

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **CONSENT ORDER (Case No. 2:13-CV-**
) **01421 AJS)**
 S-2 PROPERTIES, INC. and BILL)
 TURZAI,)
)
 Defendants.)
)
)

I. INTRODUCTION

1. The United States filed this lawsuit to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619. The United States has alleged that Defendants S-2 Properties, Inc., and Bill Turzai (collectively “Defendants”) engaged in a pattern or practice of discrimination based on race and/or a denial of rights to a group of persons, in violation of 42 U.S.C. § 3614(a), in the rental of dwelling units, owned and managed by Defendants, at Baldwin Commons Apartments, a rental complex located at 49 Rosewood Court in Pittsburgh, Pennsylvania 15234, consisting of 52 townhomes and 48 apartment units.

2. Defendant Bill Turzai is a resident of Pennsylvania and manages Baldwin Commons Apartments.

3. Between February and April 2013, the United States Department of Justice conducted testing to evaluate Defendants’ compliance with the Fair Housing Act. Testing is a simulation of a housing transaction that compares responses given by housing providers to different types of home-seekers to determine whether illegal discrimination is occurring.

4. The United States, in its Complaint, alleges that Defendants discriminated on the basis of race at Baldwin Commons apartments by:

a. Refusing to negotiate for the rental of, otherwise making unavailable or denying, dwellings to persons of race or color, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. §3604(a);

b. Discriminating in the terms, conditions, or privileges of, or the provision of services or facilities in connection with, the rental of a dwelling because of race, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. §3604(b); and

c. Representing to persons, because of race, that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available, in violation of Section 804(d) fo the Fair Housing Act, 42 U.S.C. §3604(d).

5. The United States alleges that through the conduct described above, Defendants are liable for violating the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

6. Specifically, the United States has alleged that Defendants have engaged in housing practices that discriminate against African-Americans on the basis of race, including:

a. Allowing white persons to inspect available units or comparable units, while informing African-Americans that the same units are unavailable and/or that they must put their names on a waiting list;

b. Informing white persons that certain units would soon be available, while failing to so inform African-American persons of the same; and

c. Offering opportunities to bypass pre-qualifying requirements to some white persons, but not to African-Americans.

7. The parties have agreed that, in order to avoid protracted and costly litigation, this controversy should be resolved without a trial. Therefore, the parties consent to the entry of this Consent Decree (hereinafter “the Consent Decree”).

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

II. GENERAL INJUNCTION

8. Defendants, their officers, agents, employees, successors and assigns, and all other persons in active concert or participation with them, are enjoined, with respect to the rental of dwellings, from:

- a. Refusing or failing to provide, or offer information about, a dwelling on the basis of race;
- b. refusing or failing to show available or comparable dwellings to prospective tenants on the basis of race;
- c. representing to persons, because of race, that any dwelling is not available for inspection when such dwelling is, in fact, so available; or
- d. 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);
- e. discriminating in the terms, conditions, or privileges of, or the provision of services or facilities in connection with, the rental of a dwelling because of race, in violation of 42 U.S.C. 3604(b); and
- f. misrepresenting the availability of dwellings on the basis of race or color, in violation of 3604(d).

III. NON-DISCRIMINATION POLICY

9. Defendants shall implement and maintain the Nondiscrimination Policy attached hereto as Exhibit A. Within 15 days of entry of the Consent Order, Defendants shall distribute the Nondiscrimination Policy to all of their employees, agents, or anyone

acting under their direction, who have responsibility for showing, renting, or managing any and all dwelling units at Baldwin Commons Apartments, and this policy shall be reviewed, along with a question and answer session, with each employee, agent, or anyone acting under Defendants' direction, on an annual basis hereafter. The text of the Nondiscrimination Policy is as set forth in Appendix A hereto.

IV. NOTICE TO PUBLIC OF NON-DISCRIMINATION POLICY

10. Within 15 days of the entry of the Consent Order, Defendants shall take the following steps to notify the public of its non-discrimination policy:
 - a. Prominently post at all rental offices the Defendants may currently or subsequently use for the rental of dwellings at Baldwin Commons Apartments, a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all apartments are available for rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.
 - b. Include the words "Equal Housing Opportunity" and/or the fair housing logo in rental advertising conducted by Defendants, their agents or employees, in newspapers, flyers, handouts, and other written materials; on radio, television or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature. The words and/or logo shall be prominently placed and easily readable.
 - c. Whenever any dwelling unit at Baldwin Commons Apartments is available for rent, Defendants shall prominently post an easily readable "For Rent" or "Vacancy" sign or notice at the rental office of the apartment complex in

which the dwelling unit is available. 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.

d. Include the following phrase in the standard rental application and the standard rental agreement used for the rental of dwelling units, using letters of equal or greater size to those of the text in the body of the document:

S-2 Properties, Inc., is an equal housing opportunity provider and supports and follows the state and federal fair housing laws. S-2 Properties, Inc., does not discriminate on the basis of race, color, sex, national origin, religion, disability, or familial status (having children under age 18).

