

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DERECK A. SCOTT,

Plaintiff,

v.

No. 1: 12-cv-00680 MCA-ACT

MICHAEL F. CROOM,

Defendant,

and

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:12-cv-1132 MCA/ACT

MICHAEL CROOM,

Defendant.

CONSENT DECREE

I. INTRODUCTION

1. On November 2, 2012, the United States filed this action on behalf of Dereck Scott against Michael Croom.

2. Defendant Michael Croom is a resident of New Mexico. Defendant owns a residential property that he occupies and manages three residential rental properties and a four-plex in Albuquerque, New Mexico, including the single-family residential home at 5407 Kettle Road, NW, Albuquerque, New Mexico.

3. Dereck Scott resided at 5407 Kettle Road, NW, Albuquerque, New Mexico from October 1, 2008 to on or about December 20, 2011.

II. THE UNITED STATES' ALLEGATIONS

The United States alleged in its Complaint that Dereck Scott has multiple sclerosis. His condition requires him to use a wheelchair and restricts his ability to care for himself. Mr. Scott is a person with disabilities within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h). The United States alleged that Defendant violated the Fair Housing Act, 42 U.S.C. § 3604(f)(1)(A), 3604(f)(2)(A), 3604(f)(3)(A), 42 U.S.C. § 3604(c), 42 U.S.C. § 3617 in two ways. First, the United States alleged Defendant violated the Fair Housing Act by refusing to permit, at the expense of Mr. Scott, reasonable modifications of his dwelling on Kettle Road, NW, when such reasonable modifications were necessary to afford Mr. Scott full enjoyment of the premises. Second, the United States alleged Defendant violated the Fair Housing Act by taking actions to evict Mr. Scott and his family from the Kettle Road house after and because of Mr. Scott's request that he be allowed to make reasonable modifications to the property.

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

III. SCOPE AND TERM OF DECREE

1. This Decree is effective immediately upon its entry by the Court and shall be effective for a period of three (3) years thereafter.
2. The Court shall retain jurisdiction of the action and over the Defendant for the term of this Decree.

IV. AFFIRMATIVE RELIEF

A. Injunction

Defendant, his agents, employees, and all other persons in active concert or participation with him, are hereby enjoined from:

1. Discriminating against persons in the sale or rental of a dwelling because of a disability, in violation of 42 U.S.C. § 3604(f)(1);
2. Discriminating against persons in the terms, conditions, or privileges of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2);
3. Refusing to permit, at the expense of a person with a disability, reasonable modifications of any rental premises if such reasonable modifications may be necessary to afford such person full enjoyment of the premises, in violation of 42 U.S.C. § 3604(f)(3)(A);
4. Coercing, intimating, threatening, or interfering with persons in the exercise of enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise of enjoyment of, any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617; and
5. Printing or publishing any statement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on disability, or intending to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

B. Policies

1. Within sixty (60) days after the date of entry of this Decree, Defendant shall adopt and implement specific, uniform, and objective written standards and procedures for receiving and handling requests made by people with disabilities for reasonable modifications and reasonable accommodations at his rental properties. These standards shall comply with the requirements of 42 U.S.C. § 3601, *et seq.*, and include the following provisions:

a. Defendant shall inform all tenants upon the execution of a valid lease that they may make reasonable modifications to their dwellings at their own expense to make them more accessible, and that they may request reasonable accommodations to rules, policies, practices and services. Prior to lease execution, if a prospective tenant inquires about reasonable accommodations and/or reasonable modifications, Defendant will inform them of their ability to seek reasonable accommodations and/or reasonable modifications.

b. Defendant shall follow and use the following forms: Request for Reasonable Accommodation and/or Reasonable Modification ("Request Form") (Attachment A); and Approval or Denial of Reasonable Accommodation and/or Reasonable Modification Request Form ("Approval Form")(Attachment B). Oral requests for Reasonable Accommodations and/or Reasonable Modifications will be recorded by Defendant or the manager of his rental properties using the form in Attachment A-1.

