

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

| | | |
|-------------------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civ. No. 08-469 |
| |) | |
| HOMESTEAD BUILDING AND |) | |
| DEVELOPMENT, INC. |) | |
| a/k/a Homestead Building and |) | |
| Development Corp. AND |) | |
| PETER DAIGLE, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

CONSENT DECREE AND ORDER OF PAYMENT

I. PARTIES

This Consent Decree and Order of Payment (“Consent Decree”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Housing and Urban Development (“HUD”) collectively the (“United States”), and Homestead Building and Development Corp. (“Homestead”) and Peter Daigle (“Daigle”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Consent Decree, the Parties agree to the following:

A. Homestead is a Massachusetts corporation that does business in New Hampshire. Daigle is a resident of Massachusetts who is a principal in Homestead. Homestead owns real property in Nottingham, New Hampshire that it has sought to develop for resale.

B. In May of 2007, Homestead and Daigle executed a conciliation agreement with HUD in which they agreed to pay a total of \$35,000.00 to Gary and Tessie Howard to resolve allegations of discrimination under 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 *et seq.* The allegations arose out of an administrative complaint filed by Gary and Tessie Howard related to the refusal of Homestead and Daigle to sell them a property located at 8 Gerrior Drive in Nottingham, New Hampshire. The payments were to be made in increments of \$5,000.00. The final payment was due on November 1, 2007.

C. The United States contends that it has certain civil claims under the Fair Housing Act against Homestead and Daigle for breaching the conciliation agreement. Specifically, HUD has referred this matter to the United States Department of Justice because there is reasonable cause to believe that Homestead and Daigle have breached the conciliation agreement by failing to make all of the payments that they agreed to make. Accordingly, the United States has filed a complaint seeking relief with respect to the breach of a conciliation agreement pursuant to 42 U.S.C. § 3614(b)(2).

D. This Consent Decree is neither an admission of liability by Homestead or Daigle nor a concession by the United States that its claims are not well founded.

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Upon execution of this Consent Decree by all parties, Homestead and Daigle will pay to Gary and Tessie Howard (“the Howards”) the sum of \$10,407.66 (“the Settlement Amount”) plus interest accruing at the applicable judgment rate on any amount not paid on the effective date of this Consent Decree. Homestead and Daigle agree to the entry of a judgment against them for the Settlement Amount. Collectively, the Settlement Amount and applicable interest shall be referred to as the “Settlement Proceeds.”

2. Payment of the Settlement Proceeds by Homestead and Daigle shall be as follows:

- (a) An initial payment of \$2,000.00 will be made to the Howards no later than December 10, 2008.
- (b) Homestead and Daigle will pay the remaining balance of the Settlement Proceeds to the Howards within five (5) days of the sale of the property located at 8 Gerrior Drive in Nottingham, New Hampshire (“the Nottingham property”).
- (c) If the Settlement Proceeds have not been paid in full prior to December 31, 2008, Homestead and Daigle will pay \$1,000.00 to the Howards no later than December 31, 2008.
- (d) The Settlement Proceeds must be paid in full no later than June 30, 2009.
- (e) All payments under this Consent Decree shall be made payable to Gary and Tessie Howard and shall be sent to the United States Attorney's Office

for the District of New Hampshire, 53 Pleasant Street, Concord, NH
03301.

3. In the event that Homestead or Daigle fails to pay any amount as provided in Paragraph 2 above within five (5) business days of the date upon which such payment is due, or fails to otherwise comply with the terms of this Consent Decree without justification deemed sufficient by the United States Attorney for the District of New Hampshire (in his or her sole discretion), Homestead and Daigle shall be in default (“Default”) of the terms of this Consent Decree. The United States will provide written notice of the Default, and Homestead and Daigle shall have an opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default will be delivered to Homestead and Daigle at Daigle’s residence or to such other representative as Homestead and Daigle shall designate in advance in writing. If Homestead and Daigle fail to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Proceeds shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). Upon Default, the United States may exercise, at its sole discretion, one or more of the following rights, as applicable: (a) declare this Consent Decree breached and proceed against Homestead and Daigle for any claims under the Complaint; (b) file an action for specific performance to enforce the terms of the Consent Decree; (c) foreclose on any judicial liens, including those referenced in Paragraph 4; or (e) exercise any other right granted by law, or under the terms of this Consent Decree or recognizable at common law or equity, including the option of referring such matters for private collection. Homestead and Daigle agree not to contest any

offset imposed and not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Homestead and Daigle shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

4. The Parties agree that, after the Effective Date of this Consent Decree, an Abstract of Judgment shall be recorded among the records of the Registry of Deeds in the county of residence of Homestead and Daigle and all other jurisdictions where it is determined by the United States that Homestead or Daigle owns real or personal property. The Abstract of Judgment shall grant a lien to the United States on any such properties. The lien secured by the Abstract of Judgment will not be released in anticipation of a sale, transfer or refinancing of the Properties owned by Homestead or Daigle unless the proceeds of the transaction have been assigned in writing to the United States in order to satisfy the Settlement Amount. The United States will release any lien secured by the Abstract of Judgment and discharge any mortgage upon receipt of full payment of the Settlement Proceeds in satisfaction of this Consent Decree.