V. TRAINING

11. Within thirty (30) days of the entry of this Consent Decree, Defendants shall provide a copy of this Consent Decree, or a summary of the consent decree approved by the United States, and the Nondiscrimination Policy, in the form of Appendix A, to their agents and employees who have responsibility for showing, renting, or managing any dwelling unit at Baldwin Commons Apartments and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Consent Decree or the approved summary, and the Nondiscrimination Policy, has had the opportunity to have questions about the Consent Decree and Nondiscrimination Policy answered, and agrees to abide by the relevant provisions of the Consent Decree and said policy. This Non-Discrimination Policy statement shall be in the form of Appendix A. S-2 Properties, Inc., Inc. shall make the Consent Decree in its entirety available to agents and employees at Baldwin Commons Apartments upon their request.

12. Within ninety (90) days, Defendants' managers, officers, and/or trustees, and Corporate Defendants' agents and employees who have responsibility for showing, renting, or managing any dwelling units at Baldwin Commons Apartments shall undergo in-person training on the Fair Housing Act, and the Pennsylvania Human Rights Act, with emphasis on the importance of equal treatment in all aspects of housing whether or not the individual is a member of a protected class. The training shall be conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with this training shall be borne by Defendants. Defendants shall obtain from the trainer certifications of attendance, executed by each individual who received the training, confirming their attendance, in a form acceptable to the United States. This confirmation shall include the name of the course, the date the course was taken, and the length of the course and/or time within which the course was completed.

13. 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.

VI. NON-DISCRIMINATION STANDARDS AND PROCEDURES FOR SHOWING AVAILABLE UNITS TO PROSPECTIVE TENANTS

14. Within thirty (30) days from the date of entry of this Consent Decree, Defendants shall develop and implement, with respect to all dwelling units at Baldwin Commons Apartments, objective, uniform, non-discriminatory standards and procedures for 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 and shall be consistent with the provisions of this Section. Within 5 days of when the United States approves the standards and procedures, they shall be posted and prominently displayed in any Baldwin Commons Apartments rental or leasing office where there is rental activity and/or personal contact with prospective tenants or applicants, and a copy of these standards and procedures shall be made available upon request to any prospective tenant or applicant for the rental of a dwelling. For the duration of this Consent Decree, these standards and procedures may be modified only if written notice is given to counsel for the United States thirty (30) days before modifications are to take effect.

15. The nondiscriminatory standards and procedures discussed above shall include the use of the following documents or computer programs, which Defendants shall update as new information becomes available, and retain for the duration of the Consent Decree:

- a. Prospective Tenant Log: Defendants shall, for all prospective tenants who inquire in-person about dwelling units, obtain guest information either on paper or through a computer program that contains or requests the following information:
 - i. The date of the prospective tenant's visit;
 - ii. The prospective tenant's name and contact information, including phone number(s), if provided by the applicant upon request by the Defendant;
 - iii. The date on which the prospective tenant wishes to move and the type of unit the prospective tenant seeks
 - iv. Whether the prospective tenant was invited to see available dwelling units. If the prospective tenant was not invited to see available dwelling units, the prospective tenant log should explain why;

- v. The address and unit number for each available dwelling unit shown to the prospective tenant, and the date the unit was shown;
- vi. Whether the prospective tenant was invited to fill out an application;
- vii. The names of all employees/agents who assisted the prospective tenant.

b. Rental Applications: Defendants, their agents, and their employees shall provide and process rental applications on a non-discriminatory basis and shall maintain all rental applications, whether deemed complete or incomplete, and any correspondence about the availability of dwelling units.

c. Availability Reports: Defendants shall ensure that, on a weekly basis, an Availability Report is updated and 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; monthly rent and security deposit for each such dwelling unit; and the first date it would be available for rental or occupancy by a new tenant. Defendants and/or their agents/employees shall share information on the Availability Report about the type of unit requested and shall provide this information to each person who visits or calls to inquire about the availability of dwelling units.

d. Waiting Lists: Defendants, their agents, and their employees shall maintain waiting lists in a non-discriminatory manner and develop uniform standards for selecting individuals from the list.

