

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 2:19-26
)	
v.)	
)	
GUS CRANK and PENNY CRANK,)	
)	
Defendants.)	
_____)	

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order arises out of a Complaint, filed by the United States on March 6, 2019, captioned United States v. Gus Crank and Penny Crank, No. 2:19-cv-00026 (E.D. Ky.), (the "Civil Action") 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. §§ 3601-3631 ("Fair Housing Act" or "FHA").

2. In the Civil Action, the United States alleges, and the Defendants deny, that Gus Crank violated the FHA by discriminating against tenants on the basis of sex in the rental of dwellings located at 902 3rd Avenue in Dayton, Kentucky ("Subject Property"). Specifically, the United States alleges, and the Defendants deny, that from approximately 2008 through 2017, Gus Crank subjected multiple female tenants to severe, pervasive, and unwelcome sexual harassment and retaliation.

3. The Defendants deny the allegations made by the United States against them and state that there has been no judicial determination that a violation of the FHA has occurred.

4. The United States alleges, and the Defendants deny, that the conduct described above constitutes a pattern or practice of resistance to the full enjoyment of rights granted by the FHA and denial to a group of persons of rights granted by the FHA, which denial raises an issue of general public importance.

5. The United States further alleges, and the Defendants deny, that Penny Crank is liable for discriminatory actions and conduct committed by Gus Crank because she is an owner of the Subject Property.

6. The United States and the Defendants (collectively, "the Parties") agree that the Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a).

7. The Parties agree that the United States' claims against the Defendants should be resolved without further litigation. Therefore, the Parties consent to the entry of this Consent Order, as shown by the signatures below.

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL NONDISCRIMINATION PROVISIONS

8. The Defendants, their officers, agents, employees, transferees, successors, heirs and assigns, and all other persons or entities in active concert or participation with them, are enjoined, with respect to the rental of dwellings,¹ from any violations of the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3631. The Defendants deny that they have previously violated any provisions of the above referenced Act.

III. THE DEFENDANTS' TRANSFER OF INTEREST IN THE SUBJECT PROPERTY

¹ The term "dwellings" has the meaning set out in the Fair Housing Act, 42 U.S.C. §3602(b).

9. The Defendants sold the rental property located at 902 3rd Avenue in Dayton, Kentucky (“the 3rd Avenue Property” or the “Subject Property”) to a bona fide, independent third-party purchaser in an arms-length transaction. For purposes of this order, a “bona fide, independent third-party purchaser” is one with whom the Defendants have no current or past financial, contractual, or familial relationship. An “arms-length transaction” is one that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding the transaction.

10. As of June 30, 2021, the Defendants no longer have an interest in the 3rd Avenue Property and will play no role in managing the Subject Property.

IV. THE DEFENDANTS’ ACQUISITION OR TRANSFER OF INTEREST IN OTHER PROPERTY

11. The Defendants will not purchase any residential properties to be used for rental purposes and agree to be removed from entering into any landlord-tenant relationships and engaging in any property management responsibilities once the Subject Property is sold and for two years thereafter. “Property management responsibilities” include the following: showing or renting housing units; processing rental applications; performing or supervising repairs or maintenance; determining tenant eligibility for subsidies or waivers of fees and rents; inspecting dwelling units; collecting rent and fees; entering rental units; overseeing any aspects of the rental process; or engaging in any other property-related activities that involve, or may involve, personal contact with tenants or prospective tenants.

V. CONTACT WITH AGGRIEVED PERSONS

13. The Defendants are enjoined from purposefully or knowingly contacting or communicating, either directly or indirectly, with any person identified by the United States as

an aggrieved person in this action. "Contact or communications" includes, but is not limited to, physical contact, verbal contact, telephone calls, e-mails, faxes, written communications, text or instant messages, contacts through social media, or other communications made through third parties.

