

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
and)
)
DEVAUGHN DUNCAN, her minor)
son, R.W., JAMES GAINNEY, and)
TRAVIS TUCKER,)
)
Plaintiffs-Intervenors,)
)
v.)
)
ROBERT S. CAIRNS and KATERINA D.)
CAIRNS,)
)
Defendants.)
_____)

Case No. 8:11-cv-100-RAL-TGW

CONSENT DECREE

I. Introduction

On January 14, 2011, the United States instituted this action against Robert S. Cairns and Katerina D. Cairns, a married couple, on behalf of Devaughn Duncan and her three children, James C. Gainey, Travis D. Tucker,¹ and R.W., a minor, pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o). On February 16, 2011, Ms. Duncan, on behalf of herself and R.W., and Mr. Gainey and Mr. Tucker moved to intervene. (Dkt. 7). That motion was granted on February 17, 2011, by order of the Court, which accepted the filing of the complaint of Ms.

¹ Mr. Tucker was referred to as "Charles" Tucker in the United States' complaint, in accordance with information provided the United States by his attorneys. See United States' complaint (Dkt. 1) at paragraphs 1 and 7. His attorneys subsequently informed the United States and the Cairns that Mr. Tucker's first name is "Travis," as reflected in the caption above.

Duncan and her children (“Plaintiffs/Intervenors”) (Dkt. 7-1) on the same date. (Dkt. 8).² Hence, this Consent Decree resolves the claims of Plaintiff United States and Plaintiffs/Intervenors against the Cairns.

The actions of Plaintiff United States and Plaintiffs/Intervenors were brought pursuant to the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (the “Act”). The Plaintiffs’ complaints allege that Mr. and Mrs. Cairns evicted Ms. Duncan and her children from a single-family rental home in Gibsonton, Florida because of their race or color, made one or more statements with respect to the rental of the home that indicated a preference, a limitation, or discrimination based on race or color, and, coerced, intimidated, threatened or interfered with Ms. Duncan and her children in their exercise or enjoyment of, or on account of their having exercised or enjoyed, rights granted or protected by Section 804 of the Act, in violation of Sections 804(a) and (c) and 3617 of the Act, 42 U.S.C. §§ 3604(a) and (c) and 3617.

The parties stipulate that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. § 3612(o). The parties wish to avoid protracted and costly litigation and agree that this dispute should be resolved without the necessity of further proceedings or trial. Therefore, the parties consent to the entry of this Consent Decree, as indicated by the signatures below.

Therefore, it is hereby, ORDERED, ADJUDGED, and DECREED that:

² The Court granted Plaintiffs/Intervenors’ motion pursuant to Section 812(o)(2) of the Fair Housing Act, which provides that “[a]ny aggrieved person with respect to the issues to be determined in a civil action under [Section 812(o)] may intervene as of right in that civil action.”

II. Injunctive Relief

Robert S. Cairns and Katerina D. Cairns, and any agents, employees, successors, and persons in active concert or participation with them, are enjoined from:

- A. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of race or color, in violation of 42 U.S.C. § 3604(a);
- B. Making, printing or publishing, or causing to be made, printed or published any notice, statement or advertisement, with respect to the rental of a dwelling, that indicates any preference, limitation, or discrimination based on race or color, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c); and
- C. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, rights granted or protected by Section 804 of the Fair Housing Act, 42 U.S.C. § 3604, based on race or color, in violation of 42 U.S.C. § 3617.