VII. COMPLIANCE TESTING

16. The United States may take steps to monitor Defendants' compliance with this Consent Decree including, but not limited to, conducting fair housing tests at Baldwin Commons Apartments.

VIII. REPORTING AND DOCUMENT RETENTION

17. Within 90 days of the date of entry of this Consent Decree, and every six (6) months thereafter for the duration of this Consent Decree, Defendants shall deliver to the United States, by electronic submission, a compliance report containing information about Defendants' compliance efforts at Baldwin Commons Apartments during the preceding reporting period, including but not limited to:

- i. Photographs indicating the locations of the fair housing signs posted and a copy of the Nondiscrimination Standards and Procedures for Showing Available Dwelling Units to Prospective Tenants pursuant to Sections IV and VI of this Consent Decree;
- ii. Copies of standard rental applications and rental agreement forms, pursuant to Section IV of this Consent Decree;
- iii. Copies of all Employee Acknowledgment forms, pursuant to Section V of this Consent Decree;
- iv. Copies of all fair housing training certifications, pursuant to Section V of this Consent Decree; and
- v. Monthly print outs of the Availability Report, copies of Rental Applications, lease data pages (first page of each lease), and other information recorded by any means related to any inquiries regarding the availability of rental dwellings, maintained pursuant to Section VI of this Consent Decree.

18. Defendants shall notify counsel for the United States in writing within fifteen

(15) days of receipt of any written or oral complaint against Defendants alleging discrimination on the basis of race or color. If the complaint is written, Defendants 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. Defendants shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States in writing within fifteen (15) days of the terms of any resolution of the complaint.

19. During the period in which this Consent Decree is in effect, Defendants shall preserve all records that are the source of, contain, or relate to any of the information pertinent to the obligations under this Consent Decree, including, but not limited to, availability reports, waiting lists, if any, rental applications, leases, rental roll ledgers, and occupancy lists, as well as records relating to the acquisition and/or transfer of interest in Subject Properties as set out in Section X, below. Upon reasonable notice to counsel for Defendants, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times or, upon request by the United States, Defendants shall provide copies of such documents.

IX. CIVIL PENALTY

20. Within forty-five (45) days after the entry of this Consent Decree, Defendants shall pay a total of **Fifteen Thousand Dollars (\$15,000)** to the United States Treasury pursuant to 42 U.S.C. § 3614(d)(1)(C). This payment shall be delivered to counsel for the United States in the form of electronic funds transfer pursuant to written instructions to be provided by the United States.

21. The civil penalty payment referenced in this Section is a debt for a fine, penalty, or forfeiture payable to and for the benefit of the United States within the meaning of 11 U.S.C.

§ 523(a)(7), and is not compensation for actual pecuniary loss. No Defendants shall seek to discharge any part of this debt in bankruptcy.

X. TRANSFER OF INTEREST IN SUBJECT PROPERTY

22. If at any time during the effective period of this Consent Decree, any Defendant (“transferring Defendant”) decides to transfer the entirety of said Defendant’s direct or indirect ownership, management, or other financial interest in Baldwin Commons Apartments to an unrelated party (“purchaser” or “transferee”) in an arms-length transaction,¹ the transferring Defendant shall take the following steps:

- a. At least thirty (30) days prior to completion of the sale or transfer, provide each prospective purchaser or other transferee with a copy of this Consent Decree along with written notice that Baldwin Commons Apartments remains subject to Sections II-VIII and X-XIV of the Consent Decree;
- b. At least thirty (30) days prior to completion of the sale or transfer, provide to the United States with written notice of its intent to sell or otherwise transfer Defendant’s interest in Baldwin Commons Apartments, along with a copy of the notice sent to each prospective purchaser or transferee, containing each prospective purchaser’s or transferee’s name, address and telephone number;
- c. Within thirty (30) days following completion of the sale or other transfer, the transferring Defendant shall provide to the United States a copy of the

¹ For purposes of this Consent Decree, “arms-length transaction” is defined as a transaction such as a contract or agreement that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that contract.

documents memorializing the transfer in interest of Baldwin Commons Apartments; and

- d. The transferring Defendant shall require the transferee, as a condition of the sale or other transfer, to agree in writing to perform all obligations and be liable for compliance with Sections II-VIII and X-XIV of this Consent Decree for the duration of this Decree, with respect to Baldwin Commons Apartments.

