

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)
 Plaintiff,)
)
 CATHY WYRENBECK,)
 Plaintiff-Intervenor,)
)
 v.)
)
 MENNINO PLACE LP,)
 CATCH NEIGHBORHOOD HOUSING,)
 MB MANAGEMENT COMPANY LLC,)
 and GERALD WALSH,)
)
 Defendants.)

Civil Action No. 13-CV-287-JL

CONSENT DECREE

I. INTRODUCTION

1. This action was filed by the United States to enforce the Fair Housing Act, 42 U.S.C. §§ 3601- 3631. The United States filed this action on June 21, 2013, on behalf of Cathy Wyrenbeck based upon a referral from the US Department of Housing and Urban Development (“HUD”) pursuant to 42 U.S.C. § 3612(o).¹ On April 5, 2014, HUD also referred a charge alleging that the Defendants had violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.² Both referrals were based upon the factual allegations outlined in the United States’ Complaint.

2. The United States’ Complaint alleges that Mennino Place LP, CATCH Neighborhood Housing, MB Management Company LLC, and Gerald Walsh (collectively “Defendants” or “CATCH”), the owners and managers of Mennino Place, an affordable housing

¹ HUD case #01-12-0391-8.

² HUD case #01-13-0020-4.

apartment building in Concord, New Hampshire, denied Cathy Wyrenbeck, a resident and a person with a disability, the reasonable accommodation of modifying the rule that prohibits window air conditioning units by allowing her to use her window air conditioning unit to supplement the floor air conditioning unit supplied by CATCH.

3. The United States and the Defendants agree that, to avoid costly and protracted litigation, the United States' claims against the Defendants should be resolved without further proceedings or a trial. This Consent Decree resolves the United States' claims in its Complaint against all Defendants named herein. It also resolves HUD's referral that the Defendants violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 based upon the alleged facts that underline the Complaint. This Consent Decree does not constitute a finding of, and shall not be construed as an admission by the Defendants of, any violation of any Federal, State, or local civil rights statute, law, ordinance or regulation. There has been no finding made with respect to liability.

II. GENERAL INJUNCTION

4. Defendants, their agents, employees, and all other persons in active concert or participation with them, are hereby enjoined from:

- a. Making unavailable or denying a dwelling at Mennino Place to any person because of disability, in violation of 42 U.S.C. § 3604(f)(1);
- b. Refusing to make reasonable accommodations in rules, policies, practices, or services at Mennino Place, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and

- c. Excluding from participation in, denying the benefits of, or otherwise subjecting to discrimination qualified individuals with handicaps under any program or activity that receives Federal financial assistance, in violation of 29 U.S.C. § 794, and HUD's implementing regulations 24 C.F.R. § 8.4(a).

III. POLICY CONCERNING REQUESTS FOR REASONABLE ACCOMMODATIONS

5. No later than thirty (30) days after the date of entry of this Consent Decree, Defendants shall adopt and implement the reasonable accommodation policy contained in Attachment A. This policy shall supersede all existing policies, procedures and resolutions concerning or affecting approval of reasonable accommodations at Mennino Place, including but not limited to approval of requests for use of window air conditioning units.

6. No later than ten (10) days after adoption of the policy referenced in Paragraph 5, supra, Defendants shall notify in writing each resident of Mennino Place of the adoption and implementation of this policy. Notice shall be hand delivered to each tenant residing at the property.

7. No later than ten (10) days after adoption of the policy referenced in Paragraph 5, supra, Defendant CATCH Neighborhood Housing shall post this policy, or a link to this policy, on the home page of its website.

