

United States v. Housing Authority of the City of Anderson, Indiana

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND THE HOUSING AUTHORITY
OF THE CITY OF ANDERSON, INDIANA**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is made and entered between Plaintiff, the United States of America (“the United States”), through the Department of Justice, and Defendant Housing Authority of the City of Anderson (“AHA”), through their authorized representatives. The Plaintiff and the Defendant are referred to herein as the “Parties.”

2. This Settlement Agreement arises out of a Complaint filed by the United States on September 14, 2017, captioned *United States v. Housing Authority of the City of Anderson* (S.D. Ind.) (the “Civil Action”) to enforce Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. §§ 3601-3631.

3. Since November 2015, the United States investigated alleged violations of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* by the AHA.

4. In its Complaint, the United States alleges that the AHA has engaged in a pattern or practice of discrimination on the basis of disability and sex and/or a denial of rights to a group of persons on the basis of disability and sex that raises an issue of public importance, in violation of 42 U.S.C. § 3614.

5. AHA denied and continues to deny the United States’ allegations and believes that any and all Fair Housing Act claims brought by the United States would be resolved in its favor. Nevertheless, AHA and the United States have engaged in pre-lawsuit negotiations, and they desire to compromise and settle completely the disputes between them upon the terms and in the manner herein provided.

II. RECITALS

6. AHA operates and manages the City of Anderson's public housing program and administers the United States Department of Housing and Urban Development's ("HUD") Housing Choice Voucher Program in Anderson. AHA was created in 1975 pursuant to Indiana law for the purpose of providing "safe and sanitary dwelling accommodations for persons of low income." Ind. Code § 36-7-18-2. AHA is located at 528 W. 11th Street, Anderson, IN 46016 in the Southern District of Indiana.

7. AHA owns and operates public housing properties in the City of Anderson: two multi-family apartment complexes, Lynwood Village and Westvale Manor, and approximately sixty scattered-site homes.

8. At all times relevant to the Complaint, AHA was responsible for the operation and management of Westvale Manor and Lynwood Village.

9. Westvale Manor is located at the 2200 block of Fulton Street, Anderson, IN 46016. It is a residential apartment complex consisting of sixty units across eight two-story buildings.

10. Lynwood Village is located at the 1500 block of Weatherly Way, Anderson, IN 46016. It consists of twenty-three two-story townhouses and one single-story unit.

11. The units at Westvale Manor and Lynwood Village are dwellings within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

12. At all times relevant to the United States' allegations, AHA has employed Charles Weatherly. Weatherly is currently the Executive Director of AHA. Prior to November 2015, Charles Weatherly was the Deputy Director of AHA.

13. At all times relevant to the United States' allegations, AHA employed Connie Klungness as manager of AHA's public housing units.

14. The United States alleges that since at least 2009 through at least 2015, Defendant AHA regularly received disability-related requests for maintenance, accommodation, or modification from its tenants. Tenant requests were allegedly made orally, in person and over the phone to AHA staff, and in writing. Some tenant requests were also accompanied by a doctor's note.

15. The United States alleges that AHA routinely denied or ignored these requests, sometimes for years at a time, including:

- a. Tenants who specifically requested to be assigned to ground-floor units because of mobility impairments affecting their ability to use the stairs;
- b. Tenants requesting a designated disabled parking spot because of their inability to walk a far distance from the parking lot to their unit;
- c. Tenants with mobility impairments who requested that AHA staff install grab bars in their bathrooms so that they could safely enter and leave their bathtubs and showers; and
- d. Tenants with mobility impairments who requested that AHA staff clear away snow and ice accumulation on the sidewalks and the premises so that they could safely and independently navigate the premises and use their mobility aids, including wheelchairs and canes.

16. The United States alleges that AHA was given sufficient information that tenants were disabled and that some accommodation and/or modification relating to their disabilities was necessary.

17. The United States further alleges that these tenant requests for accommodation and/or modification were reasonable and necessary.

18. The United States alleges that since at least 2007 through at least 2013, AHA, through its employees, has subjected its female tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment, on multiple occasions. Such alleged conduct has included, but is not limited to:

- a. Making unwelcome sexual comments about female tenants' appearances and bodies;
- b. Making unwelcome sexual advances to female tenants; and
- c. Making unwelcome and unwanted solicitations for sex to female tenants.

19. The United States alleges that Defendant AHA is liable for the actions of its agents, Charles Weatherly, Connie Klungness, Brian White, Bill Hofer, and Curtis Stowes. AHA knew or should have known of the discriminatory conduct of its agents, had the authority to take preventative and corrective action, yet failed to take reasonable preventive or corrective measures.

