

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:11cv00617
)	Hon. Susan J. Dlott, Chief Judge
CINCINNATI CAPITAL PARTNERS)	
LXXIII, LLC, AND PAULA WISHAM,)	
)	
Defendants.)	
_____)	

CONSENT ORDER

1. This action was brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (hereinafter “Fair Housing Act” or “FHA”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619. It was brought on behalf of Housing Opportunities Made Equal (“HOME”), pursuant to 42 U.S.C. § 3612(o).
2. In its Complaint, the United States alleges that Defendant Cincinnati Capital Partners LXXIII, LLC, and Defendant Paula Wisham (hereinafter, “Wisham”) (collectively, “Defendants”) violated Section 804 of the Fair Housing Act, 42 U.S.C. § 3604, by:
 - a. Refusing to negotiate for the rental of, or otherwise making unavailable or denying dwellings to persons because of race and national origin, in violation of 42 U.S.C. § 3604(a); and
 - b. Representing to persons because of race and national origin that dwellings are not available for inspection or rental when such dwellings are in fact so available, in violation of 42 U.S.C. § 3604(d).

3. The United States alleges that as a result of Defendants' discriminatory conduct, the mission of HOME has been frustrated. It has expended funds, and its staff has spent time on this matter and diverted resources that could have been spent working in other areas.
4. The parties agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 3612(o).
5. Defendant Cincinnati Capital Partners LXXIII, LLC, does not admit any of the allegations in the United States' Complaint.
6. To avoid costly and protracted litigation, the parties have voluntarily agreed to resolve the United States' claims against Defendants without further proceedings. Therefore, as indicated by the signatures appearing below, the United States and Defendants agree to the entry of this Consent Order.

It is hereby ORDERED, ADJUDGED, and DECREED:

I. INJUNCTIVE RELIEF

7. Defendants, and any agents, employees, assigns, successors-in-interest, and any persons in active concert or participation with them, are hereby enjoined from:
 - a. Refusing to negotiate for the rental of, or otherwise making unavailable or denying dwellings to persons because of race and national origin, and
 - b. Representing to persons because of race and national origin that dwellings are not available for inspection or rental when such dwellings are in fact so available.

II. NONDISCRIMINATION POLICY

8. Defendant Cincinnati Capital Partners LXXIII, LLC, shall prepare and implement a Nondiscrimination Policy regarding the rental of dwelling units at Valley Woods

Apartments that shall be applied equally to all actual and prospective tenants, regardless of their race or national origin.

9. Within ten (10) days of the date of entry of this Consent Order, Cincinnati Capital Partners LXXIII, LLC, shall distribute the Nondiscrimination Policy to all of its employees and agents, or anyone acting under its direction, who have responsibility for showing, renting, or managing any and all dwelling units at Valley Woods Apartments, and this policy will be reviewed, along with a question and answer session, with each employee, agent, or anyone acting under Defendant's direction, on an annual basis thereafter. The text of the Nondiscrimination Policy shall be consistent with Appendix A.

III. NOTICE TO PUBLIC OF NONDISCRIMINATION POLICY

10. Within ten (10) days of the date of entry of this Consent Order, Defendant Cincinnati Capital Partners LXXIII, LLC, shall take the following steps to notify the public of its Nondiscrimination Policy for Valley Woods Apartments:
 - a. Prominently post in any office or area where there is rental activity and/or personal contact with applicants or prospective applicants at Valley Woods Apartments, a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all dwelling units are available for rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement. Nothing in this provision requires Cincinnati Capital Partners LXXIII, LLC, to affirmatively create any rental office at Valley Woods Apartments.

- b. Whenever any dwelling unit at Valley Woods Apartments is available for rent, Cincinnati Capital Partners LXXIII, LLC, shall prominently post an easily readable “For Rent” or “Vacancy” at Valley Woods Apartments. The sign or notice shall include the slogan “Equal Housing Opportunity” and/or the fair housing logo. Such slogan and logo shall be prominently displayed and easily readable.
- c. Include the words “Equal Housing Opportunity” and/or the fair housing logo in all rental advertising conducted by Cincinnati Capital Partners LXXIII, LLC, its agents or employees, in newspapers, flyers, handouts, telephone directories, and other written materials; on radio, television, or other media broadcasts; and on all billboards, signs, pamphlets, brochures, and other promotional literature, provided that this requirement does not compel Cincinnati Capital Partners LXXIII, LLC, its agents, or employees to advertise in any of these media, but does require compliance with this provision whenever Cincinnati Capital Partners LXXIII, LLC, its agents, or employees so advertise. The words and/or logo shall be prominently placed and easily readable.
- d. Include the following phrase in the standard rental application and the standard rental agreement used for rental of dwelling units at Valley Woods Apartments in boldface type, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability, or familial status (having children under age 18).

