

FILED

JUN 11 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SHANRIE CO., INC., DAN SHEILS,)
NETEMEYER ENGINEERING)
ASSOCIATES, INC., THOUVENOT, WADE &)
MOERCHEN, INC.,)
)
Defendants.)

Civil Action No. 05-306-DRH

PARTIAL CONSENT ORDER RESOLVING UNITED STATES' REMAINING CLAIMS AGAINST DEFENDANT NETEMEYER ENGINEERING ASSOCIATES, INC.

I. INTRODUCTION

1. This Consent Order is entered into between the United States of America and Defendant Netemeyer Engineering Associates, Inc. ("Defendant" or "Netemeyer").
2. On April 25, 2005, the United States filed this action to enforce provisions of Title VIII of the Civil Rights Act of 1968 ("the Fair Housing Act") as amended, 42 U.S.C. § 3601 *et seq.* The United States' Complaint alleged that Defendants engaged in a pattern or practice of discrimination and/or a denial of rights to a group of persons, which denial raises an issue of general public importance, against persons with disabilities by failing to design and construct covered multifamily dwellings commonly known as Applegate Apartments located in Swansea, Illinois with the features of accessible and adaptable design and construction required by 42 U.S.C. § 3604(f)(3)(c).

3. On March 30, 2007, the Court granted the United States' Motion for Partial Summary Judgment against Defendants Shanrie Co., Inc., Dan Sheils, and Netemeyer Engineering Associates, Inc., finding that these Defendants designed and constructed Applegate Apartments without the accessibility features required by the Fair Housing Act. *See* March 30, 2007 Summary Judgment Order.
4. On April 10, 2008, the Court ordered the Defendants to remedy the inaccessible features at the Applegate Apartments within time frames ranging from thirty days to one year. *See* April 10, 2008 Remedial Plan Order (hereinafter "April 10, 2008 Remedial Order"). Nothing in this Decree shall be construed to amend the terms of the April 10, 2008 Remedial Order.
5. Netemeyer has now agreed to the following terms, which resolve the remaining claims against Netemeyer that are not addressed by the April 10, 2008 Remedial Order. This Consent Decree does not in any way affect the United States' claims against Defendants Shanrie Co., Inc., Dan Sheils, and Thouvenot, Wade and Moerchen.

ACCORDINGLY, it is hereby ADJUDGED, ORDERED and DECREED as FOLLOWS:

II. GENERAL INJUNCTION

6. Netemeyer, and each of its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with it, are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f).

III. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

7. All future covered multifamily housing designed or constructed by Netemeyer after the date of this Consent Order shall include an accessible route to the primary entrances of such dwellings.
8. For the duration of this Consent Order, if Netemeyer Engineering Associates, Inc. prepares any site plans, architectural plans, drawings or blueprints for covered multifamily housing, it shall include on such plans, drawing or blueprints a statement that they comply with the Fair Housing Act, and, where applicable, the Americans with Disabilities Act, [CITE] ("ADA") and the ADA Standards for Accessible Design. For the duration of this Consent Order, Netemeyer shall, upon request, provide to the United States a list of all such multifamily housing that it has designed or is designing during the term of this Consent Order.

IV. COMPENSATION OF IDENTIFIED AGGRIEVED PERSONS

9. Netemeyer shall pay¹ the total sum of nine thousand dollars (\$9,000) in monetary damages to Metropolitan St. Louis Equal Housing Opportunity Council for its damages as a result of Netemeyer's failure to design and construct Applegate Apartments in compliance with the Fair Housing Act and the Fair Housing Accessibility Guidelines. Netemeyer shall pay this sum within fourteen (14) days of the date of entry of this Order, by sending a check payable in that amount to Metropolitan St. Louis Equal Housing Opportunity Council, care of the United States, provided that no amount shall be paid

¹ If any of the payments required under this Order are made after the prescribed time, for whatever reason, such payments shall include interest from the prescribed time of payment, calculated by the formula set forth in 28 U.S.C. § 1961. Payment of such interest shall be in addition to any other remedies available to the United States for delays in payment.

pursuant to this paragraph before the Metropolitan St. Louis Equal Housing Opportunity Council has executed a written release (Appendix A) of all claims, legal or equitable, that it might have against Defendants relating to the claims asserted in this lawsuit.

V. CIVIL PENALTY

10. Netemeyer shall pay the total sum of twenty-five thousand dollars (\$25,000) to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(c). Said sum shall be paid within thirty (30) days of the date of entry of this Order by submitting a check to counsel for the United States made payable to "United States of America."

VI. EDUCATIONAL PROGRAM

11. Within thirty (30) days of the entry of this Order, Netemeyer shall provide a copy of this Order to all its agents and employees involved in the design, construction, rental, or sale of covered multifamily dwellings and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and had an opportunity to have questions about the Order answered. This statement shall be substantially in the form of Appendix B.
12. During the term of this Order, within thirty (30) days after the date he or she commences an agency or employment with Netemeyer, each new agent or employee involved in the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and had an opportunity to have questions about the Order answered. This statement shall be substantially in the form of Appendix C.
13. Netemeyer shall also ensure that they and any other employees and agents who have

supervisory authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, *A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act* (Aug. 1996, rev. Apr. 1998). Netemeyer and all employees and agents whose duties, in whole or in part, involve the sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations, and reasonable modifications.