20. The United States alleges that by the actions and statements described above, AHA has:

- a. Discriminated in the terms, conditions or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of sex and disability, in violation of 42 U.S.C. § 3604(b) and 3604(f)(2); and
- b. Refused to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person

with a disability equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

21. The United States further alleges that AHA's conduct described above constitutes:
- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, or
 - b. A denial of rights to a group of persons granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, which denial raises an issue of general public importance.

22. The United States alleges that tenants with disabilities, female tenants, and persons associated with them have been injured by AHA's discriminatory conduct.

23. The United States alleges that AHA's conduct was intentional, willful, and/or taken in reckless disregard of the rights of others.

24. AHA denies the United States' allegations. Nothing in this Agreement shall be construed as a finding or admission of liability on the part of AHA.

III. STATEMENT OF CONSIDERATION

25. The Parties agree that the United States' allegations against AHA should be resolved without further proceedings or a trial. Therefore, the United States and AHA agree to the entry of this Settlement Agreement (the "Agreement"). This Agreement constitutes full resolution of the claims in the United States' Complaint in this case against AHA.

26. In consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions.

IV. TERMS AND CONDITIONS

A. MONETARY DAMAGES TO AGGRIEVED PERSONS

27. Within thirty (30) days of entry of this Agreement, AHA shall pay a total of SEVENTY THOUSAND DOLLARS (\$70,000) in monetary damages to identified aggrieved persons in the amounts listed in Appendix A. No aggrieved person shall be paid until he/she has executed and delivered to counsel for the United States the release at Appendix B.

B. PROHIBITED CONDUCT

28. As part of this Agreement, AHA, its officers, agents, employees, and all other persons or entities in active concert or participation with them, agree to refrain, with respect to the rental of dwellings from:

- a. Refusing to rent or sell a dwelling, refusing or failing to provide or offer information about a dwelling, refusing to negotiate for the rental or sale of a dwelling, or otherwise making unavailable or denying a dwelling to any person because of sex; and
- b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sex.

29. Also as part of this Agreement, AHA, its officers, agents, employees, and all other persons or entities in active concert or participation with them, agree to refrain, with respect to the rental of dwellings from:

- a. Discriminating on the basis of disability as prohibited by the FHA, 42 U.S.C. §§ 3601-3619;

- b. Discriminating in the rental of, or otherwise making unavailable or denying, a dwelling to any renter on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1);
- c. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with the rental of such a dwelling on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2); and
- d. Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a resident with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3).

30. As part of this Agreement, AHA agrees that it does not intend to and will not retain former maintenance contractor Curtis Stowes to work in any capacity at AHA.

C. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

31. During the duration of this Agreement, AHA shall, no later than fifteen (15) days after occurrence, provide to the United States notification and documentation of the following events:

- a. Any change to AHA's rules or practices regarding the Nondiscrimination Policy or the nondiscriminatory standards and procedures implemented by AHA in conjunction with the Consent Decree in *Fair Housing Center of Central Indiana v. Housing Authority of the City of Anderson*, 1:16-cv-785-TWP-DML ("*FHCCI v. AHA*");

- b. Proof of notification of the nondiscrimination policy set forth as an attachment to the Consent Decree entered in *FHCCI v. AHA*, including executed copies of the Acknowledgment forms, attached as Exhibits 6-9 to the Consent Order filed in *FHCCI v. AHA*, and a list of the names and addresses for all tenants to whom the policy was provided; and
- c. Any written or oral complaint against AHA, or any of AHA's agents or employees, regarding discrimination in housing. If the complaint is made orally, AHA shall maintain a log upon which they record the name of the complainant; the address and telephone number of the complainant; the date the complaint was received; the name of the AHA employee or agent who received the complaint; the name of the AHA employee or agent who is the subject of the complaint; the name of the property involved in the complaint; and a general description of the complaint. If the complaint is written, AHA shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. AHA shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within 15 days of the substance of any resolution of such complaint.

32. AHA shall deliver to counsel for the United States a report containing the following information about its compliance efforts:

- a. Notification and documentation of the adoption and implementation of the nondiscriminatory standards and procedures attached as exhibits to the Consent Order filed in *FHCCI v. AHA*;
- b. Photographs of AHA's office, showing that fair housing signs and Nondiscrimination Standards and Procedures have been posted;
- c. A list of all rental properties in which AHA or its members acquire an ownership or management interest, in whole or in part, after the date of entry of this Agreement, including the street address, the number of rental units at each property, and a description of the interest in the property.

33. These actions shall be taken within ninety (90) days of entry of this Agreement and every six (6) months thereafter for the duration of this Agreement. In addition to the reports required above, AHA shall submit a final report to the United States no later than sixty (60) days before the expiration of this Agreement.

34. During the period in which this Agreement is in effect, AHA shall preserve all records that are the source of, contain, or relate to any of the information pertinent to its obligations under this Agreement. Upon reasonable notice to counsel for AHA, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, AHA shall provide copies of such documents.

