

FILED

JUL 10 2017

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No: 1:16-CV-42 (Keeley)
)	
GARY WALDEN; BRIAN CARL)	
WALDEN, as Conservator for GARY)	
WALDEN, protected person; BRIAN)	
CARL WALDEN, as Administrator CTA)	
of the Estate of deceased TINA WALDEN;)	
WALDEN HOMES, LLC d/b/a WALDEN)	
RENTALS; and 973 CHESTNUT RIDGE)	
ROAD, INC.,)	
)	
Defendants.)	
_____)	

CONSENT DECREE

I. INTRODUCTION

1. This action was filed by the United States of America to enforce Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. §§ 3601-3631. The United States alleges that Defendants Gary Walden, Tina Walden (the estate of), Walden Homes LLC d/b/a Walden Rentals, and 973 Chestnut Ridge Road, Inc. (collectively, “the Defendants”), engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act and denied to a group of persons rights granted by the Fair Housing Act that raise an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

2. The United States alleges that, at least from 2006 through July 2015, the Defendants engaged in discrimination on the basis of sex in the rental of dwellings that they

owned and/or managed in or around Morgantown, West Virginia. Specifically, the United States alleges that Gary Walden and Tina Walden subjected female tenants and prospective tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment and retaliation. The alleged conduct by Defendant Gary Walden included, but was not limited to:

- a. Engaging in unwanted and unwelcome sex acts with female tenants;
- b. Engaging in unwanted sexual touching and groping, including grabbing female tenants' breasts and genitals;
- c. Conditioning or offering tangible housing benefits to female tenants in exchange for performance of sex acts on him or with his maintenance workers;
- d. Touching himself in a sexual manner in the presence of female tenants, including exposing his genitals to them;
- e. Making unwanted, unwelcome sexual comments and verbal sexual advances;
- f. Entering the apartments of female tenants without permission or notice to sexually harass them; and
- g. Taking or threatening to take adverse action against female tenants when they refused or objected to his sexual advances or objected to continuing to grant sexual favors.

The alleged conduct by Tina Walden included, but was not limited to, receiving tenant complaints about sexual harassment and failing to take appropriate steps to remedy the discrimination; and taking adverse housing actions, or threatening to take such actions, in retaliation for discrimination complaints. Tina Walden died on or about December 24, 2014.

3. The United States further alleges that Tina Walden, Walden Homes, LLC, and 973 Chestnut Ridge Road, Inc. are liable for the discriminatory conduct of Gary Walden, who was acting as their agent; and that Gary Walden, Walden Homes, LLC, and 973 Chestnut Ridge Road, Inc. are liable for the discriminatory conduct of Tina Walden, who was acting as their agent.

4. By the actions and statements described above, the United States alleges that the Defendants:

- a. Denied housing or otherwise made housing unavailable because of sex in violation of 42 U.S.C. § 3604(a);
- b. Discriminated 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 42 U.S.C. § 3604(b);
- c. Made statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on sex, in violation of 42 U.S.C. § 3604(c);
and
- d. Coerced, intimidated, threatened, or interfered 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 42 U.S.C. § 3617.

5. The United States alleges that female tenants and persons associated with them have been injured by the Defendants' discriminatory conduct. Such persons are aggrieved persons as defined in 42 U.S.C. § 3602(i) and have suffered damages.

6. The United States alleges that the Defendants' conduct was intentional, willful, and/or taken in reckless disregard for the rights of others.

7. The United States has not alleged in its Civil Action that Brian Walden has engaged in discrimination or sexual harassment or has otherwise violated the Fair Housing Act in any way.

8. In April 2015, Defendant Gary Walden pled guilty to one count of burglary, two counts of sexual abuse, and two counts of conspiracy; four of these charges were related to Walden's conduct against female tenants, some of whom are aggrieved persons in this lawsuit. In July 2015, Walden was sentenced to 2-10 years in state prison, followed by 1-15 years of home confinement and 10 years of probation. At the time this action was initiated, Walden was incarcerated in the Huttonsville Correctional Center in Huttonsville, West Virginia. On or around March 24, 2017, he was released from prison to serve the remainder of his sentence on home confinement.

