

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 1:09cv1225
CITY OF COLUMBUS, INDIANA,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

The United States initiated this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“the Fair Housing Act”), 42 U.S.C. §§ 3601-3619. In its Complaint, the United States alleges that the City of Columbus (the “City”), on March 29, 2005, and again on July 24, 2007, denied requests by Addictions Counseling Treatment Service, Inc., d/b/a Bethesda House, Inc. (“Bethesda House”), for a land use variance which would have allowed Bethesda House, Inc. to operate a building located at 423/425 Lafayette Avenue in Columbus as an addictive behavior recovery home for up to 16 persons recovering from addictions. The United States alleges that the City took these actions with an intent to discriminate on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1); and that the City’s denials constituted refusals to make a reasonable accommodation, in violation of 42 U.S.C. § 3604(f)(3)(B). The Complaint further alleges that the Defendant’s conduct as described above constitutes a denial of rights to a group of persons that raises an issue of general public importance in violation of the Fair Housing Act, 42 U.S.C. §§ 3614(a), or a discriminatory housing practice under 42 U.S.C. § 3614(b)(1).

On June 16, 2005, Bethesda House filed a timely complaint with the United States

Department of Housing and Urban Development (“HUD”) pursuant to 42 U.S.C. § 3610(a) against the City, alleging discrimination in housing on the basis of disability. After some preliminary investigation, HUD referred the complaint to the Department, pursuant to 42 U.S.C. 3610(g), however, the Bethesda House decided to file a new application for a land use variance and this time specifically included a request for a reasonable accommodation. The City denied the Bethesda House request for a land use variance and reasonable accommodation on July 25, 2007, and Bethesda House filed a second complaint with HUD on May 20, 2008.

Pursuant to the requirements of 42 U.S.C. §§ 3610(g) (2)(C) and 3614(b) (1)(B), the Secretary of HUD determined that the complaints involve the legality of state or local zoning or other land use laws or ordinances. Accordingly, pursuant to 42 U.S.C. § 3610(g), on or about June 6, 2008, the Secretary referred these matters to the Attorney General for appropriate action under 42 U.S.C. § 3614(b)(1).

This Consent Decree (the “Decree”) is intended to effect a comprehensive settlement of the United States’ claims. To avoid costly and protracted litigation, the United States and the Defendant have jointly entered into and agreed to the entry of this Decree to resolve the claims presented.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

I. JURISDICTION

1. The Court has personal jurisdiction over the Defendant for purposes of this civil action, and subject matter jurisdiction over the claims in this civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a).

II. DEFINITIONS

2. The following terms when used in this Decree shall have the following meaning:

A. The term “Defendant” includes the City of Columbus, the Columbus Board of Zoning Appeals, their employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with them;

B. “Disability” is the equivalent of the term “handicap” as used in the Fair Housing Act. See 42 U.S.C. § 3602(h);

C. “Reasonable Accommodation” refers to 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, within the meaning of 42 U.S.C. § 3604(f);

D. The “effective date of the Decree” refers to the date the Court enters this Consent Decree.

III. GENERAL INJUNCTIONS AND NONDISCRIMINATION PROVISIONS

3. The Defendant shall not:

A. deny, or otherwise make unavailable, a dwelling to a buyer or renter because of a disability of that buyer or renter, of any person residing in or intending to reside in such dwelling, or of any person associated with such buyer or renter;

B. discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person; or

C. refuse to make reasonable accommodations in their rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling.

4. The preceding injunctions shall specifically, but not exclusively, cover:

A. administrating, enforcing, or amending zoning ordinances of the City of Columbus, including, but not limited to, receiving, evaluating, or deciding upon applications for building permits, special exceptions, variances, or other uses not provided for; and

B. conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or reviewing any decision made by any zoning, land-use, or building official.

IV. ESTABLISHMENT AND IMPLEMENTATION OF REASONABLE ACCOMMODATION POLICY

5. Within thirty (30) days after the effective date of the Decree, the Defendant shall submit to the United States for approval¹ a draft policy for receiving and handling requests made by people with disabilities for reasonable accommodations (“Reasonable Accommodation Policy”). The Reasonable Accommodation Policy shall comply with the requirements of 42 U.S.C. §§ 3601 *et seq.*, and shall include the following provisions:

¹ The Defendant shall send all documents, notices, and other communications required by the Decree to be sent to the United States to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., G Street, Washington, D.C. 20530, Attn: DJ #175-54-153. The Defendant shall send all documents, notices, and communications required by or relating to this Decree by regular United States mail and by facsimile to (202) 514-1116.