The parties acknowledge that in some situations verification by a health care provider of a person's disability is not necessary in evaluating a requested reasonable accommodation and/or reasonable modification because the person's disability is obvious or readily apparent to the Defendant, and the need for the requested reasonable accommodation or reasonable modification is also readily apparent or known. However, if (1) the requester's disability is not obvious or readily apparent to Defendant, or (2) the requester's disability is obvious or readily apparent to Defendant but the need for the reasonable accommodation is not readily apparent or known to Defendant, then Defendant may request only the information that is necessary to evaluate the disability-related need for the reasonable accommodation or reasonable modification. Defendant will use for that purpose Attachment C. Any information provided must be kept confidential and must not be shared with other persons unless they need the information to make or assess a

decision to grant or deny a reasonable accommodation or reasonable modification, and the Requester authorizes such disclosures.

c. Defendant will place the Reasonable Accommodation and/or Reasonable Modification for Persons with Disabilities Policy, attached hereto as Attachment D, to all residential leases.

d. Defendant shall keep written records of each request for reasonable accommodation and/or reasonable modification it receives during the duration of this Consent Decree. These records shall include: (a) the name, address, and telephone number of the person making the request; (b) the date on which the request was received; (c) the nature of the request; (d) whether the request was granted or denied; and (e) if the request was denied, the reason(s) for the denial.

2. If Defendant proposes to change these standards and procedures, he shall first notify the United States and provide the United States with a copy of the proposed changes. If the United States does not deliver written objections to Defendant within sixty (60) days of receiving the proposed changes, the changes may be effected. If the United States makes objections to the proposed changes within such sixty (60) day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

C. Notice to Employees

1. Within ten (10) days after the date of this Decree, Defendant shall apprise each of his employees, agents, or any other persons who have responsibility for the management and/or maintenance of his residential rental property of such persons' obligations under this Consent Decree and under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* Defendant shall furnish each such employee, agent, or other person covered by this paragraph 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 E acknowledging that he or she has received, read, and understood a copy of this Consent Decree, and declaring that he or she will perform his or her duties in accordance with this Consent Decree and the Fair Housing Act, 42 U.S.C. § 3601,*et seq.*

2. New employees or new agents who have responsibility for the management and/or maintenance of Defendant's residential rental properties shall (a) be apprised of the contents of this Consent Decree and of their obligations under the Fair Housing Act, 42 U.S.C. § 3601,*et seq.*, when their employment commences, (b) be provided a copy of this Consent Decree, and (c) execute the statement appended hereto as Attachment E no later than five (5) days following their first day of employment.

D. Notice to Tenants

1. Within ten (10) days of the date of this Decree, Defendant shall mail to current tenants a notice of Defendant's non-discriminatory policies. This notice shall be in the form of Attachment F.

2. For the duration of this Consent Decree, Defendant shall keep a copy of this Consent Decree and make it available for interested individuals to review.

E. Training

1. Within sixty (60) days after the date of this Decree, Defendant and anyone else who has responsibility for the management of Defendant's residential rental properties shall attend an educational training program concerning the substantive provisions of federal, state and local fair housing laws, regulations or ordinances, including their disability provisions, and their responsibilities under such laws. This training shall be conducted by a qualified third party, approved by the United States, and not connected to Defendant or his employees, agents or

counsel. All persons attending such a program shall have their attendance certified in writing by the person conducting the program.

2. During the period in which this Decree is in effect, each new employee or agent of Defendant who has responsibility for the management and/or maintenance of Defendant's residential rental properties shall attend, after their hiring, the next practicable training session being conducted in the normal course of its business by the organization referenced above.

3. The costs and expenses related to the training requirements of this Consent Decree shall be the sole responsibility of Defendant.

V. REPORTING REQUIREMENTS

1. Defendant shall, no later than ninety (90) days after the date of entry of this Consent Decree, serve upon counsel for the United States a written report explaining his efforts to comply with this Consent Decree. This report shall consist of the following:

a. Copies of the statements signed by any and all employees pursuant to Section V(C) of this Consent Decree;

b. A copy of the notice sent to current tenants pursuant to Section V(D) of this Consent Decree; and

c. Copies of certification of attendance for fair housing educational programs pursuant to Section V(E) of this Consent Decree.