9. The Defendants dispute liability. Nevertheless, the United States and the Defendants have agreed to resolve these claims without a trial. Therefore, the United States and the Defendants consent to the entry of this Consent Order, as shown by the signatures below.

10. The parties agree that this Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3614(a).

11. This Consent Decree is effective immediately upon its entry by the Court. For purposes of this Consent Decree, the phrase "effective date" shall refer to the date on which the Court enters the Consent Decree.

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED:

II. INJUNCTION CONCERNING DEFENDANT GARY WALDEN

12. Defendant Gary Walden has represented that he has or is attempting to transfer, sell, or otherwise divest himself of any management, ownership, financial, and control interests in all of the Subject Properties,¹ and that he does not intend to own or otherwise manage or control residential rental property in the future. Defendant Gary Walden has represented that he is taking all appropriate steps to obtain all necessary approvals to complete those transfers or sales.

13. Defendant Gary Walden is enjoined from directly or indirectly performing any Property Management Responsibilities² at any of the Subject Properties or at any other residential rental property.

14. Defendant Gary Walden is enjoined from entering the premises at any of the Subject Properties, including, but not limited to, the dwelling units, leasing offices, basements, communal spaces, yards, parking areas, and garages.

15. Defendant Gary Walden is enjoined from initiating or knowingly participating in any direct personal contact with any current or past tenants of the Subject Properties, with any persons who have inquired about or indicated an intention to reside in any of the Subject

¹ A complete and current list of the Subject Properties, provided by the Defendants, is incorporated by reference herein and attached to this Decree as Appendix A.

² As used in this Decree, "Property Management Responsibilities" include showing or renting housing units; processing rental applications; supervising or performing repairs or maintenance; setting rents and security deposits; determining tenant eligibility for subsidies or waivers of fees and rent; determining whom to rent to, whom to evict, and/or whose lease to renew or not renew; inspecting dwelling units; collecting rent and fees; overseeing all 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.

Properties, or with any aggrieved persons (as defined in paragraph 22). He shall refrain from initiating any such contact and shall terminate such contact if initiated by others.

16. Within 15 days of the effective date of this Decree, Defendant Gary Walden shall provide to the United States, in writing, the name and phone number of the probation officer to whom he is assigned.³ If the probation officer to whom he is assigned changes at any time during the term of this Consent Decree, Defendant Gary Walden shall provide to the United States, in writing, the subsequent probation officer's name and phone number within 5 business days of receiving notice of the change.

17. If Defendant Gary Walden violates any of the provisions of this Consent Decree, the United States may seek any and all available remedies for those violations, including instituting a civil contempt proceeding and notifying Gary Walden's probation officer of the violation.

III. ACQUISITION OR TRANSFER OF INTEREST IN SUBJECT PROPERTIES

18. If, at any time while this Consent Decree remains in effect, Defendant Gary Walden acquires a direct or indirect management, ownership, financial, or control interest in any other residential rental property, such property shall be considered a Subject Property and shall become subject to the applicable provisions of this Consent Decree. Within thirty (30) days of acquiring such an interest, Defendant Gary Walden shall notify counsel for the United States of the nature of his interest in the dwelling or property; the address of the property; the number of individual dwelling units at the property; and any other information required under the Consent

³ All documents or other communications required by this Consent Decree to be sent to counsel for the United States shall be sent by 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 175-83-20, or as otherwise directed by the United States. Facsimile transmissions shall be sent to (202) 514-1116.

Decree. Defendant Gary Walden shall further provide a copy of the documents memorializing the transfer in interest.

19. If, prior to the effective date or at any time while this Consent Decree remains in effect, a Subject Property has been or is sold or transferred to a bona fide, independent, third-party purchaser in an arms-length transaction,⁴ such property shall cease to be a Subject Property. For purposes of this paragraph, a “bona fide, independent, third-party purchaser” is one in which neither Defendant Gary Walden nor a corporation or entity of which he is an officer, partner, employee, or agent, has any current or past financial, contractual, personal, or familial relationship.

20. If at any time while this Consent Decree remains in effect, any Defendant maintains that its obligations under this Consent Decree have terminated or changed because it has sold or transferred one of the Subject Properties to a bona-fide third party purchaser in an arms-length transaction, the Defendant shall inform the United States within thirty (30) days of such transaction and provide the date of the sale or transfer, copies of the sale or transfer documents, and the name(s) and contact information for the subsequent purchaser.

