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MAY 16 2005

MARY L. COOPER  
U.S. DISTRICT JUDGE

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By: SUSAN CASSELL  
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(609) 896-9060  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :  
 :  
 :  
 :  
 Plaintiff, :  
 :  
 :  
 vs. :  
 :  
 :  
 MEM PROPERTY MANAGEMENT :  
 CORP.; BAYVIEW CONDOMINIUM :  
 ASSOCIATION, INC.; JOHN HEATON; :  
 and MARTIN LADERMAN :  
 :  
 :  
 Defendants, :  
 :

Hon. Tonianne J. Bongiovanni

Case No. 04-5631 (MLC)

CONSENT ORDER

RECEIVED

MAY 16 2005

AT 8:30 \_\_\_\_\_  
WILLIAM T. WALSH  
CLERK

STARK & STARK  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
MAILING ADDRESS  
PO BOX 5315  
PRINCETON, NEW JERSEY 08543-5315

## I. INTRODUCTION

The United States of America filed this action on behalf of Debra Herrick pursuant to subsection 812(o) of the Fair Housing Act ("the Act"), 42 U.S.C. § 3612(o). Ms. Herrick is a resident of the Bayview Condominiums, Highlands, New Jersey, which are subject to rules and restrictions enforced by the defendants.

The Complaint alleges that Ms. Herrick has disabilities that make her unable to carry objects of the weight of an ordinary load of laundry without undue pain in the arms and hands. To avoid carrying laundry to and from her apartment to the common laundry rooms located on the ground floors of the buildings of the Bayside, Ms. Herrick wishes to purchase and install a washer and dryer in her unit. During the summer of 2003, Ms. Herrick asked permission to install a washer and dryer in her unit. The request was denied, and she has not done so.

Ms. Herrick timely filed a complaint with the Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3610(a) ("the Act"), alleging discrimination on the basis of disability. As required by 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g), determined that reasonable cause exists to believe that illegal discriminatory housing practices had occurred, and issued a Determination of Reasonable Cause and Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2), charging defendants with engaging in discriminatory practices in violation of the Act. 42 U.S.C. §§ 3604(f)(3)(B). On October 15, 2004, defendants elected to have the

claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). The filing of this action followed.

The parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345, § 1331, and 42 U.S.C. § 3612(o).

The parties agree that, in order to avoid costly and protracted litigation, the claims against Defendants should be resolved without further proceedings and an evidentiary hearing.

Therefore, as indicated by the signatures appearing below, the parties agree to the entry of this Consent Order. This Consent Order constitutes full resolution of the United States' claims that Defendants discriminated against Debra Herrick on the basis of disability.

It is hereby ORDERED, ADJUDGED, AND DECREED:

## II. GENERAL INJUNCTION

Defendants, their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them, are enjoined from failing, when requested to do so by a resident or prospective resident, to make any reasonable accommodation that may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, as required by the Fair Housing Act.

## III. INJUNCTION REGARDING INSTALLATION OF APPLIANCES

Defendants, their officers, employees, agents, successors and assigns, and all other persons in active concert or participation with them, are further enjoined from interfering with Debra Herrick's purchase and installation of a clothes washer and/or dryer of her choice, provided that such installation shall be carried out by a licensed plumber in compliance with all

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PRINCETON, NEW JERSEY 08540 5015

applicable codes and the prevailing standards in the industry and provided that such proof is provided to the Association within seven (7) days of installation.

#### **IV. DAMAGES FOR COMPLAINANT**

Within thirty (30) days of the entry of this Order, Defendants shall pay to Debra Herrick \$2,000 in monetary damages. Defendants shall pay said money by sending to the United States a check for \$2,000 payable to Debra Herrick. Upon receipt of the check, the United States shall send to Defendants an executed Release of all claims, legal or equitable, that the Ms. Herrick might have against Defendants relating to the claims asserted in this lawsuit. The form of Release is at Appendix A.