V. IMPLEMENTATION, ENFORCEMENT, AND DISMISSAL OF UNDERLYING ACTION

35. The United States may review compliance with this Agreement at any time. AHA agrees to cooperate with the United States in any review of compliance with this Agreement.

36. Should AHA fail to timely make any required settlement payment described herein or materially breach any other provision of this Agreement, the Parties agree that upon any such claim of breach as made by the United States, the United States may move to restore the present Action to the active docket of this Court for purposes of resolution of any such claim of breach, or may file a separate action in the United States District Court for the Southern District of Indiana to remedy the breach. In the event of such a claim of breach as made by the United States, AHA consents to and agrees not to contest the Government's motion to restore the present Action to the Court's active docket, and consents to and agrees not to contest the exercise of jurisdiction, including personal jurisdiction over the Defendant, by this Court.

37. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action. If the United States believes that there has been a failure by the AHA to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the United States will notify AHA in writing of its concerns and the Parties will attempt to resolve those concerns in good faith. The AHA shall have fifteen (15) days from the date the United States provides notification of any breach of this Agreement to cure the breach.

38. If the Parties are unable to reach a resolution within fifteen (15) days, the United States may, until the Civil Action is dismissed, seek appropriate relief before the Court in the Civil Action. After the Civil Action is dismissed, the United States may bring a civil action for breach of this Agreement or any provision thereof, in the United States District Court for the Southern District of Indiana. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. This Court shall serve as the exclusive

jurisdiction and venue for any dispute concerning this Agreement. The Parties consent to and agree not to contest the jurisdiction of this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.

39. In the event the United States files a civil action as contemplated by paragraph 36, above, to remedy breach of this Agreement, the United States may seek, in addition to any remedy available under law or equity, an injunction mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate. The United States may also seek from the Court an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement. If such a civil action is filed, AHA expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

40. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

41. After the monetary payments required by paragraph 27 have been made, the Parties shall jointly move the Court for dismissal with prejudice of the underlying civil action, subject to its reinstatement as set forth in paragraph 36, above.

VI. TERMINATION OF LITIGATION HOLD

42. The Parties agree that, as of the date of the dismissal of the Civil Action, litigation is not "reasonably foreseeable" concerning the matters described above or in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve

documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Agreement.

VII. DURATION, EXECUTION, AND OTHER TERMS

43. This Agreement is effective on the date of signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

44. The duration of this Agreement shall be for a period of three (3) years from the date of execution.

45. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Agreement.

46. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

47. For purposes of construing or interpreting this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

48. This Agreement constitutes the complete agreement among the Parties, except as noted in paragraphs 31-32. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

49. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

50. This Agreement is binding on the Parties and their transferees, heirs, and assigns.

51. This Agreement is governed by and shall be interpreted under the laws of the United States.

52. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

53. This Agreement is a public document. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

54. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

55. This Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.

FOR THE PLAINTIFF, UNITED STATES:

DATED: September 14, 2017

JOSH MINKLER
United States Attorney
Southern District of Indiana

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

SAMEENA SHINA MAJEED
Chief



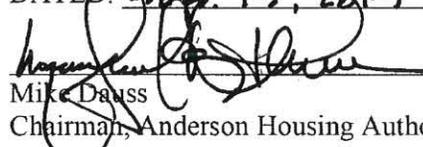
TIMOTHY J. MORAN

Deputy Chief
KINARA A. FLAGG
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
950 Pennsylvania Avenue, NW
Northwestern Building, 7th Floor
Washington, D.C. 20530
Phone: (202) 353-4141
Email: kinara.flagg@usdoj.gov

KELLY ROTA
Assistant United States Attorney
10 W. Market St, Suite 2100
Indianapolis, IN 46204
Phone: (317) 226-6333
Email: kelly.ropa@usdoj.gov

FOR THE DEFENDANT, HOUSING AUTHORITY OF THE CITY OF ANDERSON:

DATED: Sept. 13, 2017



Mike Dauss
Chairman, Anderson Housing Authority Board of Commissioners

APPENDIX A

Lasha Allen	\$15,000
Charles Boyd	\$15,000
Lorraine Davis	\$4,000
McKinley Walker	\$7,000
Lynelle Siler	\$15,000
Francie Steen	\$7,000
Effie World	\$7,000

APPENDIX B

RELEASE OF ALL CLAIMS

In consideration of and contingent upon the payment of the sum of dollars (\$ _____), pursuant to the Settlement Agreement executed by the United States and the Housing Authority of the City of Anderson, I hereby release and forever discharge the Defendant named in this action from any and all liability for any claims, legal or equitable, I may have against Defendant arising out of the issues alleged in this action as of the date of the entry of that Settlement Agreement. I fully acknowledge and agree that this release of the 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.

(Signature)

NAME: _____

ADDRESS: _____

DATE: _____