A. A description of where and how the Defendant will accept and process requests for accommodations in their rules, policies, practices, or in the provision of their services;

B. The Defendant shall maintain records of all oral and written requests for reasonable accommodation and the Defendant' responses thereto;

C. The Defendant shall acknowledge all requests for reasonable accommodation, in writing, within fourteen (14) days of the Defendant' receipt of an oral or written request;

D. The Defendant shall provide written notification to those requesting a reasonable accommodation of the decision regarding their request for accommodation within sixty (60) days of the receipt of the request; if the Defendant denies a request, it shall include an explanation of the basis for such denial in this written notification;

E. The Defendant shall retain the final written decisions regarding reasonable accommodation requests in their files; and

F. The Defendant shall not impose any additional fees, costs, or otherwise retaliate against any person who has exercised his or her right under the Fair Housing Act to make one or more reasonable accommodation requests.

6. Within thirty (30) days of receiving notification from the United States that the Reasonable Accommodation Policy has been approved, the Defendant shall adopt and implement the Reasonable Accommodation Policy. Within ten (10) days of the adoption and implementation, the Defendant shall send a copy of the Reasonable Accommodation Policy to the United States.

7. Within ten (10) days of adopting and implementing the Reasonable

Accommodation Policy, the Defendant shall post and publicly display the Reasonable Accommodation Policy on the City's website, and at the offices of the Defendant in which announcements or vacancies are posted.

8. The Defendant shall keep written records of each request for reasonable accommodation they receive. These records shall include: (A) the name, address, and telephone number of the person making the request; (B) the date on which the request was received; (C) the nature of the request; (D) whether the request was granted or denied; and (E) if the request was denied, the reason(s) for the denial.

9. If the Defendant propose to modify the Reasonable Accommodation Policy, it shall first provide the United States with a copy of the proposed changes. If the United States does not deliver written objections to the Defendant within sixty (60) days of receiving the proposed changes, the changes may be effected. If the United States makes any objections to the proposed changes within the 60-day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

10. Nothing in this Decree shall be interpreted to require persons with disabilities – or providers of housing for persons with disabilities – acting or operating in accordance with applicable zoning, licensing, and/or land use laws and practices, to seek permission from the Defendant to begin or continue such action or operation.

V. REASONABLE ACCOMMODATION FOR 423/425 LAFAYETTE AVENUE

11. If, during the term of this Decree, Bethesda House, Addictions Counseling Treatment Service, Inc., or Brenda and/or Mike Harris make a request for a reasonable accommodation to operate a recovery home at 423/425 Lafayette Ave. for up to 11 persons, Defendant shall grant such request within ten (10) days.

VI. FAIR HOUSING TRAINING

12. The Defendant shall, no later than forty-five (45) days after the effective date of the Decree, provide training in the requirements of the Decree and the Fair Housing Act to the members and professional staff of the Columbus Bartholomew Planning Department and the Columbus Board of Zoning Appeals.

13. The training shall be conducted by a qualified third party, subject to the approval of the United States. The trainer shall be unconnected to the Defendant or their employees, officials, agents, or counsel, and any expenses associated with this training shall be borne by the Defendant.

14. As part of the training, each person trained shall be given a copy of the Decree and the Act.

15. The Defendant shall, no later than thirty (30) days after training, provide to the United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of Attachment A.

16. For each person commencing, during the term of the Decree, employment or service in any of the positions listed in this part, the Defendant shall, no later than thirty (30) days after such commencement or service, give each such person a copy of the Decree and the Fair Housing Act and shall require each such person to sign a certification acknowledging that he or she has received and read the Decree and the Act. This certification shall be in the form of Attachment B hereto.

VII. REPORTING AND RECORD KEEPING

17. No later than ten (10) days after the effective date of the Decree, the Defendant shall designate an employee or official of the City of Columbus to receive complaints of alleged

housing discrimination against any Defendant and coordinate compliance with this Decree. The designated person shall maintain copies of the Decree, the HUD complaint form, and the pamphlet entitled "Are You a Victim of Housing Discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to any Defendant. The Defendant shall notify the United States in writing of the name, address, and title of the designated person no later than thirty (30) days after the effective date of the Decree.

18. The Defendant shall prepare annual reports that detail the actions they have taken to fulfill their obligations under the Decree. The Defendant shall submit their first Compliance Report to the United States no later than 12 months after the effective date of the Decree, and subsequent reports every 12 months thereafter, for the duration of the Decree, except that the final report shall be delivered to the United States no fewer than sixty (60) days prior to the date upon which the Decree is scheduled to expire.