14. In the event that a Defendant inadvertently or unintentionally initiates any contact with any aggrieved person, or another person initiates such contact between a Defendant and an aggrieved person, that Defendant will immediately discontinue the contact or communication and take all reasonable steps to avoid any further contact or communication.

VI. REPORTING REQUIREMENTS

15. For the term of the Consent Order, on September 1, 2022 and September 1, 2023, the Defendants will provide a statement in writing to the United States that they do not own, manage or rent any residential rental properties.

VII. MONETARY DAMAGES AND OTHER RELIEF FOR AGGRIEVED PERSONS

16. Within ten (10) days of the Effective Date of this Consent Order, the Defendants will pay a total of \$48,000 to the aggrieved persons identified by the United States and listed in Attachment A.

17. For purposes of payment to the two living aggrieved persons, Defendants will deliver to counsel for the United States, by overnight mail, checks payable to the aggrieved person in the amount specified in Attachment A. For purposes of payment to the estates of the two deceased aggrieved persons, Defendants will deposit the remaining amount specified in Attachment A into an escrow account until the estates of the aggrieved persons have been resolved by probate court and the United States has notified Defendants to issue checks. The

Defendants will provide the United States with a written record of the deposit into the escrow account.

18. When counsel for the United States has received a check from the Defendants payable to an aggrieved person or representative from the estate of an aggrieved person and a signed release in the form of Attachment B from the aggrieved person or representative from the estate of an aggrieved person, counsel for the United States will deliver the check to the aggrieved person or the representative from the estate of the aggrieved person and the original, signed release to counsel for the Defendants. No aggrieved person or representative from the estate of an aggrieved person will be paid until that individual has executed and delivered to counsel for the United States the release at Attachment B.

19. The damages required to be paid under this Section is a debt within the meaning of 11 U.S.C. § 523(a)(6). Accordingly, the Defendants will not seek to discharge any part of this debt in bankruptcy.

VIII. CIVIL PENALTY

20. Within ten (10) days of the Effective Date of this Consent Order, the Defendants will pay \$2,000 to the United States Treasury as a civil penalty under 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. The payment will be in the form of an electronic fund transfer in accordance with written instructions to be provided by the United States.

X. ENFORCEMENT OF CONSENT ORDER

21. This Consent Order is effective immediately upon its entry by the Court. For purposes of this Consent Order, the "Effective Date" means the date on which the Court enters the Consent Order.

22. The Court will retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time the case will be dismissed with prejudice. This Order will be in effect for a period of two (2) years from the Effective Date. The United States may move the Court to extend the duration of the Consent Order in the event of noncompliance, whether intentional or not, with any of its terms, or if it believes the interests of justice so require.

23. The Parties will 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 that there has been a failure by the Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order 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 or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

XI. TIME FOR PERFORMANCE AND MODIFICATIONS TO ORDER

24. Any time limits for performance imposed by this Consent Order may be extended by mutual written agreement of the Parties. Any other modifications to the provisions of this Order must be approved by the Court.

XII. COSTS OF LITIGATION

25. Except as otherwise provided in Paragraph 23, the Parties will bear their own costs and attorneys' fees associated with this litigation.

XIII. TERMINATION OF LITIGATION HOLD

26. The Parties agree that, as of the Effective Date of this Consent Order, litigation is not “reasonably foreseeable” concerning the matters described in this Consent Order. To the extent that any Party has previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, that Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations under this Consent Order.

IT IS SO ORDERED this 24th day of August, 2021.



Signed By:

William O. Bertelsman *WOB*

United States District Judge

FOR THE UNITED STATES OF AMERICA:

Dated: August 23, 2021

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FOR DEFENDANTS:

Dated: 8-23, 2021


Dated: 8-23, 2021



GUS CRANK



PENNY CRANK



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Attorney for Defendants
Gus and Penny Crank

Attachment A
Compensation of Aggrieved Persons

1. Estate of J.C.	\$12,000
2. M.K.	\$12,000
3. Estate of K.S.	\$12,000
4. C.S.	\$12,000

Attachment B
Release of Claims

This Agreement is made and entered into this _____ day of _____, 2021, between _____ and Gus Crank and Penny Crank.

