R. Part 110 will satisfy this requirement.
- d. Require that all advertising for any residential rental property owned, in whole or in part, by Defendant Pendency that is conducted in newspapers, in telephone directories, on radio, on television or in other media, including electronic media, and all billboards, signs, pamphlets, brochures, and other promotional literature, include either a fair housing logo, the words "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 legible and prominently placed.

- e. Send to counsel for the United States every six (6) months, a list of all tenants at any residential rental property owned, in whole or in part, or leased by Defendant Pendency, including at least one and telephone number for each tenant.

- f. Immediately notify counsel for the United States in the event that it obtains any information indicating that Defendant Pendygraft is in violation of this Consent Order.
- g. Provide any information reasonably related to compliance with this Consent Order that is requested by counsel for the United States.

ii. Education and Training

13. Within sixty (60) days of acquiring ownership, in whole or in part, or management of any rental property, the Defendants (or Defendant if only one has acquired the ownership interest) shall undergo in-person training on non-discrimination laws, including the Fair Housing Act, with specific emphasis on discrimination on the basis of sex and sexual harassment. The trainer or training entity shall be independent of the Defendants, qualified to conduct such training, and approved in advance by the United States. Any expenses associated with this training shall be borne by the Defendants. The Defendants shall obtain from the trainer certifications of attendance, executed by each individual who received training, confirming their attendance. This confirmation shall include the name of the course, the name of the instructor, the date the course was taken, and the length of the course and/or the time within the course was completed. At a minimum, the training required shall consist of instruction on the requirements of all applicable federal and state non-discrimination laws, and a question and answer session for the purpose of reviewing the foregoing areas.
14. Within thirty (30) days of commencing an employment or agency relationship with the Defendant(s) in relation to any rental property(ies), employees, agents, assigns,

successors-in-interest, and all persons in active concert or participation with them, shall undergo training as described in paragraph 13, *supra*.

iii. Reporting Requirements

15. The Defendant(s) shall provide the United States notification and documentation of the following events, no later than ten (10) days after their occurrence:

- a. Any change in the Defendant Pendency's nondiscrimination policies and complaint procedures;
- b. Any information indicating that the Defendant(s), or any of their agents or employees, is in violation of this Consent Order; and
- c. Any complaint, whether written, oral, or in any other form, against the Defendant(s) or any of their agents or employees, regarding discrimination, including sexual harassment. If the complaint is made verbally, the Defendant(s) shall maintain a log upon which they record the name of the complainant; the date the complaint was received; the name of the Defendant, employee, or agent who received the complaint; the name of the person subject to the complaint; the address of the property involved in the complaint; and a general description of the complaint. The notification sent to the United States shall include a copy of the complaint, if the complaint was in writing, or a copy of the complaint log, if the complaint was made verbally; the complainant's name, address, and telephone number; a description of any actions taken by the Defendant(s) or their employees or agents in response to the complaint; and any documents relevant to the complaint. The Defendant(s) shall promptly provide the United States all information it may request concerning any such complaint. The Defendant(s)

shall also inform the United States, in writing, about the substance of any resolution of the complaint within ten (10) days of such resolution.

16. Within ninety (90) days of acquiring ownership, in whole or in part, or commencing management of any rental property, the Defendant(s) shall submit copies of all written verifications of the nondiscrimination training conducted pursuant to paragraphs 13 and 14 above to counsel for the United States.
17. Beginning six (6) months after acquiring ownership, in whole or in part, or commencing management of any rental property, and every six (6) months thereafter, Defendant Pendency shall deliver to counsel for the United States any documents required by paragraphs 7 through 16 above, and Defendant Ballard-Pendency shall deliver to counsel for the United States any documents required by paragraphs 7 and 13 through 16 above, where applicable, and the extent that these documents have not been previously provided, with the last delivery of documents due to the United States sixty (60) days before the expiration of the Consent Order.