14. Within ninety (90) days of the date of entry of this Consent Order, Netemeyer and all employees and agents whose duties, in whole or in part, involved supervisory authority over the development, design and/or construction of the multifamily dwellings at issue in this case shall undergo training on the design and construction requirements of the Fair Housing Act. A qualified third party, unconnected to Netemeyer or its employees, agents or counsel, shall conduct the training, and any expenses associated with this training shall be borne by Netemeyer. Netemeyer shall provide to the United States, within thirty (30) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by Netemeyer and all covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix E.

VII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

15. Within one hundred (100) days after the date of entry of this Consent Order, Netemeyer shall submit to the United States an initial report regarding the signed statements of Netemeyer's employees and agents who have completed the training program specified in Section XII of this Consent Order. Thereafter during the term of this Order, Netemeyer shall, on the anniversary of the entry of this Order, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with Section XII of this Consent Order, they have received and read the Order, and had an opportunity to have questions about the Order answered.
16. Netemeyer shall advise the United States in writing within fifteen (15) days of receipt of any written administrative or legal fair housing complaint against any property owned, managed, or against any employees or agents of Netemeyer working at or for any such property, regarding discrimination on the basis of disability, or regarding retaliation, in housing. Upon reasonable notice, Netemeyer shall also provide the United States all information it may request concerning any such complaint. Netemeyer shall also notify the United States in writing within fifteen (15) days of the resolution of any such complaint.
17. For the term of this Consent Order, Netemeyer is required to preserve all records related to this Consent Order, for Applegate Apartments and all covered multifamily dwellings designed, constructed, or owned by it. Upon reasonable notice to Netemeyer, representatives of the United States shall be permitted to inspect and copy any records of Netemeyer or inspect any developments or residential units under Netemeyer's control

bearing on compliance with this Consent Order at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to Netemeyer from such inspections.

VIII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

18. This Consent Order shall remain in effect for (3) years after the date of its entry. By consenting to entry of this Order, the United States and Netemeyer agree that in the event that Netemeyer engages 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)(1)(C)(ii).
19. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Order, at which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.
20. The United States and Netemeyer shall endeavor in good faith to resolve informally any differences regarding 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 Netemeyer to perform in a timely manner any act required by this Order or otherwise to act in conformance 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 reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

IX. TIME FOR PERFORMANCE

21. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and Netemeyer.

X. COSTS OF LITIGATION

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

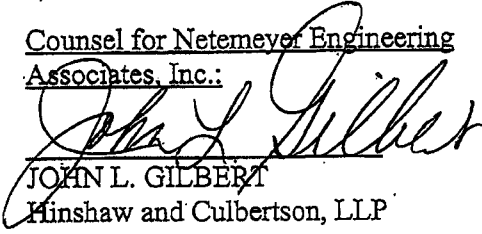
SO ORDERED this 11th day of June, 2008:



The Honorable David R. Herndon
UNITED STATES DISTRICT COURT JUDGE

Agreed to by the parties as indicated by the signatures appearing below:

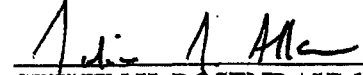
Counsel for Netemeyer Engineering
Associates, Inc.:



JOHN L. GILBERT
Hinshaw and Culbertson, LLP
156 North Main Street
Edwardsville, Illinois 62025

Counsel for the United States:

GRACE CHUNG BECKER
Acting Assistant Attorney General



STEVEN H. ROSENBAUM
Chief
TIMOTHY J. MORAN
Deputy Chief
JULIE J. ALLEN
DANIEL YI
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave. N.W. - G St.
Washington, D.C. 20530
(202) 307-6275
(202) 514-1116 (Fax)

A. COURTNEY COX
United States Attorney
LAURA J. JONES
Assistant United States Attorney
Southern District of Illinois
Nine Executive Drive
Fairview Heights, Illinois 62208
(618) 628-3715
(618) 622-3810 (Fax)

Attorneys for Plaintiff

APPENDIX A

RELEASE OF ALL CLAIMS

In consideration of and contingent upon the payment of the sum of Nine Thousand dollars (\$9,000.00), pursuant to the Consent Order entered in United States v. Shanrie Company, Inc. et al., C.A. No. 05-306-DRH (S.D. Ill.), United States District Court, Southern District of Illinois, I hereby release and forever discharge the Defendants named in this action from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in this action as of the date of the entry of that Consent Order. I fully acknowledge and agree that this release of the 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.

(Signature)

NAME: _____

ADDRESS: _____

DATE: _____

APPENDIX B

ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER

On _____, I received a copy of and have read the Consent Order entered by the federal district court in United States of America v. Shanrie Company, Inc. et al., C.A. No. 05-306-DRH (S.D. Ill.). All of my questions concerning the Consent Order and the Fair Housing Act have been answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)

APPENDIX C

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act, including its requirements concerning physical accessibility for people with disabilities. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)