#### **V. REASONABLE ACCOMMODATION POLICY**

A. Within sixty (60) days after the date of entry of this Decree, subject to the approval of the United States, defendants shall adopt and implement specific written guidelines for receiving and handling requests made by people with disabilities for reasonable accommodations. These guidelines shall comply with the requirements of 42 U.S.C. §§ 3601 *et seq.*, and include the following elements:

1. A provision describing where and how requests for accommodations in defendants' rules, policies, practices or services are to be accepted and processed;
2. A provision stating that each request for reasonable accommodation and response thereto shall be fully documented by defendants;

3. A provision stating that all requests for accommodation shall be acknowledged, in writing, within 14 days of any defendant's receipt of an oral or written request; however, defendants reserve the right in the case of an oral request to seek written confirmation of the request;

4. A provision stating that those requesting a reasonable accommodation shall be notified in writing of the decision regarding their request for accommodation within thirty-one (31) days of any defendant's receipt of the request; if a request is denied, an explanation of the basis for such denial shall be included in this written notification;

5. A provision stating that the final written decision regarding the reasonable accommodation request will be retained in defendants' files;

6. A provision stating that defendants shall consider all requests for accommodations because of disability and shall grant those requests that are reasonable within the meaning of the Fair Housing Act; and

7. A provision stating that defendants 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 and, if applicable, receive a reasonable accommodation.

B. Within ninety (90) days of the date of entry of this Decree, defendants shall provide a copy of the Reasonable Accommodation Policy for Persons with Disabilities to each current Bayview resident, by delivering a copy by hand to each unit in the complex.

C. For the duration of this Decree, defendants shall provide a copy of the Reasonable Accommodation Policy for Persons with Disabilities to each new Bayview resident within ten (10) days of the beginning of the residency.

D. Defendants shall keep written records of each request for reasonable accommodation they receive during the duration of this Consent Decree. 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.

E. Defendants shall post the Reasonable Accommodation Policy in a conspicuous location in the management office, easily viewable to residents and prospective residents.

F. If defendants propose to change these guidelines, they shall first notify the United States with a copy of the proposed changes. If the United States does not deliver written objections to the defendants 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 sixty (60) day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

## VI. TRAINING

A. Within thirty (30) days of the entry of this Order, Defendant MEM Property Management Corp. shall provide a copy of this Order to each of its agents and employees whose duties, in whole or in part, involve the management or administration of residential properties, and shall secure the signed statement from each agent or employee acknowledging that he or she has received, has read, and understands the Order and nondiscrimination policy, and has had an

opportunity to have questions about the Order and nondiscrimination policy answered. This statement shall be substantially in the form of Appendix B. During the term of this Order, each new employee or agent whose duties, in whole or in part, involve the management or administration of all rental properties owned or operated by Defendants shall be given a copy of this Order and be required to sign a statement substantially in the form of Appendix B.

B. Within sixty (60) days of the date of entry of this Consent Order, all members of the Board of Trustees of Defendant Bayview Condominium Association shall receive instruction in the requirements of the Fair Housing Act as it pertains to persons with disabilities. This instruction, which may be conducted in connection with a regularly scheduled meeting of the Board of Trustees, shall be at least 60 minutes in length, and shall be conducted by a person or persons mutually acceptable to the Bayview Condominium Association and the United States. Those who attend the training shall be required to sign a certification confirming their attendance, in a form substantially equivalent to Appendix C. Defendant Bayview Condominium Association shall be responsible for all costs associated with such training.

#### VII. REPORTING AND RECORD-KEEPING REQUIREMENTS

A. Within sixty (60) days of the entry of this Order, and thereafter on the anniversary of the entry of this Order, Defendant MEM Property Management Co. shall submit to the United States the signed statement of each agent and employee referred to in Part VI.A of this Order.<sup>1</sup> The final report shall be submitted not more than 60 days prior to the expiration of this Order.

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All submission to the United States or its counsel shall be made to: U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section – NWB, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: DJ No. 175-46-117.

