

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 13-cv-3155 (ADM/LIB)

United States of America,

Plaintiff,

vs.

**CONSENT DECREE**

Kurt Schimnich,

Defendant.

**I. INTRODUCTION**

1. The United States filed this action on November 15, 2013 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.

2. The United States' Complaint alleges that Defendant Kurt Schimnich denied aggrieved person LaDonna Smith the reasonable accommodation of an assistance animal and discriminated against Ms. Smith, in violation of the Fair Housing Act. The United States further alleges that, as a result of these actions, aggrieved person Ms. Smith was denied the full use and enjoyment of an apartment unit for rent by Mr. Schimnich at 501 ½ 8<sup>th</sup> Avenue North, St. Cloud, Minnesota.

3. Ms. Smith filed a fair housing complaint with the United States Department of Housing and Urban Development (HUD) alleging that Defendant had discriminated against her on the basis of her disability.

4. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated the complaint made by Ms. Smith, attempted conciliation without success, and prepared a final investigative report. Based on information gathered in his investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred. Therefore, on or about September 12, 2013, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g), and charged the Defendant with discrimination under the Fair Housing Act under 42 U.S.C. §§ 3604(f)(1), 3604(f)(2), 3604(f)(3)(B), and 3604(c).

5. On October 16, 2013, Defendant 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 aggrieved person Ms. Smith, pursuant to 42 U.S.C. § 3612(o).

6. The parties agree that, to avoid costly and protracted litigation, the claims against Defendant should be resolved without further proceedings or a trial. This Consent Decree resolves the United States' claims in its Complaint against the Defendant.

## **II. INJUNCTION**

7. Defendant, his agents, employees, and all other persons in active concert or participation with him, are hereby enjoined 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 persons in the terms, conditions, or privileges of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2)(A);
- c. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling, that indicates any preference, limitation, or discrimination based on disability, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c); and
- d. 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).

### **III. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS**

8. No later than thirty (30) days after the date of entry of this Consent Decree, Defendant Kurt Schimnich shall submit for approval to the United States<sup>1</sup> a proposed

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<sup>1</sup> For purposes of the Consent Decree, documents to be sent to the United States shall be addressed as follows: AUSA Ana H. Voss, United States Attorney's Office, District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as otherwise directed by counsel for the United States.

reasonable accommodation policy. The proposed policy shall, at a minimum, include the information contained in Attachment A.

9. Within fourteen (14) days of the United States' approval of the proposed policy, Defendant Kurt Schimnich shall adopt the policy (the New Policy) and notify in writing each resident of his rental property of the adoption and implementation of the New Policy. Notice shall be sent via first-class mail, postage prepaid, to each tenant of the property.

10. Defendant also agrees that because there is no common area in his rental units and because he does not maintain an office in which posting of the policy would be effective, he shall distribute a copy of the new policy with all applications for new tenants and upon request to any party who so inquires.

11. The New Policy, once approved, shall supersede all existing policies, procedures, and resolutions concerning or affecting approval of reasonable accommodations at the property, including but not limited to approval of assistance animals.

12. No later than fourteen (14) days after adoption of the New Policy, Defendant Kurt Schimnich shall apprise each of his employees, agents, and any other persons responsible for the rental of units of each persons' 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. Defendant Kurt Schimnich shall furnish each such employee, agent, or other person 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 this 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.

13. During the term of this Consent Decree, new employees, or agents who have responsibility related to the management of or rental of units at the property, 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.

#### **IV. MANDATORY EDUCATION AND TRAINING**

14. Within one-hundred and twenty (120) days of the Entry of this Consent Decree, Defendant and Defendant's employees, agents, and members, shall attend, at Defendant'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 Defendant, his employees, agents, or counsel.

15. Defendant shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. 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.

**V. NONDISCRIMINATION POLICIES**

16. Within fourteen (14) days of the date of entry of this Consent Order and throughout its term, Defendant shall disseminate at their rental units and to applicants and other parties who inquire, a Fair Housing Poster that complies with 24 C.F.R. Part 110.

17. Throughout the term of this Consent Decree, Defendant 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.

**VI. REPORTING AND RECORD-KEEPING**

18. During the term of the decree, Defendant 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 14, including the certification required in Paragraph 15;
- b. Any change to Defendant’s rules or practices affecting the keeping of assistance animals at rental properties;
- c. Any denial by Defendant 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; and

- d. Any written or oral complaint received by Defendant regarding discrimination on the basis of disability, including a copy of the written complaint itself or a written summary of an oral complaint and the name, address, and telephone number of the complainant. Defendant shall also promptly provide the United States with information concerning resolution of the complaint.

19. During the term of this Decree, Defendant shall preserve all records relating to his obligations under this Consent Decree. Representatives of the United States shall be permitted, upon providing reasonable notice to Defendant, to inspect and copy at reasonable times any and all records related to Defendant's obligations under this Decree.