III. Mandatory Education and Training

- A. Within sixty (60) days after the date of entry of this Consent Decree, Defendant Robert Cairns and any of Defendants' employees or agents with responsibility for renting or managing dwellings shall attend a program of educational training focusing on the Consent Decree and federal, state and local fair housing laws, regulations and ordinances. Copies of the Consent Decree shall be provided to all

such employees and agents in advance of the training. The training shall be conducted by a qualified individual or organization unconnected to the Defendants or their counsel that has been previously approved by the United States. The training shall be videotaped. Any expenses associated with this training shall be borne by the Defendants. By October 31, 2011, Defendant Katerina Cairns shall attend a similar approved fair housing training.³

- B. Within ten (10) days after the training required above, the Defendants shall provide to the United States and Plaintiffs/Intervenors certificates confirming attendance at the training in the form of Appendix A, as well as copies of certificates of completion from the trainers, or signatures from the trainers confirming attendance.⁴

IV. Notification to Public of Nondiscrimination Policies

Within ten (10) days after the date of entry of this Consent Decree, the Defendants shall take the following steps to notify the public of their nondiscriminatory policies:

- A. Post and prominently display at any place of business where the Defendants conduct rental activity and/or have personal contact with applicants for rental of their property, a Fair Housing Poster. *See* 24 C.F.R. Part 110; and

³ Ms. Cairns is presently out of the country and will not return until September 2011. Ms. Cairns must sign and return the training certificate to the United States and Plaintiffs/Intervenors by November 10, 2011. *See* Section III. B., below.

⁴ The training materials and any other materials the Defendants are required to provide the United States and Plaintiffs/Intervenors pursuant to this Decree (*see* Sections III and IV, below) shall be submitted, respectively, via overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street, N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ # 175-17M-495; and Migdalia Figueroa, Esquire, Bay Area Legal Services, Inc., 18238 U.S. 301 South, Wimauma, Florida 33598.

- B. Include the words, "Equal Housing Opportunity," or the fair housing logo (*see* 24 C.R.F. § 110.25) in any advertising conducted by the Defendants in newspapers, telephone directories, radio, television or other media, and on all billboards, signs, pamphlets, brochures and other prominent literature. The words or logo should be prominently placed and easily legible.
- C. Within ten (10) days of displaying the Fair Housing Poster and publishing or printing any advertisements, including billboards, signs, pamphlets and brochures regarding any rental properties, the Defendants shall provide the United States and Plaintiffs/Intervenors with copies of the poster and any such advertisements.

V. Record Keeping and Monitoring

- A. The Defendants shall preserve all records pertaining to their obligations under the Decree. Upon reasonable notice to the Defendants' counsel, representatives of the United States Department of Justice and counsel for Plaintiffs/Intervenors shall be permitted to inspect and copy all such records at reasonable times in order to monitor compliance with the Decree.
- B. The Defendants shall give counsel for the United States and Plaintiff/Intervenors written notice within fifteen (15) days of receipt of any written or oral complaint against the Defendants, regarding discrimination on the basis of race or color, and a description of the resolution of any such complaint within fifteen (15) days of resolution. If the complaint is written, the Defendants shall provide a copy of it with the notice. The notice shall include the full details of the complaint, including

the complainant's name, address and telephone number. The Defendants shall also promptly provide the United States and Plaintiffs/Intervenors with all information they may request concerning any such complaint and its actual or attempted resolution.

VI. Relief for DeVaughn Duncan, James Gainey, Travis Tucker and R.W.

- A. On May 2, 2011, the Defendants shall pay Plaintiffs/Intervenors, Devaughn Duncan, James Gainey, Travis Tucker and R.W., \$12,500 in compensatory damages by transferring that amount electronically into an account designated by Bay Area Legal Services, Inc., attorneys for Plaintiffs/Intervenors. Payments from that account will be disbursed to Plaintiffs/Intervenors by Bay Area Legal Services, Inc. in the following amounts: \$3,125 to Devaughn Duncan; \$3,125 to Devaughn Duncan on behalf of R.W.; \$3,125 to James Gainey; and \$3,125 to Travis Tucker.⁵
- B. On June 1, 2011, Defendants shall pay Plaintiffs/Intervenors an additional \$12,500 in compensatory damages by transferring that amount electronically into the account designated by Bay Area Legal Services, Inc., attorneys for Plaintiffs/Intervenors. A second set of payments from the account will be disbursed to Plaintiffs/Intervenors by Bay Area Legal Services, Inc. in the following amounts: \$3,125 to Devaughn Duncan; \$3,125 to Devaughn Duncan on behalf of R.W.; \$3,125 to James Gainey; and \$3,125 to Travis Tucker, for a total

⁵ The identity of the financial institution and the number of the account into which the funds are to be transferred will be provided in writing by counsel for Plaintiffs/Intervenors, together with instructions for such transfer, to counsel for Defendants no later than April 26, 2011.

of \$6,250 in compensatory damages to each Plaintiff/Intervenor and an overall total of damages in the amount of \$25,000.

