

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Civil No.: 05-cv-1819 (JNE/JJG)

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THOMAS J. FISCHER and)
DAWN FISCHER,)
)
Defendants.)
_____)

CONSENT ORDER

I. INTRODUCTION

1. This action was filed by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Act Amendments of 1988, 42 U.S.C. §§ 3601–3619. The United States alleges that Defendants engaged in a pattern or practice of discrimination on the basis of sex, and/or a denial of rights to a group of persons, in violation of 42 U.S.C. § 3614.
2. In its complaint, the United States alleges that Defendant Thomas J. Fischer engaged in a pattern or practice of discrimination on the basis of sex, in the rental of dwelling units he owned, co-owned and/or managed in and around Red Wing.
3. Specifically, the United States alleges that Defendant Thomas J. Fischer has subjected female tenants of the subject properties to discrimination on the basis of sex, including severe,

pervasive, and unwelcome sexual harassment. Such conduct has included, but is not limited to, unwelcome sexual touching; unwelcome verbal sexual advances; and entering the apartments of female tenants without permission or notice, all in violation of 42 U.S.C. § 3604(b) and (c).

The United States alleges that this conduct resulted in the denial of housing to some female tenants, in violation of 42 U.S.C. § 3604(a). The United States also alleges that Thomas J. Fischer engaged in threatening, intimidating, and retaliatory behavior toward female tenants, in violation of 42 U.S.C. § 3617.

4. The United States alleges that Defendant Dawn Fischer, who co-owned many of the dwelling units described above with her husband Thomas J. Fischer, is liable for the above-described discriminatory conduct of her agent and principal, Defendant Thomas J. Fischer, which conduct occurred within the scope of his employment and/or agency.
5. The Defendants deny the allegations contained in the Complaint filed by the United States. However, the parties have agreed that in order to avoid protracted and costly litigation over damages, this controversy should be resolved without a trial. Therefore, the parties consent to the entry of this Consent Order. Consent to this Order by the Defendants shall not in any way be construed to be an admission of statutory violations or of liability. This Order constitutes a full resolution of all claims alleged in the United States' Complaint.

II. SCOPE AND TERM OF CONSENT ORDER

6. The provisions of the Consent Order shall apply to Defendants Thomas J. Fischer and Dawn Fischer ("Defendants"), their employees, agents, assigns, successors-in-interest, and all persons in active concert or participation with any of them.
7. This Consent Order is effective immediately upon its entry by the Court. For purposes of this

Consent Order, the phrases “date of this Consent Order” and “effective date” shall refer to the date on which the Court enters the Consent Order.

8. This Consent Order shall be in effect for a period of five (5) years from the effective date.

III. INJUNCTION

9. It is hereby ORDERED, ADJUDGED AND AGREED that Defendants, their agents, employees, successors, and all persons currently in active concert or participation with them, are hereby enjoined from:
- a. Refusing to rent a dwelling unit, refusing or failing to provide or offer information about a dwelling unit, or otherwise making unavailable or denying a dwelling unit to any person because of sex;
 - b. Discriminating against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
 - c. Making, printing, publishing, or causing to be made, printed, or published any notice, statement or advertisement with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based on sex; or
 - d. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by 42 U.S.C. §§ 3603–3606.
10. For the term of this Consent Order, Defendants shall retain an independent management

company, approved by the United States (hereinafter “Management Company”), to manage the rental of any and all residential rental properties in which either Defendant has a direct or indirect ownership, management, or other financial interest. These dwelling units shall be referred to as the “Subject Properties.” A current and complete list of the Subject Properties is attached to this Consent Order as Attachment A.

11. Defendants shall retain the Management Company within thirty (30) days of the date of this Consent Order and shall continue to retain such company for the duration of this Consent Order. This requirement shall be in effect during any and all such times during the duration of this Consent Order in which either Defendant has a direct or indirect ownership, management, or other financial interest in any dwelling unit. If after retaining an independent Management Company, Defendants wish to change to another independent management company, Defendants may do so, provided that any such subsequent management company must also be approved in advance by the United States and comply with the requirements for the Management Company as described in this Consent Order.
12. The Management Company shall be responsible for all aspects of management of the Subject Properties that are rented or available for rent, including showing and renting units, making repairs, collecting rents, determining whom to rent to and/or evict, and all other aspects of the rental process.
13. Defendant Thomas J. Fischer shall refrain from entering the premises of the Subject Properties except that he may do so, when accompanied by a Management Company representative, when it is necessary for him to inspect the property or show it to a prospective buyer, if that

function cannot be reasonably delegated to an agent. However, in exigent circumstances requiring immediate aid or action, Defendant Thomas J. Fischer may enter the premises unaccompanied for the period of the exigency.