IV. TRAINING

11. Within ten (10) days of the date of entry of this Consent Order, Defendant Cincinnati Capital Partners LXXIII, LLC, shall provide a copy of this Consent Order to all of its existing agents and employees involved in showing, renting, or managing any dwelling units at Valley Woods Apartments. Cincinnati Capital Partners LXXIII, LLC, shall secure a signed statement from each such existing agent or employee acknowledging that he or she has received and read the Consent Order and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Order and the Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Order and the Nondiscrimination Policy. This statement shall be as set forth in Appendix B.
12. During the term of this Consent Order, within five (5) days after each new agent or employee of Cincinnati Capital Partners LXXIII, LLC, becomes involved in showing, renting, or managing any dwelling units at Valley Woods Apartments, Cincinnati Capital Partners LXXIII, LLC, shall provide a copy of this Consent Order and the Nondiscrimination Policy to each such new agent or employee and secure a signed statement from each new agent or employee acknowledging that he or she has received and read the Consent Order and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Order and the Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Order and the Nondiscrimination Policy. This statement shall be as set forth in Appendix B.
13. Within sixty (60) days of the date of entry of this Consent Order, Cincinnati Capital Partners LXXIII, LLC's managers, officers, and/or trustees, and its agents and employees involved in showing, renting, or managing any dwelling units at Valley Woods

Apartments shall undergo in-person training on the Fair Housing Act, with specific emphasis on discrimination on the basis of race or national origin. The training shall be conducted by an independent, qualified third party, approved in advance by the United States (which approval shall not be unreasonably withheld), and any expenses associated with this training shall be borne by Cincinnati Capital Partners LXXIII, LLC. Cincinnati Capital Partners LXXIII, LLC, shall obtain from the trainer certifications of attendance, executed by each individual who received the training, confirming their attendance. This confirmation shall include the name of the course, the name of the instructor, the date the course was taken, and the length of the course and/or time within which the course was completed.

14. At a minimum, the training required in the preceding paragraph shall consist of the following:

- a. Instruction on the requirements of all applicable federal and state housing discrimination laws; and
- b. A question and answer session for the purpose of reviewing the foregoing areas.

V. NONDISCRIMINATORY STANDARDS AND PROCEDURES FOR SHOWING AVAILABLE DWELLING UNITS TO PROSPECTIVE TENANTS

15. Within forty-five (45) days of the date of entry of this Consent Order, Cincinnati Capital Partners LXXIII, LLC, shall develop and implement, with respect to dwelling units at Valley Woods Apartments, objective, uniform, nondiscriminatory standards and procedures for informing persons about and showing available dwelling units to prospective tenants. Such standards and procedures shall be submitted to the United States for approval in advance of their implementation (which approval shall not be

unreasonably withheld) and shall be consistent with the provisions of this Section. The standards and procedures shall be posted and prominently displayed in any office or area where there is rental activity and/or personal contact with applicants or prospective applicants, and a copy of these standards and procedures shall be made available upon request to any prospective applicant for the rental of a dwelling unit. Nothing in this provision requires Cincinnati Capital Partners LXXIII, LLC, to affirmatively create any rental office at Valley Woods Apartments. For the duration of this Consent Order, these standards and procedures may be modified only if written notice is given to counsel for the United States at least thirty (30) days before the proposed modifications are to take effect and the United States makes no objection before the proposed modifications are to take effect.

16. The nondiscriminatory standards and procedures discussed in paragraph fifteen (15) above shall include the use of the following documents, which Cincinnati Capital Partners LXXIII, LLC, shall update as new information becomes available, and retain for the duration of the Consent Order:

- a. Availability List: Cincinnati Capital Partners LXXIII, LLC, shall ensure that it maintains and timely updates an Availability List that includes the addresses and unit numbers of all dwelling units known to be available or reasonably expected to be available for rental within thirty (30) days, including the date on which Cincinnati Capital Partners LXXIII, LLC, was first informed that each would be available or reasonably expected to be available for rental and the first date that each would be available or reasonably expected to be available for rental or occupancy by a new tenant. Such Availability List may also include comments

that may affect Cincinnati Capital Partners LXXIII, LLC's reasonable assessment of when a particular dwelling unit would be available or reasonably expected to be available for rental, including but not limited to whether an existing tenant may change his or her decision to vacate the dwelling unit, whether the dwelling unit may require repair or renovation, or whether the existing tenant may require an extension of occupancy until new housing is made available. Cincinnati Capital Partners LXXIII, LLC, shall share the complete information on the Availability List with each person who visits or calls to inquire about the availability of dwelling units.