19. The Defendant shall include the following information in the Compliance Reports:

- A. the name, address, and title of the employee or official serving as the designated person referred to in paragraph 16;
- B. copies of the training certification and acknowledgment forms signed since the last report;
- C. any written complaint received since the last report alleging discrimination by any Defendant with respect to any matter subject to the injunctions in part III, above, including a description of any action taken in response to the complaint and copies of all pertinent documents, such as a copy of

the complaint, any documents filed with the complaint, and any written response to the complaint made by any Defendant;

D. the identity of each zoning, land-use, or building application or request for reasonable accommodation related to housing for disabled persons (including those for building permits, special exceptions, variances, or other uses not provided for) for which any Defendant has made a determination, indicating: (1) the date of the application; (2) the applicant's name; (3) the applicant's current residential street address; (4) the street address of the proposed housing; (5) the disposition of the application, including any appeals, indicating reasons for that outcome; and (6) if a vote was taken, how each participant voted and the date of the vote; and

E. all documents presented in support of oral testimony offered by any member of the public at any hearing held with respect to each such application or request that is denied by any Defendant.

20. If at any time during the term of this Decree, Bethesda House, Addictions Counseling Treatment Service, Inc. or a successor, or Brenda and/or Mike Harris makes a request for a reasonable accommodation to operate a recovery home at 423/425 Lafayette Ave., or elsewhere in the City of Columbus, Defendant shall within 10 days of receiving such a request send a copy to counsel for the United States.

21. For the duration of this Decree, the Defendant shall maintain all records relating to implementation of and compliance with all provisions of the Decree, including, but not limited to, all records related to zoning, land-use, or building applications or requests for reasonable accommodation related to housing for disabled persons. The United States shall have the

opportunity to inspect and copy any records maintained as required by the Decree after giving reasonable notice to the Defendant.

VIII. MONETARY RELIEF

22. The Defendant shall pay the sum of \$18,000 within ten (10) days of the effective date of the Decree by sending a check to the United States payable to Addictions Counseling Treatment Services, Inc.

IX. CIVIL PENALTY

23. The Defendant shall pay \$6,000 to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). Such payment shall be made no later than thirty (30) days after the effective date of the Decree by submitting to the United States a check in such amount made payable to the United States Treasury.

X. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

24. The Decree shall remain in effect for a period of three (3) years after its effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree in the interests of justice, or for other good cause, including on the basis that a Defendant has failed to comply with a provision of the Decree.

25. The parties agree to work cooperatively with one another in good faith to resolve informally any differences regarding interpretation of, and compliance with, the Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by any Defendant to perform in a timely manner any act required by this Decree or otherwise to act in violation of 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 attorney's fees that may have been occasioned by the violation or failure to perform.

XI. COSTS OF LITIGATION

26. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

It is hereby ORDERED, ADJUDGED, and DECREED this _____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

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s/ Timothy P. Coriden
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Attachment A

CERTIFICATION OF ATTENDANCE AT FAIR HOUSING TRAINING

On _____, I attended training on the Consent Decree entered by the federal district court in *United States v. City of Columbus, et al.*, Civil No. 1:09cv1225 (S.D. Ind.) on _____, 2010), and the federal Fair Housing Act . I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment B

**ACKNOWLEDGMENT OF RECEIPT OF COPIES OF CONSENT DECREE AND
FAIR HOUSING ACT**

On _____, I received copies of and have read the Consent Decree entered by the federal district court in *United States v. City of Columbus, et al.*, Civil No. 1:09cv1225 (S.D. Ind.) on _____, 2010), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment C

GENERAL RELEASE IN FULL AND FINAL SETTLEMENT OF CLAIMS

relating to the Consent Decree entered in *United States v. City of Columbus*, Civil No. 1:09cv1225_(S.D. Ind.) on _____, 2010)

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in *United States v. City of Columbus*, Civil No. 1:09cv1225 (S.D. Ind.) on _____, 2010), and the Defendant's payment of the sum of Eighteen Thousand Dollars (\$18,000), we, individually and on behalf of Addictions Counseling Treatment Services, Inc. (ACTS), hereby release the Defendant in this action, the City of Columbus, and its successors, insurers, agents and assigns, from any and all liability for any existing, pending or potential claims or causes of action, legal or equitable, we or ACTS may have against them arising out of the allegations raised in this action or any related action or complaint pending before HUD involving Defendant. We hereby acknowledge that we have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

In witness whereof, with the intent to be legally bound hereby, we have hereunto set our hands and seals this _____ day of _____, 2010.

MIKE HARRIS
Individually and on behalf of Addictions
Counseling Treatment Services, Inc.

BRENDA HARRIS
Individually and on behalf of Addictions
Counseling Treatment Services, Inc.