14. The provisions of Paragraph 13 shall not apply to the house located at 528 20th St., Red Wing, Minnesota, or the house located at 530 20th St., Red Wing, Minnesota, so long as those properties are occupied by the current residents, identified by initials M.M. and M.K., respectively.¹
15. For the duration of this Consent Order that Defendants are required to retain a Management Company, Defendants shall require the Management Company to do the following:
 - a. Implement, subject to the United States' approval, a written policy against sexual harassment, including a formal complaint procedure. A copy of this policy and procedure shall be provided to counsel for the United States within thirty (30) days after the date of entry of this Decree. This policy and procedure shall be implemented within fifteen (15) days if it is satisfactory to the United States, and at that time the Management Company shall notify all new and current tenants at the subject properties of the policy and procedure.
 - b. The Management Company shall ensure that all of its employees who will be performing any duties in relation to the subject properties are familiar with the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment.

¹ The United States is satisfied that these individuals have knowingly and voluntarily expressed a desire to continue to associate with Defendant Thomas J. Fischer without requiring the presence of a Management Company representative.

- c. Post an "Equal Housing Opportunity" sign in any rental office through which the subject properties are rented, which sign indicates that all apartments are available for rent on a nondiscriminatory basis. An 11-inch-by-14-inch poster substantially equivalent to the reduced sample appended to this Consent Order as Attachment B will satisfy this requirement. Such poster shall be placed in a prominent, well-lit, and easily readable location.
- d. Require that all advertising conducted for any of the subject properties in newspapers, telephone directories, radio, television or other media, and all billboards, signs (including at the entrance to the property), pamphlets, brochures and other promotional literature, include either a fair housing logo, the words "equal housing opportunity provider," and/or the following sentence:

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 legible and prominently placed.
- e. Send to the United States every six (6) months, a list of all tenants at the subject properties and their telephone numbers. Maintain all rental records kept in relation to rental of the subject properties, and allow the United States to inspect and copy all such records upon reasonable notice.
- f. Notify the United States in the event it obtains any information indicating that either Defendant is in violation of this Consent Order.
- g. Provide any information reasonably related to compliance with this Consent Order that

is requested by the United States.

16. Defendants shall report to the United States in the event that either Defendant purchases, inherits, or otherwise acquires an interest in any residential real estate property, or sells, transfers or otherwise disposes of any interest in any of the subject properties. Such written notification² shall be made within thirty (30) days after the purchase, inheritance, acquisition, sale, or transfer of interest and shall include the identity of the potential purchaser(s) or person(s) to whom the interest is being transferred.

IV. MONETARY DAMAGES TO AGGRIEVED PERSONS

17. Defendants will pay a total of two hundred ten thousand dollars (\$210,000.00) in monetary damages to persons whom the United States has identified as aggrieved persons. A list of such persons (hereinafter “identified aggrieved persons”) identifying the specific amount to be paid to each person is attached as Attachment C. The monetary damages shall be paid in two installments:
 - a. Within ten (10) business days of the date of entry of this Consent Order, Defendants shall deliver to counsel for the United States cashier’s checks made payable to each aggrieved person, in the amounts listed in Attachment C. The cashier’s checks for this first installment shall total one hundred seventy-five thousand dollars (\$175,000).

² All documents or other communications required by this Order to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-39-93, United States Department of Justice, 950 Pennsylvania Avenue N.W.-G St., Washington, D.C. 20530, or as otherwise directed by the United States. If the Consent Order requires transmission by facsimile, the communication shall also be sent via facsimile to (202) 514-1116.

- b. Within sixty (60) days of the date of entry of this Consent Order, Defendants shall deliver to counsel for the United States cashier's checks made payable to each aggrieved person, in the amounts listed in Attachment C. The cashier's checks for this second installment shall total thirty-five thousand dollars (\$35,000).
18. When counsel for the United States has received a check from Defendants payable to an aggrieved person and a signed release in the form of Attachment 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 Defendants. No aggrieved person shall be paid until he/she has signed and delivered to counsel for the United States the release at Attachment D.