## **VII. RELIEF FOR AGGRIEVED PERSONS**

20. No later than fourteen (14) days after the date of entry of this Consent Decree, Defendant shall pay the total sum of two thousand dollars (\$2,000) in monetary damages to aggrieved person LaDonna Smith by delivering one check payable to LaDonna Smith in the amount of \$2,000 to counsel for the United States.

21. As a prerequisite to receiving such payment, LaDonna Smith shall execute and deliver to counsel for the United States a release of all claims, legal or equitable, that she may have against Defendant relating to the claims asserted in this lawsuit. Such release shall take the form of Attachment C. Counsel for the United States shall deliver the original release form to counsel for Defendant.

**VIII. JURISDICTION, DURATION, MODIFICATION, AND REMEDIES**

22. 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).

23. This Consent Decree is effective immediately upon its entry by the Court.

24. This Court shall retain jurisdiction over this action and the parties thereto for the duration of this Decree for the purpose of enforcing and modifying its terms. This Decree shall be in effect for a period of two (2) years from its effective date.

25. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

26. 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 Defendant 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.

27. All parties shall be responsible for their own attorney's fees and costs, except as otherwise provided in this Decree.



So ORDERED this 8th day of February, 2016

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
United States District Judge

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

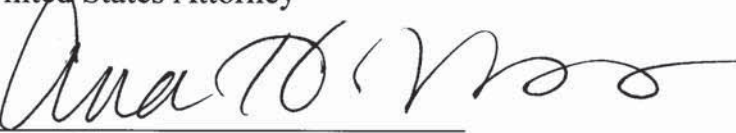
For the Defendant,

  
\_\_\_\_\_

Date: 5-29-15

For Plaintiff United States of America,

ANDREW M. LUGER  
United States Attorney

  
\_\_\_\_\_

Date: 5-29-15

BY: ANA H. VOSS  
Assistant United States Attorney  
Attorney ID No. 483656DC  
600 U.S. Courthouse, 300 S. Fourth Street  
Minneapolis, MN 55415  
(612) 664-5600

## **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. Kurt Schimnich and his employees, agents, or designees (collectively “Kurt Schimnich”) is 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.

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 alleviates one or more symptoms or effects of a person’s disability (“Assistance Animal”). The most common Assistance Animals are dogs, although other animals may qualify as assistance animals. Assistance Animals are not pets under Kurt Schimnich’s policies, and Assistance Animals will be governed by this policy and not Kurt Schimnich’s pet policy. Kurt Schimnich recognizes the importance of Assistance Animals and is dedicated to ensuring that his tenants with Assistance Animals – whether owners, occupants or renters – may keep them in their units.

If a resident with a disability requests a reasonable accommodation for an Assistance Animal, Kurt Schimnich may determine whether the animal provides assistance needed by that resident to afford him or her an equal opportunity to enjoy living at his property. Many times, both the disability and the assistance provided by 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 impairment. If this is the case, no further inquiry will be made and Kurt Schimnich will grant the resident the reasonable accommodation.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal that provides emotional support or other assistance that alleviates one or more symptoms or effects of the resident’s disability, Kurt Schimnich may require a written statement from a health or social service professional<sup>1</sup> indicating:

- i. That the applicant has a disability,<sup>2</sup> and

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<sup>1</sup> “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.

<sup>2</sup> 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, a

- ii. That the animal would provide emotional support or other assistance that would alleviate one or more symptoms or effects of the disability.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal that does work or performs tasks for the benefit of a person with a disability, Kurt Schimnich may require that the resident provide:

- i. A written statement from a health or social service professional indicating that the person has a disability, and
- ii. Information that the animal has been individually trained to do work or perform tasks that would alleviate one or more symptoms or effects of the disability, or information that the animal, despite lack of individual training, is able to do work or perform tasks that would alleviate one or more symptoms or effects of the disability.

In the case of an Assistance Animal that both provides emotional support or other assistance that alleviates one or more symptoms or effects of a disability and does work or performs tasks for the benefit of a person with a physical disability, Kurt Schimnich may require compliance with either of the two preceding paragraphs, but not both.

Kurt Schimnich will not require compliance with any of the following requirements:

- i. In the case of an Assistance Animal that provides emotional support or other assistance that alleviates one or more symptoms or effects of a disability, that the animal be trained as an emotional support animal or have a certification of its efficacy, or
- ii. That the resident pay any fee, deposit, or other charge for keeping the animal, or obtain insurance as a condition of keeping the animal.

In processing requests for Assistance Animals, Kurt Schimnich 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

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person who is regarded as having such an impairment, or a person with a record of such an impairment.

documentation in a secure area to which only those designated persons have access, except as otherwise required by law.