21. If any transfer of interest in all or a portion of one of the Subject Properties is not an arms-length transaction, the Defendants shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of this Consent Decree for its duration.

⁴ For purposes of this Consent Decree, “arms-length transaction” is defined as a transaction that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that transaction. A transaction involving a corporate entity in which any Defendant, or any person related to any Defendant by blood or marriage, is an officer, agent, employee, or partner, or has any ownership, financial, or control interest, shall not be considered an arms-length transaction.

IV. MONETARY DAMAGES FOR AGGRIEVED PERSONS

22. The Defendants shall deposit in an interest-bearing escrow account the total sum of **Five Hundred Thousand Dollars (\$500,000.00)** for the purpose of compensating the aggrieved persons identified in Appendix B, as well as any additional persons whom the United States determines may have been harmed by the Defendants' discriminatory rental practices (hereinafter "aggrieved persons"). This money shall be referred to as "the Settlement Fund." These funds shall be deposited into the Settlement Fund as follows: \$100,000 within thirty (30) days of the entry of this Consent Decree, and \$400,000 by January 15, 2018. In addition, within fifteen (15) days of the establishment of the Settlement Fund, the Defendants shall submit proof to the United States that the account has been established and the funds deposited.

23. Any interest accruing to the Settlement Fund shall become a part of the Settlement Fund and be utilized as set forth herein.

24. The Defendants shall be solely responsible for any taxes assessed or owed on any interest earned on money deposited pursuant to paragraph 22, above.

25. Beginning within thirty (30) days of the entry of this Consent Decree, counsel for the Defendants shall publish a Notice to Potential Victims of Housing Discrimination ("Notice"), in the form of the Notice at Appendix C, informing readers of the availability of monetary damages. Each Notice shall set forth a summary of the legal and evidentiary contentions of the United States and a general statement of the relief provided under the Consent Decree. Each Notice shall also contain a statement that the United States seeks information from any persons who claim to have been subjected to sexual harassment while a tenant at any of the Subject Properties. Each Notice shall invite such persons to contact counsel for the United States within one hundred and twenty (120) days from the effective date of this Consent Decree. The Notice

shall be published on at least six (6) occasions in the 'A' Section (or News Section) of the DOMINION POST, including at least three (3) separate occasions on Sunday, in a space measuring at least one-fourth (1/4) of a page.

26. The Defendants shall complete the publication of all notices within ninety (90) days from the effective date of this Consent Decree. The Defendants shall provide a copy of the newspapers containing each such Notice to counsel for the United States within fifteen (15) days after publication of the Notice.

27. The Defendants shall produce any rental/tenancy records, or any other records in their possession, custody, or control, that the United States believes to be useful in identifying persons who may be entitled to relief under this Consent Decree. Upon reasonable notice, the Defendants shall provide such rental/tenancy records or shall permit representatives of the United States to make copies of such rental/tenancy records.

28. Nothing in this Consent Decree shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

29. The United States shall investigate the claims of any newly identified allegedly aggrieved persons and shall make a preliminary determination as to which additional persons are aggrieved and an appropriate amount of damages that should be paid to each aggrieved person. The Defendants shall permit the United States, upon reasonable notice, to review and copy any records that may facilitate its determinations regarding the claims of allegedly aggrieved persons. The United States will inform the Defendants in writing of its preliminary determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim. The Defendants hereby waive the right to dispute the United States' determinations regarding the currently identified aggrieved persons identified at Appendix B.

With respect to any additional identified aggrieved persons, the Defendants shall have twenty-one (21) days to review the declarations and provide to the United States any documents or information that they believe may refute the claims.

30. After receiving the Defendants' comments, the United States shall submit its final recommendations to the Court for approval, identifying the aggrieved persons and an appropriate amount of damages that should be paid to each such person, together with a copy of the sworn declarations and any documents or additional information submitted by the Defendants. If the Defendants agree with the United States' recommendations, the recommendations shall be submitted to the Court in the form of a Stipulated Order. When the Court issues an order approving or changing the United States' proposed distribution of funds for allegedly aggrieved persons, the Defendants shall, within 10 days of the entry of the Court's order, deliver to counsel for the United States, by overnight delivery in accordance with footnote 3, a separate check payable to each aggrieved person in the amounts approved by the Court.

31. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund plus accrued interest.

32. When counsel for the United States has received a check from the Defendants payable to an aggrieved person and a signed release in the form of Appendix D from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release to counsel for the Defendants. No aggrieved person shall be paid until she has executed and delivered to counsel for the United States the release at Appendix D.

V. CIVIL PENALTY

33. By January 15, 2018, the Defendants shall make a payment of **One Hundred Thousand Dollars (\$100,000)** to the United States as a civil penalty pursuant to 42 U.S.C. §

3614(d)(1)(C). This payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

VI. DURATION, MODIFICATIONS, AND REMEDIES

34. This Consent Decree shall remain in effect for five (5) years after the effective date. If one or more Defendants violates one or more terms of the Consent Decree or if the interests of justice so require, the United States may move the Court to extend the period in which this Decree is in effect against the Defendant(s) alleged to have violated it.

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

36. By agreeing to entry of this Consent Order, the Defendants agree that the facts underlying this lawsuit constitute a “first violation” of the Fair Housing Act, pursuant to 42 U.S.C. § 3614(d)(1)(C)(i).

37. The parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree 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 any Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree 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.

VII. RETENTION OF JURISDICTION AND FINAL JUDGMENT

38. The Court shall retain jurisdiction over this case after the effective date of this Consent Decree to enforce compliance with its terms, or to take any action necessary or appropriate for its interpretation, construction, execution, modification, or the resolution of disputes. During the term of this Consent Decree, any Party may apply to the Court for any relief necessary to construe or effectuate its terms.

39. The Parties reserve all legal and equitable rights and defenses available to them to enforce or defend the provisions of this Consent Decree.

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment in this matter as to Plaintiff and Defendants. The Court, finding no just reason for delay, therefore enters this Consent Decree as its final judgment under Fed. R. Civ. P. 54 and 58.

VIII. MISCELLANEOUS

41. The parties agree that, as of the effective date of this Decree, 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, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any of the parties of any other obligations imposed by this Consent Decree.

42. The United States and the Defendants will bear their own costs and attorneys’ fees associated with this litigation.

IT IS SO ORDERED this 10th day of July, 2017.

James M. Keeley
UNITED STATES DISTRICT JUDGE

By their signatures below, the parties consent to the entry of this Consent Decree:

Respectfully submitted this 7th day of July, 2017.

For Plaintiff United States of America:

T.E. WHEELER, II
Acting Assistant Attorney General
Civil Rights Division

BETSY STEINFELD JIVIDEN
Acting United States Attorney

SAMEENA SHINA MAJEED
Chief
MICHAEL S. MAURER
Deputy Chief

/s/ Helen Campbell Altmeyer

/s/ Charla D. Jackson

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For Defendant Gary Walden:

/s/ Debra H. Scudiere

DEBRA H. SCUDIERS, ESQ.
Guardian *Ad Litem* for Gary Walden
Kay, Casto & Chaney, PLLC
1085 Van Voorhis Road, Suite 100
Morgantown, WV 26505
Tel.: (304) 225-0970
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**For Defendants Brian Carl Walden, as
Conservator for Gary Walden, protected
person; Brian Carl Walden, as
Administrator CTA of the Estate of
deceased Tina Walden; Walden Homes,
LLC d/b/a Walden Rentals; and 973
Chestnut Ridge Road, Inc.:**

/s/ George Armistead

GEORGE ARMISTEAD, ESQ.
Baker & Armistead, PLLC
168 Chancery Row
Morgantown, WV 26507
Tel.: (304) 292-8473
Fax: (304) 292-8483
Email: GArmistead@labs.net