23. If the transferring Defendant complies with Paragraph 22, above, and transfers all of Defendant's ownership, management, or other financial interest in Baldwin Commons Apartments to an arm's length purchaser or other transferee, the Defendant will thereafter be relieved of further obligations under the Consent Decree, except for Sections II and IX.

24. If the proposed transfer of interest is not an arms-length transaction, the transferring Defendant must comply with each requirement set out in Paragraph 22, above. In addition, the transferring Defendant shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of this Consent Decree for its duration

X. SCOPE AND DURATION OF CONSENT DECREE

25. The provisions of this Consent Decree shall apply to all Defendants, their officers, agents, employees, successors and assigns, and all persons acting in active concert or participation with them.

26. This Consent Decree shall remain in effect for three (3) years after the date of its entry.

27. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree, after which time the case shall be dismissed with

prejudice. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice.

XII. 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 Decree prior to bringing such matters to the Court for resolution. However, in the event 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 Decree 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 which may have been occasioned by the violation or failure to perform.

29. In the event that any Defendant 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).

XIII. TIME FOR PERFORMANCE

30. Any time limits for performance imposed by this Consent Decree may be extended by written agreement of the parties. Other provisions in the Decree may be modified only upon approval of the Court, upon motion by either party.

XIV. COSTS OF LITIGATION

31. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

Dated this 9th day of April, 2014.

For Plaintiff United States of America:

DAVID J. HICKTON
United States Attorney

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

/s/ Charla Jackson

AMIE MURPHY
NY 4147401
Assistant United States Attorney
United States Attorney's Office
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Ph: (412)894-7379
Email: Amie.Murph@usdoj.gov

STEVEN H. ROSENBAUM
Chief
SAMEENA MAJEED
Deputy Chief
CHARLA JACKSON
ROGER SEVERINO
Trial Attorneys
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Northwestern Building, 7th Floor
Washington, DC 20530
Ph: (202) 514-4713
Fax: (202) 514-1116
E-mail: charla.jackson@usdoj.gov

For Defendants:

JONES, GREGG, CREEHAN & GERACE,
LLP

/s/ John P. Corcoran

JOHN P. CORCORAN, JR., ESQ.
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219-1905
Tel: (412)261-6400
Fax: (412)261-2652

SO ORDERED THIS __ DAY OF _____, 2014.

UNITED STATES DISTRICT JUDGE

APPENDIX A

Non-Discrimination Policy

It is the policy of BALDWIN COMMONS APARTMENTS AND S-2 PROPERTIES, INC., to comply with Title VIII of the Civil Rights Act of 1968, as amended, (commonly known as the Fair Housing Act) and the Pennsylvania Human Rights Act by ensuring that apartments are available to all persons without regard to race, color, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation. This policy means that, among other things, BALDWIN COMMONS APARTMENTS, S-2 PROPERTIES, INC., and all their 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, color, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation. Such agents and employees may not:

- A. Refuse to rent, or negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation;
- 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, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation;

- 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, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation; or
- D. Represent to persons because of race, color, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation; that any dwelling is not available for inspection or rental when such dwelling is in fact so available.

Our commitment to comply with the fair housing laws includes an affirmative duty to provide reasonable modifications and accommodations to qualified applicants and residents with disabilities. We will permit disabled persons, at their expense, to make reasonable modifications of existing premises, both the common area and the unit to be occupied by the disabled person, if modifications may be necessary to afford the disabled person full enjoyment of the premises. Further, we will make reasonable accommodations in our rules, policies, practices, or services when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

Any action taken by an agent or employee that results in the unequal service, treatment or behavior to tenants on the basis of race, color, creed, religion, national origin, disability, familial status, sex, marital status, status with regard to public assistance or sexual orientation may constitute a violation of state and federal fair housing laws.

Any agent or employee who fails to comply with this Nondiscrimination Policy will be subject to appropriate disciplinary action.

APPENDIX B

Employee Acknowledgment

I acknowledge that on _____, 20____, I was provided a copy of the Consent Decree, or a summary of the consent decree entered by the Court in United States v. S-2 Properties, Inc., et al., Civil Action No. 2:13-CV-01421 (W.D. Pa.), and the Nondiscrimination Policy of S-2 Properties, Inc., and Baldwin Commons Apartments. 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