2. Six (6) months after the date of this Consent Decree, and every six (6) months thereafter for three (3) years, Defendant shall serve on counsel for the United States a written report explaining his efforts to comply with this Consent Decree. In each report required under this paragraph, Defendant shall:

- a. Provide copies of statements signed by any new employees or agents pursuant to Section V(C) of this Consent Decree;
- b. Provide copies of certification of attendance for fair housing educational programs for any new employees or agents pursuant to Section V(E) of this Consent Decree;
- c. Notify counsel for the United States of any request he has received for reasonable accommodation and/or reasonable modification and of the action he took in response. Such notification shall include information contained in Section V(B)(1)(d);
- d. Notify counsel for the United States of any written complaint that involves housing discrimination on the basis of disability with respect to Defendant's residential rental properties which has come to the attention of Defendant, or any of his employees, agents, or other representatives in the preceding six-month period. Defendant shall include a copy of the complaint and any records of the complaint in the report; and
- e. Notify counsel for the United States and for Plaintiff/Complainant Dereck Scott any change in the ownership or management of Defendant's rental properties. Such notification shall include the address and the name of any new owner or manager.

VI. INSPECTION OF DOCUMENTS

For the duration of this Decree, Defendant shall preserve all records pertaining to Defendant's obligations under this Decree. Upon reasonable notice to Defendant's counsel, representatives of the U.S. Department of Justice shall be permitted to inspect and copy all such records at reasonable times in order to monitor Defendant's compliance with this Decree.

VII. MONETARY RELIEF FOR DERECK SCOTT

Within ten (10) days after the date of this Decree, Defendant shall deliver to the United States a check for two hundred thousand dollars (\$200,000.00) made payable to the order of

Relman, Dane & Colfax, PLLC. Counsel for the United States shall forward the check(s) to Reed Colfax, Relman, Dane & Colfax, 1225 Nineteenth St., NW, Suite 600, Washington, D.C. 20036, upon receipt of a release of claims executed by Plaintiff, attached hereto as Attachment G. The United States shall forward the executed release to Defendant upon receiving it.

VIII. ELECTRONICALLY STORED INFORMATION

The parties agree that, as of the expiration of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by the Consent Decree.

IX. GOOD FAITH COMPLIANCE

Plaintiff the United States, Plaintiff/Complainant Dereck Scott, and Defendant 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 Defendant, whether willful or otherwise, to perform in a timely manner any act required by this Decree, or in the event of any other act violating any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity.

X. TIME FOR PERFORMANCE, INTERPRETATIONS AND DEFINITIONS

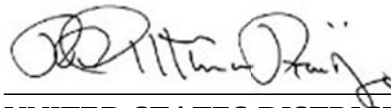
1. Any time limits for performance imposed by this Decree may be extended by mutual agreement of the parties without approval by the Court provided that such agreement is in writing.

2. This Decree constitutes the entire agreement among the parties and supersedes and renders void all prior agreements, written or oral, among the parties. In the event any provision or term of this Decree is determined to be or is rendered invalid or unenforceable, all other provisions and terms of the Decree shall remain unaffected to the extent permitted by law.

XI. DISMISSAL

Upon entry of this Consent Decree, this case shall be automatically dismissed with prejudice. The Court shall retain jurisdiction of the action over Defendant for the term of this Decree. Unless otherwise extended, this Consent Decree shall terminate three (3) years after its entry. This Consent Decree may be extended upon motion for good cause, including on the basis that Defendant has failed to comply with this Decree. Upon termination of the Consent Decree, the claims of the United States against Defendant shall be deemed dismissed with prejudice.

It is so ORDERED, ADJUDGED and DECREED on this 27th day of March, 2013.



UNITED STATES DISTRICT JUDGE

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

For Defendant:

DOUGHTY & WEST, P.A.

e-mail approval 3/20/2013

Judd C. West
Justin J. Solimon
20 First Plaza NW, Suite 412
Albuquerque, NM 87102
505/242-7070

For Plaintiff United States:

KENNETH J. GONZALES

United States Attorney

/s/
RUTH FUESS KEEGAN
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 346-7274
Ruth.F.Keegan@usdoj.gov

For Dereck Scott:

e-mail approval 3/19/2013
Reed N. Colfax
RELMAN, DANE & COLFAX PLLC
2009 Botulph Road, Suite 600
Santa Fe, NM 87505
(505) 983-6654

Attachment A
REQUEST FOR REASONABLE ACCOMMODATION
AND/OR REASONABLE MODIFICATION AND RELEASE

If you or a member of your household, or someone associated with you has a disability, and feel that there is a need for a reasonable accommodation and/or reasonable modification for that person to fully enjoy the premises and/or to have equal opportunity to use and enjoy a dwelling unit or the public or common use area, please complete this form and the release below and return it to Micheael Croom, _____, Albuquerque, New Mexico. Check all items that apply and explain fully. Use the other side if you need more space. If you cannot fill out this form yourself, please contact Michael Croom at _____ to assist you in completing this form. I will answer this request in writing within two weeks (or sooner if the situation requires an immediate response).