- C. Upon transfer of the second installment of \$12,500 into the account, counsel for Plaintiffs/Intervenors shall send to the Defendants executed releases, substantially in the form of Appendix B, of all claims, legal or equitable, that Ms. Duncan, Mr. Gainey, Mr. Tucker and R.W. may have against the Defendants relating to the claims asserted in this lawsuit.

VII. Attorneys' Fees for Bay Area Legal Services, Inc.

- A. On May 2, 2011, the Defendants shall pay counsel for Plaintiffs/Intervenors, Bay Area Legal Services, Inc., \$2,500 in attorneys' fees by transferring that amount electronically into the account designated by Bay Area Legal Services, Inc.⁶
- B. On June 1, 2011, the Defendants shall pay counsel for Plaintiffs/Intervenors, Bay Area Legal Services, Inc., an additional \$2,500 in attorneys' fees by transferring that amount electronically into the account designated by Bay Area Legal Services, Inc.
- C. Upon transfer of the second installment of \$2,500 into the account, for a total of \$5,000, counsel for Plaintiffs/Intervenors shall send to counsel for the Defendants written confirmation that Defendants' obligation under this section of the Consent Decree has been fulfilled.

⁶ Again, the identity of the financial institution and the number of the account into which the funds are to be transferred will be provided in writing by counsel for Plaintiffs/Intervenors to counsel for Defendants, together with instructions for such transfer, no later than April 26, 2011.

VIII. Duration of Decree and Termination of Legal Action

- A. The Court shall retain jurisdiction for three (3) years after the date of entry of this Decree to enforce the terms of the Decree, at which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree's term, Plaintiff United States and/or Plaintiffs/Intervenors may move the Court to extend the duration of the Decree for good cause, including on the basis that the Defendants have failed to comply with a provision of the Decree.
- B. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Defendants 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 and/or Plaintiffs/Intervenors 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 Defendants' violation or failure to perform.

IX. Time for Performance

Any time limits for performance imposed by this Consent Decree may be extended by the mutual, written agreement of the Plaintiffs and the Defendants.

X. Costs of Litigation

Each party to this Consent Decree shall bear its own costs associated with this action. Defendants shall bear their own attorneys' fees and shall pay the fees of the attorneys for Plaintiffs/Intervenors, Bay Area Legal Services, Inc., in the amount of \$5,000, as set forth in Section VII, above.

It is so **ORDERED** this 5 day of April, 2011.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to the entry of this Decree.

For the Plaintiff United States:

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APPENDIX A

Training Certificate

I certify that on _____, 20 __, I received training with respect to the Consent Decree entered by the Court in *United States v. Robert S. Cairns and Katerina D. Cairns*, Civil Action No. 8:11-cv-100 (M.D. Fla.), and with respect to federal, state and local fair housing laws, including the federal Fair Housing Act. I have received a copy of and have read the Consent Decree, and have had my questions about the Decree answered. I understand my responsibilities under the Consent Decree and applicable fair housing laws and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX B

Release of Claims

In consideration of the payment of the sum of _____ dollars (\$ _____), pursuant to the Consent Decree entered in *United States and Devaughn Duncan, et al. v. Robert S. Cairns and Katerina D. Cairns*, Case No. 8:11-cv-100 (M. D. Fla.), I, _____, hereby release 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 the action as of the date of entry of that Consent Decree. I fully acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated: _____

(NAME)