- b. Rental Applications: Cincinnati Capital Partners LXXIII, LLC, shall permit all persons who inquire about renting a dwelling unit the opportunity to apply for a dwelling unit. To the extent that Cincinnati Capital Partners LXXIII, LLC, rejects any application for housing, Cincinnati Capital Partners LXXIII, LLC, shall provide, either on the application or on an attachment to the application, a written explanation of why the applicant was not offered a tenancy, any supporting documentation, and the name of the employee who made the decision. Cincinnati Capital Partners LXXIII, LLC, shall promptly notify such applicant of the rejection and the reason therefor.

VI. COMPLIANCE TESTING

17. The United States may take steps to monitor Defendants' compliance with this Consent Order including, but not limited to, conducting fair housing tests at any dwelling in which Defendant Cincinnati Capital Partners LXXIII, LLC, now or in the future, has a direct or indirect ownership, management, or financial interest.

VII. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

18. Within ninety (90) days of the date of entry of this Consent Order, and every year thereafter for the duration of this Consent Order, Defendant Cincinnati Capital Partners LXXIII, LLC, shall deliver to counsel for the United States a report containing information about Cincinnati Capital Partners LXXIII, LLC's compliance efforts during the preceding reporting period, including but not limited to:
- a. Photographs of each office in which rental activity is conducted, showing the fair housing signs and Nondiscrimination Standards and Procedures, pursuant to Sections III and V of this Consent Order; however, nothing in this provision requires Cincinnati Capital Partners LXXIII, LLC, to affirmatively create any rental office at Valley Woods Apartments;
 - b. Copies of the standard rental applications and rental agreements that Cincinnati Capital Partners LXXIII, LLC, provides to prospective tenants, pursuant to Section III of this Consent Order;
 - c. Copies of all Employee Acknowledgment forms and fair housing training certifications, pursuant to Section IV of this Consent Order; and
 - d. Copies of all completed Availability Lists, Rental Applications, and other information (whether recorded by any means by either Cincinnati Capital Partners LXXIII, LLC, its employees or agents, or a prospective tenant) related to any inquiries regarding the availability of rental dwellings, maintained pursuant to Section V of this Consent Order.
19. During the period in which this Consent Order is in effect, Cincinnati Capital Partners LXXIII, LLC, shall preserve all records that are the source of, contain, or relate to any of

the information pertinent to its obligations under this Consent Order, including, but not limited to, all availability lists, waiting lists, rental applications, leases, rental roll ledgers, and occupancy lists. Upon reasonable notice to Cincinnati Capital Partners LXXIII, LLC, representatives of the United States shall be permitted to inspect and copy, at the United States' sole expense, all such records at any and all reasonable times or, upon request by the United States, Cincinnati Capital Partners LXXIII, LLC, shall provide copies of such documents at the United States' sole expense.

20. During the period in which this Consent Order is in effect, Cincinnati Capital Partners LXXIII, LLC, shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against Cincinnati Capital Partners LXXIII, LLC, its employees, or its agents regarding discrimination in housing. If the complaint is written, Cincinnati Capital Partners LXXIII, LLC, shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. Cincinnati Capital Partners LXXIII, LLC, shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within fifteen (15) days of the substance of any resolution of such complaint.

VIII. COMPENSATION TO HOME

21. Defendant Cincinnati Capital Partners LXXIII, LLC, shall pay a total of four thousand five hundred dollars (\$4,500) to HOME to resolve HOME's claims for damages, attorney's fees, and costs, according to the following payment schedule: fifteen hundred dollars (\$1,500) within thirty (30) days of the date of entry of this Consent Order, fifteen hundred dollars (\$1,500) within sixty (60) days of the date of entry of this Consent Order,

and fifteen hundred dollars (\$1,500) within ninety (90) days of the date of entry of this Consent Order. Prior to receiving the first payment, HOME shall execute a release in the form of Appendix C.

22. Within thirty (30) days of the date of entry of this Consent Order, Defendant Paula Wisham shall pay a total of five hundred dollars (\$500) to HOME to resolve HOME's claims for damages, attorney's fees, and costs. Prior to receiving this payment, HOME shall execute a release in the form of Appendix C.

IX. ACQUISITION OR TRANSFER OF INTEREST IN RENTAL PROPERTIES

23. If at any time while this Consent Order remains in effect, Defendant Cincinnati Capital Partners LXXIII, LLC, maintains that its obligations under this Consent Order have terminated or changed because it has sold or transferred any portion of Valley Woods Apartments to a bona-fide third party purchaser in an arms-length transaction, Defendant Cincinnati Capital Partners LXXIII, LLC, shall inform the United States within thirty (30) days of such transaction and provide the date of the sale or transfer, copies of the sale or transfer documents, and the name(s) and contact information for the subsequent purchaser.
24. If at any time while this Consent Order remains in effect, Defendant Wisham is employed in any capacity in connection with the rental of any residential dwelling units at any property, she shall, within thirty (30) days of starting such new employment, notify the United States in writing of her new employment, including the name of the property where she is employed and the name, address, and telephone number of her employer.