V. CIVIL PENALTY

19. Within sixty (60) days after the entry of this Consent Order, Defendants shall pay the sum of thirty thousand dollars (\$30,000.00) to the United States as a civil penalty to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be delivered to counsel for the United States in the form of a cashier's check payable to the "United States Treasury."
20. In the event that Defendants, their agents or employees engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d).

VI. REMEDIES FOR NON-COMPLIANCE, TIME FOR PERFORMANCE, AND MODIFICATIONS

21. Any time limits for performance imposed by this Order may be extended by mutual, written

agreement of the parties.

22. All parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 23 below.
23. Any time limits for performance imposed by this Consent Order may be extended by mutual, written agreement of the parties. The other provisions of this Consent Order may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective within thirty (30) days of filing the written agreement with the Court, and shall remain in effect for the duration of the Order or until such time as the Court indicates through written order that it has not approved the modification.
24. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by either or both Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise to comply 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 attorney's fees which may have been occasioned by the Defendant's or Defendants' violation or failure to perform.

VII. DISMISSAL

25. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. Plaintiff may move the Court to extend the duration of the Order in the interests of justice.

IT IS SO ORDERED:

This 23rd day of October, 2007.

s/ Joan N. Ericksen _____
UNITED STATES DISTRICT JUDGE

Respectfully submitted this 18th day of October, 2007.

RACHAEL K. PAULOSE
United States Attorney

RENA J. COMISAC
Acting Assistant Attorney General
Civil Rights Division

s/_____
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s/_____
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s/_____
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For Defendant Thomas J. Fischer:

s/_____
THOMAS J. FISCHER

s/_____
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For Defendant Dawn Fischer:

s/_____
DAWN FISCHER

s/_____
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ATTACHMENT A
List of Properties

1. 520 20th Street, Red Wing, MN 55066
2. 530 20th Street, Red Wing, MN 55066
3. 309 Glenwood Street, Red Wing, MN 55066*
4. 210 East 5th Street, Red Wing, MN 55066*
5. 211 West 6th Street, Red Wing, MN 55066*
6. 1802 South Park Street, Red Wing, MN 55066*
7. 1209 West 4th Street, Red Wing, MN 55066*

* Property has been sold by Thomas and Dawn Fisher pursuant to a contract for deed.

ATTACHMENT B
Fair Housing Poster



We do Business in Accordance With the Fair Housing Act
(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

IT IS ILLEGAL TO DISCRIMINATE AGAINST ANY PERSON BECAUSE OF RACE, COLOR,
RELIGION, SEX, HANDICAP, FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN), OR
NATIONAL ORIGIN

- In the sale or rental of housing or residential lots.
- In advertising the sale or rental of housing.
- In the financing of housing.
- In the appraisal of housing.
- In the provision of real estate brokerage services.
- Blockbusting is also illegal.

Anyone who feels he or she has been discriminated against should send a complaint to:

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410
1-800-669-9777

or

U.S. Department of Housing and Urban Development
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604

(312) 353-5680

ATTACHMENT C
Identified Aggrieved Persons and Amounts to Be Paid

Within ten (10) business days of entry of this Order:

1. Holly Ainsworth: \$37,450
2. Estate of Maija Anderson: \$27,510
3. Karen Skrypek: \$27,510
4. Laurie Spargur: \$27,510
5. Susan Reeser: \$27,510
6. Bobbi Jo Hanson: \$27,510

Within sixty (60) days of entry of this Order:

1. Holly Ainsworth: \$7,550
2. Estate of Maija Anderson: \$5,490
3. Karen Skrypek: \$5,490
4. Laurie Spargur: \$5,490
5. Susan Reeser: \$5,490
6. Bobbi Jo Hanson: \$5,490

ATTACHMENT D

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Thomas J. Fischer, et al., Civil No. _____ (D. Minn.), and Defendants' payment to me of \$ _____, pursuant to the Consent Order, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from the housing discrimination alleged in that litigation up to and including the date of execution of this release, that I may have against any of the Defendants Thomas J. Fischer and Dawn Fischer, all related entities, parents, predecessors, successors, subsidiaries and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders and employees and their heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 2007.

[Print Name]

[Signature]