II. MONETARY DAMAGES FOR AGGRIEVED PERSON

18. The Defendants shall jointly pay a total of FIVE THOUSAND DOLLARS (\$5,000.00) in monetary damages to Kimberly Clark. Within thirty (30) days of the date of entry of this Consent Order, the Defendants shall deliver to counsel for the United States a check made payable to Kimberly Clark for \$5,000.
19. The Defendants have provided financial disclosure statements and other financial information (“Financial Statements”) to the United States, and the United States has relied on the accuracy and completeness of those Financial Statements in entering into this Consent Order, particularly paragraph 18. The Defendants warrant that the Financial

Statements are thorough, accurate, and complete. The Defendants further warrant that they do not own or have an interest in any asset(s) that have not been disclosed in the Financial Statements, and that they have made no misrepresentations on, or in connection with, the Financial Statements. In the event the United States learns of additional asset(s) in which the Defendants have an interest at the time of this Consent Order that were not disclosed in the Financial Statements, or a misrepresentation by the Defendants in the Financial Statements, and in the event such non-disclosure or misrepresentation changes the estimated net worth of the Defendants as set forth on the Financial Statements by ten thousand dollars (\$10,000) or more, then the United States may, at its option, (a) move the Court to rescind this Consent Order and reopen the litigation based on its Complaint, or (b) let the Consent Order stand and collect an additional \$45,000 in monetary damages. To the extent that the United States discovers the occurrence of an event(s) encompassed by this paragraph, the Defendants agree not to contest the reopening of the litigation or any collection action undertaken by the United States.

20. The damages required to be paid pursuant to paragraphs 18 and 19 above is a debt for willful and malicious injury by the Defendants within the meaning of 11 U.S.C. § 523(a)(6). The Defendants shall not seek to discharge any part of this debt in bankruptcy.

III. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE

21. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the parties. The other provisions of this Consent Order may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be

effective thirty (30) days from the date of the filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through a written order that it has not approved the modification.

22. All parties shall be responsible for their own attorney's fees and court costs, except as provided for in paragraph 23 below.

23. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends there has been a failure by the Defendant(s), whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise to comply 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 or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by the Defendant(s)' violation or failure to perform.

IV. MISCELLANEOUS PROVISIONS

24. The underlying lawsuit filed by the United States is an action or proceeding by the United States to enforce its police or regulatory power within the meaning of 11 U.S.C. § 362(b)(4).

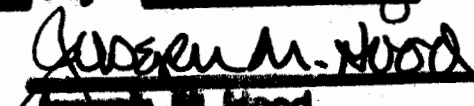
25. The parties agree that as of the effective date of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described in the United States' Complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters

described in the Complaint, such party or parties are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligation imposed by this Consent Order.

V. RETENTION OF JURISDICTION

26. This Consent Order shall be in effect for a period of three (3) years from its entry. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.

IT IS SO ORDERED:

This the 26th day of February, 2016.

Joseph M. Hood
United States District Judge

Respectfully submitted this 25th day of February, 2016.

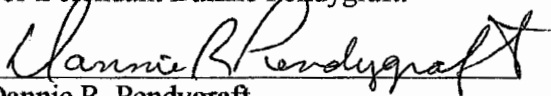
For Plaintiff United States of America:

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Civil Rights Division

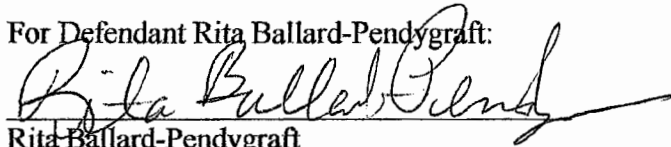
/s/Mazen M. Basrawi
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For Defendant Dannie Pendencygraft:



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For Defendant Rita Ballard-Pendencygraft:



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rbp32005@yahoo.com

CERTIFICATE OF SERVICE

I, Mazen Basrawi, hereby certify that on this 25th day of February, 2016, I electronically filed the foregoing *Proposed Consent Order* with the Clerk of Court using the Court's Electronic Filing System, and I electronically served via email the foregoing *Proposed Consent Order* on all parties as follows.

Dannie R. Pendygraft
drp2005x@yahoo.com

Rita Ballard-Pendygraft
rbp32005@yahoo.com

/s/ Mazen Basrawi
Mazen Basrawi
Trial Attorney
U.S. Department of Justice