5. In the event that the United States, pursuant to Paragraph 3 above, opts to rescind this Consent Decree, Homestead and Daigle agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Homestead and Daigle that this Consent Decree has been rescinded, and (b) relate to the alleged breach of the conciliation agreement with HUD, except to the extent these defenses were available on that effective date of this Consent Decree.

6. Homestead and Daigle fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that either has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the complaint or the United States' investigation and prosecution thereof.

7. Homestead and Daigle warrant that they have reviewed their financial situations and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following their payments to the Howards of the Settlement Proceeds. Further, the Parties warrant that, in evaluating whether to execute this Consent Decree, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Homestead and Daigle, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Homestead or Daigle was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

8. If, within 91 days of the Effective Date of this Consent Decree or any payment made under this Consent Decree, Homestead or Daigle commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Homestead or Daigle's debts, or seeking to adjudicate Homestead or Daigle as bankrupt or

insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Homestead or Daigle for all or any substantial part of Homestead or Daigle's assets, Homestead and Daigle agree as follows:

a. Homestead and Daigle's obligations under this Consent Decree may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Homestead and Daigle shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Homestead or Daigle's obligations under this Consent Decree may be avoided under 11 U.S.C. §§ 547 or 548; (ii) either Homestead or Daigle was insolvent at the time this Consent Decree was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Consent Decree do not constitute a contemporaneous exchange for new value given to Homestead and Daigle.

b. If Homestead or Daigle's obligations under this Consent Decree are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may bring any civil and/or administrative claim, action, or proceeding against Homestead or Daigle related to a breach of the conciliation agreement. Homestead and Daigle agree that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and Homestead and Daigle shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Homestead and Daigle shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims,

actions, or proceedings that are brought by the United States within 120 calendar days of written notification to Homestead or Daigle that the United States intends to pursue such claims, actions or proceedings, except to the extent such defenses were available on the effective date of this Consent Decree; and (iii) the United States has a valid claim against Homestead and Daigle in the amount of at least the Settlement Amount and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Homestead and Daigle acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Consent Decree.

9. Each Party to this Consent Decree shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Consent Decree.

10. Homestead and Daigle represent that this Consent Decree is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and that they understand their right to advice of counsel concerning this Consent Decree.

11. This Consent Decree is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Consent Decree is the United States District Court for the District of New Hampshire.

12. This Consent Decree constitutes the complete agreement between the Parties. This Consent Decree may not be amended except by written consent of the Parties.

13. The signatory for the United States represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

14. This Consent Decree is effective on the date it is signed by a judge of the United States District Court. This Consent Decree may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Consent Decree. Facsimiles or emailed PDF copies of signatures shall constitute acceptable, binding signatures for purposes of this Consent Decree. The Parties agree that, after all signatures have been obtained, the document may be electronically filed in the United States District Court for the District of New Hampshire.

15. This Consent Decree is binding on the successors, transferees, heirs, and assigns of Homestead and Daigle.

16. All parties consent to the United States' disclosure of this Consent Decree, and information about this Consent Decree, to the public.

We So Agree:

THOMAS P. COLANTUONO
United States Attorney

DATED: November 12, 2008

By: /s/ John J. Farley
JOHN J. FARLEY
Assistant United States Attorney
N.H. Bar No. 16934
53 Pleasant Street
Concord, NH 03301
(603) 225-1552
John.Farley@usdoj.gov

HOMESTEAD BUILDING AND
DEVELOPMENT CORP.

DATED: November 12, 2008

By: /s/ Peter Daigle
PETER DAIGLE
Homestead Building and Development
Corp.

PETER DAIGLE

DATED: November 12, 2008

By: /s/ Peter Daigle
PETER DAIGLE

ORDER

Judgment for the United States and against Defendants Homestead Building and Development Corp. and Peter Daigle in this cause, in the amount of \$10,407.66, according to the terms of this Consent Decree and Order of Payment, is hereby entered.

This 18 day of November, 2008.

/s/ Steven J. McAuliffe
U.S. District Court Judge