B. Within thirty (30) days after the training required by in Part VI.B of this Order, Defendants shall provide to the United States copies of the certifications of attendance signed by all persons who attended the training (Appendix C).

C. For the duration of this Order, Defendants shall advise counsel for the United States, in writing, within thirty (30) days of receipt of any complaint of housing discrimination against any Defendant, or against any of Defendants' agents, officers, or employees. Such report shall include the date of the complaint, a description of the nature of the complaint, and contact information for the complaining party. Within thirty (30) days of the resolution of any such complaints, Defendants shall advise counsel for the United States in writing, of such resolutions.

D. For the duration of this Order, Defendants shall preserve all records related to any request by a resident of the Bayside condominiums for an accommodation related to a disability. Upon reasonable notice to Defendants, representatives of the United States shall be permitted to inspect and copy any of Defendants' records or inspect any covered dwelling under Defendants' control at any and all reasonable times so as to determine compliance with the Consent Order; provided, however, that the United States shall endeavor to minimize any inconvenience to Defendants from such inspections.

#### **VIII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION**

A. The Court shall retain jurisdiction for three years after the date of entry of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Order's term, the United States may move the Court to



extend the duration of the Order, including on the basis that Defendants have failed to comply with a provision of this Order.

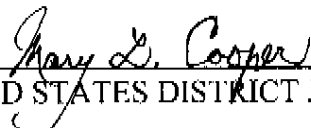
B. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendants to perform in a timely manner any act required by this Order, or any act by them 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, if the United States prevails, which may have been occasioned by the violation or failure to perform.

C. Any time limitation contained in this Decree may be extended by mutual agreement, in writing, between the parties.

#### IX. COSTS OF LITIGATION

Each party to this Consent Order shall bear its own costs and attorney's fees associated with this litigation.

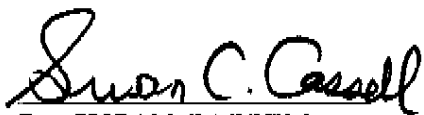
**ORDERED** This 16<sup>th</sup> day of MAY, 2005.

  
UNITED STATES DISTRICT JUDGE

The parties consent to the entry of this Decree:

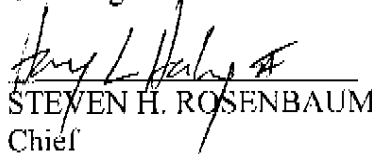
**FOR PLAINTIFF THE UNITED STATES:**

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**APPENDIX A**

**RELEASE OF CLAIMS**

In consideration of the parties' agreement to the terms of the Consent Order entered in United States v. MEM Property Management Corp., Civil No. 04-5631 (MLC) (D.N.J.), and Defendants' payment of the sum of TWO THOUSAND dollars (\$2,000), I, Debra Herrick, hereby release the defendants named in this action, MEM Property Management Corp., Bayview Condominium Association, Inc., John Heaton; and Martin Laderman, from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the action. I fully acknowledge and agree that this release of Defendants 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.

\_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

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**APPENDIX B**

**EMPLOYEE ACKNOWLEDGMENT**

On \_\_\_\_\_, 200\_\_\_\_, I, \_\_\_\_\_, was instructed by \_\_\_\_\_ with respect to my responsibilities under the Consent Order entered by the U.S. District Court in United States v. MEM Property Management Corp., et al., Civil No. 04-5631 (M.L.C) (D.N.J.) and the federal Fair Housing Act. I have received copies of and have read the Consent Order and the nondiscrimination policy. I understand my legal responsibilities and will comply with those responsibilities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Job Title

\_\_\_\_\_  
Date

APPENDIX C

EMPLOYEE CERTIFICATION

On \_\_\_\_\_, 200\_\_, I, \_\_\_\_\_, was instructed by \_\_\_\_\_ with respect to my responsibilities under the Fair Housing Act. I understand my legal responsibilities and will comply with those responsibilities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date