

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 3:10-cv-00049-JWS
)
 ALASKA HOUSING FINANCE)
 CORPORATION,)
)
 Defendant.)
 _____)

CONSENT DECREE

I. INTRODUCTION

1. On March 12, 2010, the United States filed this action on behalf of Laura Waldon (“Ms. Waldon”) to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq., (the “Fair Housing Act”). The Complaint alleges that (“AFHC”) failed to make a reasonable accommodation to Ms. Waldon, who is a person with a disability as defined within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h).

2. AHFC operates as the State of Alaska’s public housing authority. Among other things, it administers a Section 8 Housing Choice Voucher Program throughout the state which provides low income individuals with a specified amount of subsidy, based on household income and number of bedrooms needed, to choose and lease a rental dwelling from any private landlord willing to participate in the program.

3. On or about November 3, 2005, AHFC sent Ms. Waldon a letter stating that Ms. Waldon was approved for a three bedroom subsidy. AHFC noted in the November 3, 2005,

letter that Ms. Waldon's family composition qualified her for a one bedroom subsidy. In approving her for a three-bedroom voucher, AHFC granted Ms. Waldon a reasonable accommodation on account of her disability for two extra bedrooms: one bedroom for her live-in aide, and the other bedroom for her in-home exercise equipment. The November 3, 2005, approval letter also advised Ms. Waldon that she must meet verification requirements annually in support of her request for reasonable accommodation. On or about November 14, 2005, Ms. Waldon signed a lease for a three-bedroom home located at 23509 West Alexander Avenue, Willow, Alaska ("the Willow home") through the Section 8 Housing Choice Voucher Program. The Willow home is a "dwelling" within the meaning of 42 U.S.C. § 3602(b).

4. On or about October 4, 2006, Ms. Waldon submitted a "Reasonable Accommodation Request" form to AHFC in support of her recertification for the three-bedroom voucher to continue to live at the Willow home. On or about October 17, 2006, AHFC approved a two-bedroom voucher for Ms. Waldon allowing her a subsidy for an extra bedroom for a live-in aide, but denied the reasonable accommodation request to have a subsidy for the third bedroom for the exercise equipment.

5. On or about October 23, 2006, Ms. Waldon requested an informal hearing under AHFC's grievance procedure. An informal hearing was held on November 15, 2006, before a hearing officer. The hearing officer affirmed AHFC's decision to deny Ms. Waldon a subsidy for the additional bedroom for her exercise equipment in a written decision issued on November 27, 2006.

6. On or about November 29, 2006, Ms. Waldon filed a timely complaint with the United States Department of Housing and Urban Development ("HUD") alleging that AHFC discriminated against her on the basis of disability. On or about October 24, 2007, AHFC

granted Ms. Waldon a three-bedroom voucher, which included an additional bedroom for her exercise equipment.¹ Pursuant to 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of Ms. Waldon's complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. Therefore, on September 30, 2009, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging AHFC with engaging in discriminatory practices, in violation of 42 U.S.C. § 3604(f) of the Fair Housing Act. On October 6, 2009, Ms. Waldon elected to have the claims asserted in HUD's Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On October 9, 2009, the HUD Administrative Law Judge issued a "Notice of Election to Proceed in United States Federal District Court" and terminated the administrative proceeding on Ms. Waldon's complaint. Following this Notice of Election to Proceed in United States Federal District Court, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

7. The United States and AHFC agree that this Court has jurisdiction over this action brought by the United States under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o). The United States and AHFC agree that to avoid costly and protracted litigation, the United States' claims against AHFC should be resolved without further proceedings. Accordingly, the United

¹ Based on the same set of facts and events described in Paragraph 1, above, HUD and AHFC entered into a Voluntary Compliance Agreement ("VCA") on January 26, 2009, resolving HUD's claims against AHFC under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act wherein AHFC agreed to pay Ms. Waldon \$3,400.00. According to the VCA, this amount accounts for the difference in cost to Ms. Waldon for the time period during which she received a two bedroom subsidy from AHFC. Specifically, the VCA states that the sum of \$3400.00 is "a financial adjustment between a two and three bedroom Section 8 Housing Choice Voucher representing (sic) period December 2006 through October 2007, when Complainant Waldon's three-bedroom Voucher was reinstated."

States and AHFC consent to the entry of this Consent Decree, subject to approval by the Court. The United States and AHFC do not intend with this Consent Decree to limit Laura Waldon's right to intervene in this matter on her own behalf under the Fair Housing Act, 42 U.S.C. § 3612(o)(2) (see Paragraphs 16 & 17, below). Nor does this Consent Decree purport to resolve or affect any claims Ms. Waldon may have under the Fair Housing Act.

8. AHFC denies that it engaged in illegal discriminatory housing practices towards Ms. Waldon in violation of 42 U.S.C. § 3604(f) of the Fair Housing Act, and by entering into this Consent Decree AHFC does not admit that it violated any provisions of the Fair Housing Act.

It is hereby ORDERED, ADJUDGED, AND DECREED:

II. GENERAL INJUNCTION

9. AHFC, its officers, agents, employees, representatives, successors and assigns, and all other persons in active concert or participation with it are enjoined from:

A. Discriminating against a person in the terms, conditions, or privileges of the rental of a dwelling or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person, in violation of 42 U.S.C. § 3604(f)(2); and

B. Refusing to make reasonable accommodations in rules, policies, practices, or services, which are necessary to afford a person an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(A).