X. SCOPE AND DURATION OF CONSENT ORDER

25. The provisions of this Consent Order shall apply to Defendants, their officers, agents, employees, successors-in-interest, and assigns, and all persons acting in active concert or participation with them.
26. This Consent Order shall remain in effect for four (4) years after the date of its entry.
27. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after 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.

XI. REMEDIES FOR NON-COMPLIANCE

28. The Parties 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 that the United States contends that there has been a failure by any of the Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent 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 attorneys' fees that may have been occasioned by any of the Defendants' violation or failure to perform.

XII. COSTS OF LITIGATION

29. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation, except as provided by paragraph twenty-eight (28) above.

XIII. TIME FOR PERFORMANCE

30. Any time limits for performance imposed by this Consent Order may be extended by the 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 thirty (30) days from the date of the filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through a written order that it has not approved the modification.

IT IS SO ORDERED:

This 27th day of January ,2012.

S/Susan J. Dlott
UNITED STATES DISTRICT JUDGE

Appendix A

NONDISCRIMINATION POLICY

It is the policy of Cincinnati Capital Partners LXXIII, LLC, to comply with Title VIII of the Civil Rights Act of 1968, as amended, commonly known as the Fair Housing Act, by ensuring, to the extent required by law, that dwelling units are available to all persons without regard to race, color, sex, national origin, religion, disability, or familial status. This policy means that, among other things, Cincinnati Capital Partners LXXIII, LLC, and all its agents and employees with the responsibility for renting, managing, or administering any dwelling units must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants because of race or national origin. Such agents and employees may not:

- A. Refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, sex, national origin, religion, disability, or familial status;
- B. Discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, sex, national origin, religion, disability, or familial status;
- C. Make, print, or publish, or cause 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, color, sex, national origin, religion, disability, or familial status; or
- D. Represent to persons because of race, color, sex, national origin, religion, disability, or familial status that any dwelling is not available for inspection or rental when such dwelling is in fact so available.

Any agent or employee who fails to comply with this Nondiscrimination Policy will be subject to appropriate disciplinary action. Any action taken by an agent or employee that results in unequal service to, treatment of, or behavior toward tenants or actual or potential applicants on the basis of race, color, sex, national origin, religion, disability, or familial status may constitute a violation of state and federal fair housing laws. Any tenant or applicant who believes that any of the above policies have been violated by any agent or employee of the owner should contact the owner at 248-362-9699. Any tenant or applicant who believes that any of the above policies have been violated by any owner, agent, or employee may also contact the U.S. Department of Housing and Urban Development at 1-888-799-2085, or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.

Appendix B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, _____, I was provided with a copy of the Consent Order entered by the Court in United States v. Cincinnati Capital Partners LXXIII, LLC, et al., Civil Action No. 1:11-cv-00617 (S.D. Ohio), and a copy of the Nondiscrimination Policy of Cincinnati Capital Partners LXXIII, LLC. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

Appendix C

FULL AND FINAL RELEASE OF CLAIMS

Housing Opportunities Made Equal (“HOME”), its agents, executors, administrators, successors-in-interest, and assigns, pursuant to the terms, provisions, and conditions of the Consent Order approved by the United States District Court for the Southern District of Ohio on _____, 2012, in the case of United States v. Cincinnati Capital Partners LXXIII, LLC, et al., Civil Action No. 1:11-cv-00617 (S.D. Ohio) (“lawsuit”), and in consideration of the payment of five thousand dollars (\$5,000), does fully, finally, and forever release, discharge, and hold harmless Cincinnati Capital Partners LXXIII, LLC, and Paula Wisham (hereinafter “Defendants”), along with their insurers, attorneys, related companies, principals, predecessors, successors-in-interest, assigns, affiliates, partners, directors, officers, agents, employers, shareholders, subsidiaries, employees, former employees, heirs, executors, and administrators and any persons acting under their respective direction or control (hereinafter “Releasees”), from any and all fair housing claims set forth, or which could have been set forth, in the lawsuit that HOME may have against Defendants or any of the Releasees for any of Defendants’ actions or statements related to those claims through the date of the Consent Order, including claims for damages (both compensatory and punitive), costs, fines, and attorneys’ fees.

Executed this ____ day of _____, 2012.

Print Name

Signature