WHEREAS, The United States of America filed a lawsuit on behalf of aggrieved persons in the United States District Court for the Eastern District of Kentucky, Covington Division, Civil Action No. 2:19-26, styled as: *United States of America v. Gus Crank and Penny Crank*.

WHEREAS, Defendants have denied and continue to deny the allegations in the above-captioned lawsuit; and

WHEREAS, the United States and Defendants desire to settle and resolve all of their differences without any further proceeding, investigation, or litigation on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained in this Release, the parties agree as follows:

1. This Release does not constitute an admission by Defendants that any action or inaction with respect to _____ was wrongful, unlawful, or in violation of any common law, statutory, constitutional, or contractual provision. This Release is entered into solely for the purpose of compromise and to fully resolve all matters which have arisen, or may arise, between the parties.

2. Defendants agree to pay _____, the sum of Twelve Thousand Dollars (\$12,000.00).

3. It is understood and agreed that Defendants' obligations under Paragraph 2 above will not attach until after Defendants' attorneys have received, from the United States, an executed copy of this General Release, signed by _____.

4. In consideration of the agreement of Defendants to make the payment described in Paragraph 2, and for other good and valuable consideration, the sufficiency and adequacy of all of which consideration is hereby expressly acknowledged, _____ does release and forever discharge for herself, her heirs, executors and administrators, Defendants, and any affiliated companies, their officers, directors, administrators, agents, employees and attorneys of and from all matters relating to or arising out of the complaint filed in the United States District Court for the Eastern District of Kentucky, Covington Division, Civil Action No. 2:19-26, styled as: *United States of America v. Gus Crank and Penny Crank*., and all legal and equitable causes of actions, suits, controversies, claims and charges, whether common law or statutory, in contract, tort or public policy, both known and unknown, up to and including the time of the signing of this Release; whether for income from any source, declaratory or injunctive relief, compensatory or punitive damages, money, costs, expenses or attorneys' fees, including but not limited to, any and all claims of discrimination or retaliation under federal, state, or local equal opportunity and civil rights laws, including but not limited to, Title VIII of the Civil Rights Act of 1968, as amended by

the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3631. _____ further agrees not to pursue any further relief under any local, state, or federal governmental agency, or commissioned under any and all such laws. This Release shall apply to all unknown and unanticipated injuries and damages as well as those now disclosed.

5. This Release shall be binding upon and inure to the benefit of the parties, their respective representatives, predecessors, heirs, assigns, officers, and directors.

6. It is expressly recognized by the parties that a portion of the consideration for this Release is deemed a payment of compensatory damages for alleged personal injuries and is not to be considered a payment of wages or substitution of wages within the mean of §104(a)(2) of the Internal Revenue Code. Notwithstanding, _____ agrees to be fully responsible for any and all tax liability associated within this settlement, together with any interest and penalties.

7. The parties agree that the terms of this General Release may be enforced in any court of competent jurisdiction and that breach of the terms hereof shall subject the breaching party to any damages or other remedies as may be available at law or in equity, and the non-breaching party shall recover its reasonable attorneys' fees incurred in such action. The parties further understand and agree that in the event that any claim, suit, or action whatsoever shall be instituted by _____ or her heirs, executors, or administrators against Defendants, this General Release shall constitute a complete defense to any such claim, suit or action so implicated.

8. Each party hereby waives any common law and/or statutory right to recover attorneys' fees and cost.

9. The undersigned parties acknowledge and agree that they have read this document, fully understand, and accept that this is a General Release, intend to be legally bound by the document, that no inducement, duress, or coercion caused them to sign this Release.

Dated _____, 2021.

REINHARDT & ASSOCIATES, PLC

Aggrieved Person

Katherine J. Hornback, Esq.
ATTORNEY FOR DEFENDANTS,
GUS CRANK, PENNY CRANK