III. REASONABLE ACCOMMODATION POLICY

10. For the duration of this Decree, AHFC shall continue to implement the reasonable accommodation policy it adopted pursuant to the Voluntary Compliance Agreement executed on

September 29, 2008 between HUD and AHFC (“the 2008 VCA”). AHFC shall continue to follow this reasonable accommodation policy with respect to its public housing programs, including its Section 8 Housing Choice Voucher Program.

IV. TRAINING

11. For the duration of this Decree, AHFC shall continue to implement the training program established in the 2008 VCA with respect to its reasonable accommodation policy for its employees and agents whose duties, in whole or in part, involve the management and administration of AHFC’s housing programs, including its Section 8 Housing Choice Voucher Program. The persons trained pursuant to the 2008 VCA shall include all hearing officers who participate in the informal appeal process found in federal regulations at 24 C.F.R. 982.555.

V. REPORTING REQUIREMENTS

12. For the duration of this Decree, AHFC shall notify counsel for the United States, in writing, within fifteen (15) days of receipt of any written complaint of housing discrimination on account of disability against AHFC or any of AHFC’s agents or employees submitted to the HUD Office of Fair Housing and Equal Opportunity, the State of Alaska Office of the Ombudsman, or the Alaska State Commission for Human Rights. Such notification shall include the date of the complaint, a copy of any written complaint or a description of the verbal complaint, and contact information (including mailing addresses daytime and evening telephone numbers) for the complaining party. Within fifteen (15) days of the resolution of any such complaint, AHFC shall notify counsel for the United States, in writing, providing the details of the resolution. For the duration of this Decree, AHFC shall provide counsel for the United States, semi-annually, with a copy of the Reasonable Accommodation Log that AHFC submits to HUD, semi-annually, pursuant to Paragraph E.2.c on page 25 of the 2008 VCA.

13. For the duration of this Decree, AHFC shall preserve the following records related to its obligations under this Consent Decree: all records reflecting its reasonable accommodations policy and procedures with respect to its public housing programs, including its Section 8 Housing Choice Voucher Program, including any changes to its reasonable accommodation policy and procedures during the duration of the Decree; and all records reflecting or documenting the implementation of the training program referenced in Paragraph 10 of this Decree. Upon reasonable notice to AHFC, representatives of the United States shall be permitted to inspect and copy any of AHFC's Public Housing Division records related to the documents described in this paragraph so as to determine compliance with the Decree; provided, however, that the United States shall endeavor to minimize any inconvenience to AHFC from such inspections.

VI. COMPLAINANT LAURA WALDON

14. The parties recognize that 24 C.F.R. § 982.402(b)(8) states, "In determining family unit size for a particular family, the PHA [Public Housing Authority] may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances." For the duration of this Decree, AHFC agrees to continue to provide Laura Waldon with a three-bedroom voucher through the Voucher Program, provided that Ms. Waldon submits annual verification of her continued need for a reasonable accommodation for her live-in aide and her exercise equipment.

15. Within five (5) days of the entry of this Decree, the United States shall serve Laura Waldon with a copy of the Consent Decree pursuant to Fed.R.Civ.P. 5(b) and shall notify

Ms. Waldon of her rights under Section VI of this Decree. The United States shall file proof of this service with the Court pursuant to Fed.R.Civ.P. 5(d).

16. Laura Waldon shall have sixty (60) days from the date that she is served with a copy of this Decree to intervene in this case on her own behalf under the Fair Housing Act, 42 U.S.C. §§ 3612(o)(2). AHFC will not oppose any request by Ms. Waldon to intervene in this action.

17. In the event that Ms. Waldon moves to intervene in this action, and such is granted by the Court, the intervention will not affect the United States' and AHFC's obligations under this Decree. Ms. Waldon's failure to intervene within the time allowed by this paragraph, does not affect any claims Ms. Waldon may have against AHFC under the Fair Housing Act, including any claims related to the events set forth in paragraphs 3 through 5, other than her right to intervene in this action.

VII. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

18. The duration of this Consent Decree shall be three (3) years.

19. Following the sixty (60) day period set forth in Paragraph 16 of this Decree, the United States' action shall be dismissed with prejudice, except that the Court shall retain jurisdiction to enforce the terms of the Decree for three (3) years. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree for good cause, including on the basis that AHFC has failed to comply with a provision of the Decree. Consistent with Paragraph 7 of this Decree, the dismissal of the United States' action does not limit Ms. Waldon's right to intervene in this matter on her own behalf under the Fair Housing Act, 42 U.S.C. § 3612(o)(2).

20. During the Decree's three year term, the parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Decree prior to bringing such matters to the Court for a resolution. However, in the event of a failure by AHFC 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 may move this Court to impose any remedy authorized by law or equity.

21. Nothing in this Consent Decree is intended to conflict or interfere with AHFC's responsibilities under the 2008 VCA or with the Voluntary Compliance Agreement between HUD and AHFC dated January 26, 2009.

VIII. TIME FOR PERFORMANCE

22. Any time limits for performance imposed by this Consent Decree may be extended by the mutual, written agreement of the United States and AHFC.

IX. COSTS OF LITIGATION

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

IT IS SO ORDERED:

This 3rd day of September, 2010.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

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

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