

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
TWO BEACONS, L.L.C., AS OWNER OF
KENTUCKY FRIED CHICKEN RESTAURANT IN DAYTON, TENNESSEE
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ # 202-70-37

BACKGROUND

1. This matter was initiated by a complaint filed under title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 et seq., with the United States Department of Justice (“Department”) against the owner of the Kentucky Fried Chicken restaurant located at 4049 Rhea County Highway, Dayton, Tennessee (“Dayton KFC”). The complainant – a legally blind woman who uses a service animal – alleged that an employee of the Dayton KFC told her and her husband to leave the restaurant because they were accompanied by a dog.
2. The Attorney General is authorized to enforce title III of the ADA by requiring public accommodations to make reasonable modifications in policies, practices or procedures to enable persons with disabilities to have access to facilities that is equal to the access afforded to people without disabilities. 42 U.S.C. § 12188(a)(2). In addition, the Attorney General may commence a civil action to enforce title III in any situation where the Attorney General believes a pattern or practice of discrimination exists or a matter of general public importance is raised. 42 U.S.C. § 12188(b)(1)(B).

PARTIES

3. The Parties to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Two Beacons, L.L.C.
4. The Dayton KFC is a restaurant, and, as such, is a place of public accommodation under title III of the ADA. 42 U.S.C. § 12181(7)(B) and 28 C.F.R. § 36.104.
5. Two Beacons, L.L.C., a Tennessee limited liability company, owns the Dayton KFC, and is therefore a public accommodation under title III of the ADA. 42 U.S.C. § 12181(7)(B) and 28 C.F.R. § 36.104.

FINDINGS

6. The United States found in its investigation that on or around July 18, 2004, the complainant entered the Dayton KFC with her service animal and her husband to eat lunch. The complainant, who is legally blind, uses a guide dog to enable her to have independent access to the activities of daily living. After the complainant and her husband ordered their food and sat down, a female employee told them that dogs are not allowed, and they needed to leave. The female employee continued to instruct the complainant and her husband to leave the restaurant even after the complainant's husband explained to her that the dog was a service animal, and not a pet.
7. As a result of its investigation, the United States has determined that the complainant was denied equal access to the goods and services of the Dayton KFC within the meaning of 42 U.S.C. § 12182(a), 28 C.F.R. § 36.302.
8. Two Beacons, L.L.C. has taken the following steps to comply with title III of the ADA: posted a sign on the entry door to the Dayton KFC that reads "KFC Always Welcomes Customers with Service Animals;" sent a memorandum to the Dayton KFC store manager stating that persons with disabilities, including persons with service animals, are welcome; and posted the memorandum in a conspicuous place inside the Dayton KFC.
9. In order to avoid litigation of the issues discussed herein, and in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree to the following:

REMEDIAL ACTION

10. Consistent with the ADA, Two Beacons, L.L.C. will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Dayton KFC by excluding or providing unequal treatment to persons with disabilities who use service animals.
11. Two Beacons, L.L.C. will adopt, maintain, and enforce the policy attached hereto and by reference incorporated herein as Attachment 1 to this Agreement on the treatment of customers using service animals. Within ten (10) days of the effective date of this Agreement, Two Beacons, L.L.C. will provide a copy of the policy set forth in Attachment 1 to all employees of Two Beacons, L.L.C. Within twenty (20) days of the effective date of this Agreement, Two Beacons, L.L.C. will provide the United States with proof of the issuance of this communication to employees.¹ Further, Two Beacons,

¹ All documents or other communications required by this Settlement Agreement to be sent to the United States or counsel for the United States shall be sent via first class U.S. mail,

L.L.C. will post a copy of the policy in a conspicuous area of the Dayton KFC where employees can readily read the policy.

12. Within thirty (30) days of the effective date of this Agreement, Two Beacons, L.L.C. will provide training concerning the policy set forth in Attachment 1 to all employees of the Dayton KFC. Within fifty (50) days of the effective date of this Agreement, Two Beacons, L.L.C. will provide the United States with proof that this training occurred. Two Beacons, L.L.C. will incorporate this training into its regular training programs and repeat it for new employees of the Dayton KFC for the life of this Agreement.

MONETARY RELIEF FOR COMPLAINANT

13. The ADA authorizes the United States Attorney General to seek a court award of compensatory damages on behalf of individuals aggrieved as the result of violations of the ADA. 42 U.S.C. § 12188(b)(2)(B); 28 C.F.R. § 36.504(a)(2). Within ten (10) days of the effective date of this Agreement, Two Beacons, L.L.C. will compensate the complainant in this matter by sending her a certified check in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), via certified mail to the address provided by the United States. Two Beacons, L.L.C. will simultaneously send a copy of the check and the accompanying letter to counsel for the United States.
14. In consideration of the promises made in paragraph 13 of this Agreement, the Department agrees that within ten (10) days of its receipt of the Agreement signed by an authorized representative of Two Beacons, L.L.C., it will obtain the complainant's signature on the Waiver and Release of Claim form attached hereto as Attachment 2. The Department will mail the original copy of the signed Waiver and Release of Claim form to Two Beacons, L.L.C. within fifteen (15) days of the Department's receipt of same.

ENFORCEMENT

15. If at any time Two Beacons, L.L.C. desire to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.

addressed as follows: Chief, Disability Rights Section, United States Department of Justice, 950 Pennsylvania Ave. – NYA, Washington, D.C. 20530. Attn: DJ No. 202-70-37.

16. The Department may review compliance with this Agreement at any time. If the Department believes that Two Beacons, L.L.C. has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify Two Beacons, L.L.C. in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Two Beacons, L.L.C., it may institute a civil action in federal district court to enforce the terms of this Agreement or title III and may, in such action, seek any relief available under law.
17. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for Two Beacons, L.L.C. to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
18. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
19. A copy of this document or any information contained in it will be made available to any person by Two Beacons, L.L.C. or the Department on request.
20. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect Two Beacons, L.L.C.'s continuing responsibility to comply with all aspects of the ADA.
21. This Agreement shall be binding on Two Beacons, L.L.C., its agents and employees. In the event Two Beacons, L.L.C. seeks to transfer or assign all or part of its interest in the Dayton KFC, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale Two Beacons, L.L.C. shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

- 22. This Agreement will remain in effect for three (3) years.
- 23. The person signing for Two Beacons, L.L.C. represents that he is authorized to bind Two Beacons, L.L.C. to this Agreement.
- 24. The effective date of this Agreement is the date of the last signature below.

FOR TWO BEACONS, L.L.C.:

FOR THE UNITED STATES:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

BY: _____
GERALD FULBRIGHT, Chief Manager
Two Beacons, L.L.C.
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(423) 476-7823

BY: _____
JOHN L. WODATCH, Chief
MARY LOU MOBLEY, Acting Deputy Chief
JOSH MENDELSON, Supervisory Attorney
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Disability Rights Section - 1800 G Street
950 Pennsylvania Ave., NW
Washington, DC 20530
(202) 202-307-1378

Dated: _____

Dated: _____