Appendix A

SUBJECT PROPERTIES

311 Beverly Avenue, Morgantown, WV
256 Fife Street, Morgantown, WV
649 Pennsylvania Avenue, Morgantown, WV
1136 Richwood Avenue, Morgantown, WV
1137 Richwood Avenue, Morgantown, WV
1139 Richwood Avenue, Morgantown, WV
1142 Richwood Avenue, Morgantown, WV
1158 Sabraton Alley, Morgantown, WV
670 Westview Avenue, Morgantown, WV
973 Chestnut Ridge Road, Morgan District, WV
5 Bryant Avenue, Westover, WV
40 Cleveland Avenue, Westover, WV
44 Cleveland Avenue, Westover, WV
42 Dunkard Avenue, Westover, WV
50 Dunkard Avenue, Westover, WV
52 Dunkard Avenue, Westover, WV
122 Dunkard Avenue, Westover, WV
201 Dunkard Avenue, Westover, WV
404 Dunkard Avenue, Westover, WV
416A Dunkard Avenue, Westover, WV
416B Dunkard Avenue, Westover, WV
436 Dunkard Avenue, Westover, WV
440 Dunkard Avenue, Westover, WV
444 Dunkard Avenue, Westover, WV
27 Eric Street, Westover, WV
29 Eric Street, Westover, WV
2422 Fairmont Road, Westover, WV
105 Ferry Street, Westover, WV
59 Harrison Avenue, Westover, WV
525 Michigan Avenue, Westover, WV

405 Monongahela, Westover, WV
21 Monongalia Avenue, Westover, WV
27A Monongalia Avenue, Westover, WV
27B Monongalia Avenue, Westover, WV
652 Ohio Avenue, Westover, WV
128 Parkview Avenue, Westover, WV
645 Poling Avenue, Westover, WV
206 Snyder Street, Westover, WV
406 Snyder Street, Westover, WV
424 Snyder Street, Westover, WV
410 Vincent Street, Westover, WV
412 Vincent Street, Westover, WV
414 Vincent Street, Westover, WV
416 Vincent Street, Westover, WV
120 West First Street, Westover, WV
10 West High Street, Westover, WV
916 West Park, Westover, WV
920 West Park, Westover, WV
2 Western Avenue, Westover, WV
210 Western Avenue, Westover, WV
310 Western Avenue, Westover, WV
400 Herman Avenue, Star City, WV
402 Herman Avenue, Star City, WV
3420 University Avenue, Star City, WV
3424 University Avenue, Star City, WV

Appendix B

IDENTIFIED AGGRIEVED PERSONS

Melissa Allen

Terri Bennett

Christy Chambers

Kelly Chambers

Abigail Freeland

Shaney Lemasters

Heather Lipscomb

Rana Mears

Courtney Miller

Maureen Richie

Brandi Rohrbaugh

Diane Sanders

Tina Stalnaker

Gloria Tripplett

Tara Williams

Appendix C

NOTICE TO POTENTIAL VICTIMS OF SEXUAL HARASSMENT
OF GARY WALDEN

On _____, 201_, the United States District Court for the Northern District of West Virginia entered a Consent Decree resolving a housing discrimination lawsuit brought by the United States against Gary Walden and other related parties (No. 16-CV-00042). The lawsuit alleged that Gary Walden engaged in a pattern or practice of housing discrimination by sexually harassing women at residential rental properties in or around Morgantown, West Virginia, in violation of the Fair Housing Act.

Under the Consent Decree, a Settlement Fund has been established to compensate persons whose rights may have been violated by the Defendants listed above. You may qualify to recover from this Settlement Fund if you were a resident at a property managed by Gary Walden and experienced unwelcome sexual comments, gestures, or offers to trade sex for housing benefits from him.

If you believe you have been discriminated against because of sex in connection with an apartment owned or operated by Gary Walden, please contact the United States Department of Justice at:

1-800-896-7743, mailbox 97.

You may also write to:

***United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave. N.W. -G St
Washington, DC 20530
Attn: DJ# 175-83-20***

You must call or write on or before [no more than 120 days after the effective date of the Consent Decree] and your message or letter must include your name, address, and, if possible, at least TWO telephone numbers where you may be reached.

Appendix D

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the parties' agreement to the terms of the Consent Decree they entered into in the case of United States v. Gary Walden et al., 16-cv-00042 (N.D. W.Va.), as approved by the United States District Court for the Northern District of West Virginia, and in consideration for the payment of \$_____, I, _____, do hereby fully release and forever discharge Defendants named in this lawsuit, as well as their insurers, attorneys, agents, employees, former employees, heirs, and executors from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have had against any of them for any of Gary Walden's actions or statements related to those claims through the date of the entry of the Consent Decree.

Executed this _____ day of _____, 201_.

Signature

Print Name

Home Address

Home Address Continued