IV. MANDATORY EDUCATION AND TRAINING

8. No later than ten (10) days after adoption of the policy referenced in Paragraph 5, supra, Defendants shall apprise each of their employees, agents, and any other persons responsible for the management of Mennino Place, of such persons' obligations under this Consent Decree, including but not limited to Paragraph 5 of this Decree, and under the Fair

Housing Act, 42 U.S.C. §§ 3601-3631 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Defendants shall furnish each such employee, agent, or other person with a copy of this Consent Decree. Each employee, agent, or other person covered by this paragraph shall sign a statement in the form of Attachment B acknowledging that he or she has received, read and understood this Consent Decree, and declaring that he or she will perform his or her duties in accordance with this Consent Decree, the Fair Housing Act, 42 U.S.C. §§ 3601-3631, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

9. New agents or employees who have responsibility related to the management of Mennino Place shall (a) be apprised of the contents of this Consent Decree, including but not limited to Paragraph 5 of this Consent Decree, and of their obligations under the Fair Housing Act, 42 U.S.C. §§ 3601-3631 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, when their employment or agency commences; (b) be provided copies of this Consent Decree and the policy required by paragraph 5 of this Decree; and (c) execute the statement contained in Attachment B no later than five (5) days following their first day of employment.

10. Within sixty (60) days of the entry of this Consent Decree, Defendant Gerald Walsh and any other of Defendants' employees, agents, and any other persons responsible for the management of Mennino Place shall attend, at Defendants' expense, a training program regarding the disability discrimination provisions of the Fair Housing Act. The training shall be conducted in person by a qualified third party approved in advance by the United States.

11. Defendants shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. The certificates shall include the name of the course, the date the course was taken, the subject matters covered in the course, and the length of the course and/or time within which the course was completed.

12. Newly hired, elected or appointed individuals responsible for the management of Mennino Place shall have evidence of receiving Fair Housing training within twelve (12) months prior to being hired, or will attend a training program, consistent with the requirements of paragraph 10, above, within sixty (60) days after the date he or she commences employment or service, and shall be certified in writing by the Defendants.

V. REPORTING AND RECORD-KEEPING

13. Defendants shall, within fifteen (15) days of its occurrence, notify and provide documentation to the United States³ of any written or oral complaint against any Defendant regarding discrimination on the basis of disability, including a copy of the written complaint itself or a written summary of an oral complaint and the name, address, and telephone number of the complainant. Defendants shall also promptly provide the United States with information concerning resolution of the complaint.

14. Every six (6) months, beginning from the date of entry of this Consent Decree, as well as sixty (60) days prior to the expiration date of this Consent Decree, Defendants shall submit a written report that includes the following information:

- a. The information contained in Paragraph 13, supra, if not yet reported; and
- b. Any changes to the policy referenced in Paragraph 5, supra;
- c. The written notification to Mennino Place residents required in Paragraph 6, supra;

³ For purposes of this Consent Decree, documents to be sent to the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ No. 175-77-391, U.S. Department of Justice, 950 Pennsylvania Avenue NW – G Street, Washington, DC 20530, or as otherwise directed by the United States or its counsel. If transmission by facsimile is required, the following number should be used: (202) 514-1116. If transmission by electronic mail is required, the following email address should be used: HCE.Compliance@usdoj.gov, or as otherwise directed by the United States or its counsel.

- d. Executed copies of Attachment B;
- e. The training attended pursuant to Section IV, including certifications executed by the trainer(s) and Defendants confirming attendance; and
- f. For every request made for a reasonable accommodation during the preceding six (6) months:
 - i. The name and, if a current resident, unit number, of the person making the request;
 - ii. The date of the request;
 - iii. The type or kind of requested accommodation and the type of disability it is intended to address;
 - iv. All documents provided to Defendants in support of this request;
 - v. The disposition of the request; and
 - vi. For any requests denied, the phone number for the person making the request and the reasons for the denial.

15. For the duration of this Consent Decree, Defendants shall preserve all records relating to the following:

- a. Complaints against them or their agents or employees of discrimination in housing at Mennino Place on the basis of disability; and
- b. Defendants' receipt and processing of requests for reasonable accommodation by Mennino Place residents.

16. During the effective period of this Decree, representatives of the United States shall be permitted, upon providing reasonable notice to Defendants, to inspect and copy at reasonable times any and all records related to Defendants' obligations under this Decree.

VI. JURISDICTION, DURATION, MODIFICATION AND REMEDIES

17. The parties stipulate, and the Court finds, that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o) and, 29 U.S.C. § 794. This Consent Decree is effective immediately upon its entry by the Court.

18. This Court shall retain jurisdiction over this action and the parties thereto for the duration of this Decree for the purpose of enforcing and modifying its terms. This Decree shall be in effect for a period of three (3) years from its effective date. The United States may move the Court to extend the period in which this Decree is in effect if any Defendant violates one or more terms of the Decree or the interests of justice so require to effectuate the rights and obligations of this Decree.

19. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

20. Each party shall notify the other party of any dispute or difference regarding interpretation and compliance with this Decree, whether willful or otherwise, and shall attempt to resolve such dispute informally. However, in the event of a failure by Defendants, or any of them, to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance with any provision thereof, Plaintiff 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, as well as an award of damages, costs and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

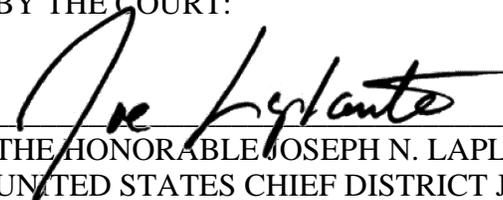
21. All parties shall be responsible for their own attorney's fees and costs, except as otherwise provided in this Decree.

22. The parties agree that, as of the date of this Decree, litigation is not "reasonably foreseeable" between the United States and the Defendants concerning the matters described in paragraphs 1 and 2. To the extent that of the United States previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in paragraphs 1 and 2, it is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves the parties of any other obligation imposed by this Decree.

IT IS SO ORDERED.

Dated this ____ day of _____, 2014.

BY THE COURT:



THE HONORABLE JOSEPH N. LAPLANTE
UNITED STATES CHIEF DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:

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FOR DEFENDANTS MENNINO PLACE LP,
CATCH NEIGHBORHOOD HOUSING, MB
MANAGEMENT COMPANY LLC, and
GERALD WALSH:

KAZAN, SHAUGHNESSY, KASTEN &
McDONALD

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ATTACHMENT A

REASONABLE ACCOMMODATION POLICY
FOR
PERSONS WITH DISABILITIES

The Federal Fair Housing Act requires that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities.⁴ HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973 require that a recipient of Federal funds shall make reasonable accommodations to otherwise qualified applicants and residents with disabilities, unless the recipient can demonstrate that the accommodation would impose an undue financial and administrative burden or would result in a fundamental alteration of its program or activity. If a prospective resident, resident or member of a prospective resident or resident's household has a disability, he/she may request a reasonable accommodation. Reasonable accommodations are changes, exceptions, or adjustments to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

It is preferred that all reasonable accommodation requests be submitted in writing to the [Property Management]. Request forms for reasonable accommodations are available at the rental office, or on-line at [www.---.com]. If a prospective resident, resident or household member has difficulty filing in the form, [Property Management] will assist him or her in completing the form. Oral requests for reasonable accommodations will be recorded and processed in accordance with this policy.

The [Property Management] shall notify the requester in writing of the decision regarding the request within 10 days of the completed written or oral request. If the [Property Management] cannot grant the request made, the [Property Management], will engage in open discussions and/or engage in the interactive process with the resident or prospective resident in an effort to provide an alternate accommodation that satisfies the request. In the event that, after a reasonable amount of time, the interactive process is unsuccessful, resulting in the denial of the request, an explanation of the basis for such denial shall be included in a written notification. If a person with a disability believes that a request has been denied unlawfully or that the response is delayed unreasonably, he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street SW
Washington, DC 20410
(800) 669-9777

<https://www5.hud.gov/Hud903/main/pagHUD903Form.jsp>

⁴ Under fair housing laws, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who is regarded as having such an impairment, or a person with a record of such an impairment. Physical or mental impairments include, but are not limited to, orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, intellectual disabilities, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. The term "substantially limits" suggests that the limitation is significant to a large degree. The term "major life activity" means those activities that are of central importance to daily life, including but not limited to seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

ATTACHMENT B

CERTIFICATION OF RECEIPT OF CONSENT DECREE

I certify that I have received a copy of the Consent Decree entered by the United States District Court for the District of New Hampshire in United States v. Mennino Place LP, et al., No. 1:13-cv-00287-JL (D. NH). I further certify that I have read and understand the Decree, that any questions I had concerning the Decree were answered, and that I understand that the Defendants may be sanctioned or penalized if I violate this Decree.

(Signature)

(Printed Name)

(Title)

(Date)