It is the responsibility of a person with a disability who is a resident, tenant, or occupant of a unit to inform Kurt Schimnich as to the need for an Assistance Animal for the resident, tenant or occupant of a unit, and to request a reasonable accommodation and provide any required documentation. A person with a disability may request a reasonable accommodation orally, but it will be more helpful to make it in writing. To that end, Kurt Schimnich has a "Form to Request An Assistance Animal" (attached to this Policy) which a person with a disability can use to make a reasonable accommodation request for an Assistance Animal.

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. Kurt Schimnich is using the form to record reasonable accommodation requests so that he can obtain only the information necessary to make a reasonable accommodation decision and does not obtain confidential information that he does not need to make a reasonable accommodation decision.

Once a completed request with any required documentation is received, Kurt Schimnich will provide a response within fourteen days. Prior to denying a request, Kurt Schimnich will attempt to engage in an interactive process with the person making the request in which the parties discuss possible alternative accommodations that might effectively meet the person's disability-related needs. Kurt Schimnich recognizes that a person with a disability is generally in the best position to know whether or not a particular accommodation will be effective in meeting his or her needs. 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

<https://www5.hud.gov/Hud903/main/pagHUD903Form.jsp>

## 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. Kurt Schimnich, his employees, agents, or designees (collectively "Kurt Schimnich") is 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 with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Reasonable accommodations may include waiving or varying Kurt Schimnich's 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 alleviates one or more symptoms or effects of a person's disability (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 for the person with a disability to use and enjoy a dwelling unit at any of Kurt Schimnich's rental units, please complete this form and return it to Kurt Schimnich. Please check all items that apply and answer all questions. Kurt Schimnich will answer this request in writing within 14 days. All information provided to Kurt Schimnich 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. Is the person with a disability who is requesting an Assistance Animal doing so so that he or she can have an equal opportunity to use and enjoy a dwelling at one of Kurt Schimnich's rental units?

Yes  No

6. Designate the species of animal for which you are making a reasonable accommodation request e.g., "dog," "cat," :

\_\_\_\_\_

7. 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Does the animal for which you are making a reasonable accommodation request perform work or do tasks for you because of your disability?

Yes  No (If “No,” continue to Question 9)

If the answer is yes:

(a) If your disability is obvious and the work or task the animal does is obvious, such as a dog guiding an individual who is blind or has low vision, or a dog pulling a wheelchair of an individual with a mobility impairment, then no further inquiry will be made.

(b) If your disability is not obvious, provide a statement from a health or social service professional indicating that you have a disability (i.e. you have a physical or mental impairment that substantially limits one or more major life activities); and

(c) If the work or task the animal performs is not obvious, explain below how the animal has been trained to do work or perform tasks that alleviate one or more symptoms or effects of your disability or, if the animal lacks individual training, how the animal is able to do work or perform tasks that would alleviate one or more symptoms or effects of your disability:

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You may provide any additional information or documentation of the training or work you describe above and attach it to this application.



9. If the animal for which you are making a reasonable accommodation request does not perform work or do tasks for you because of your disability, but provides emotional support or alleviates one or more symptoms or effects of your disability, please submit a statement from a health or social service professional stating that (a) you have a disability (i.e. you have a physical or mental impairment that substantially limits one or more major life activities); and (b) the animal would provide emotional support or other assistance that would alleviate one or more symptoms or effects of your disability and how the animal alleviates the symptoms or effects. Please attach such a statement to this application.

\_\_\_\_\_  
Signature of person making request

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of person with disability

\_\_\_\_\_  
Date

*TO BE COMPLETED BY MANAGEMENT*

Form accepted by: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

**ATTACHMENT B**  
**Certification of Receipt of Consent Decree**

I certify that I have received a copy of the Consent Decree entered by the United States District Court for the District of Minnesota in *United States of America v. Kurt Schimnich*, 13-cv-3155 (ADM/LIB) (D. Minn.). I further certify that I have read and understand the Decree, that any questions I had concerning the Decree were answered, and that I understand that the Defendant may be sanctioned or penalized if I violate the Decree.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

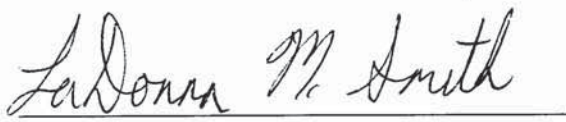
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**ATTACHMENT C**  
**Release**

In consideration of the Consent Order entered in *United States of America v. Kurt Schimnich*, 13-cv-3155 and of the payment of the sum of \$2,000 to me pursuant to that Consent Order, I, LaDonna Smith, hereby release Defendant named in this action (Civil Action No. 13-cv-3155 (ADM/LIB) (D. Minn.)) from any and all liability for any claims, legal or equitable, I may have against Defendant arising out of the issues alleged in the action as of the date of the entry of the Consent Decree. I fully acknowledge and agree that this release of Defendant shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated: 5-29-15

  
LaDonna Smith