Name of Tenant or Applicant: _____ Today's Date: _____

Signature of Tenant or Applicant: _____

1. The person(s) who has a disability requiring a reasonable accommodation and/or reasonable modification is:

____ Me ____ A person associated with me.

Name of person with disability: _____ Phone #: _____

Address: _____

2. I am requesting the following change(s) so that I and persons associated with me can live here with equal opportunity to use and enjoy the premises (check all of the changes that apply):

____ A physical change in my rental unit or the public or common area. I need the following change:

____ A change in a rule, policy, or practices. I need the following change:

3. I need this reasonable accommodation and/or modification because:

4. If your request requires a modification to the physical premises, the tenant requesting the modification will be responsible for the expense of making the modification, unless otherwise indicated. The landlord may, where it is reasonable to do so, as a condition of allowing the modification, require the renter to restore the interior of the premises to the condition that existed before the modification was made, reasonable wear and tear excepted.

REQUESTER

DATE

RESIDENT MANAGER

DATE

ATTACHMENT A-1

Form to be completed by Resident Manager if Requester cannot or will not complete written form (Attachment A).

On _____, the undersigned requester orally requested a reasonable accommodation and/or a reasonable modification to [describe dwelling unit]:

The reasonable accommodation and/or reasonable modification consisted of:

I, the undersigned, Resident Manager of _____:

_____ Gave the requester the applicable forms and offered to assist in filling out the forms.

_____ Granted the request.

_____ Explained that the request could not be evaluated until the following additional information is provided:

REQUESTER

DATE

REQUESTER'S ADDRESS: _____

REQUESTER'S TELEPHONE NUMBER: _____

RESIDENT MANAGER

DATE

Attachment B
APPROVAL OR DENIAL OF REASONABLE ACCOMMODATION AND/OR
MODIFICATION REQUEST

Dear: _____:

Address: _____

Phone: () _____

On _____ [date], you requested the following reasonable accommodation and/or reasonable modification [describe request]:

Your request for reasonable accommodation (check all that apply):

___ Is Approved. The following reasonable accommodation and/or reasonable modification will be permitted [describe]:

___ Is expected to cost _____ and is at requester's expense.

___ Permission for this reasonable modification is on the condition that the renter agrees to restore the interior of the premises to the condition that existed before the reasonable modification, reasonable wear and tear excepted.

___ Is effective immediately.

___ Will be permitted by: [date] _____.

___ To make the change you requested, we must have bids and then arrange installation, or we must order certain equipment. We anticipate that the change will be made by [date]: _____, and we will notify you if we discover that there will be a delay. If you have questions, or think that this accommodation and/or modification will not meet your needs or will take too long to perform, you may contact Michael Croom at [address and phone number].

___ Can neither be approved nor denied without further information [List information needed]:

___ Is denied. We have denied your request because [list all reasons that apply]:

We used these facts to deny your request [list]:

To make this decision, we spoke with the following people, reviewed the following documents, and performed the following investigation [list]:

If you disagree with this decision or have information to provide to me, you may contact Michael Croom at _____ to discuss this further.

Sincerely,

Signature: _____ Date _____

Name: _____ Title: _____

Request acknowledges receipt of this completed form:

Signature: _____ Date: _____

Attachment C

CONFIRMATION OF A PERSON'S DISABILITY

This form is to be used when a person's disability is not obvious or readily apparent, or when the requester's disability is obvious or readily apparent but the need for the reasonable accommodation and/or reasonable modification is not readily apparent or known to the property management.

A disability is a physical or mental impairment that substantially limits one or more of such persons' major life activities, a record of having such impairment or being regarded as having such an impairment. A reasonable accommodation and/or reasonable modification may be necessary to allow you equal opportunity to use and enjoy the premises.

To be completed by Applicant/Resident making the request for a reasonable accommodation and/or reasonable modification.

Do you meet the definition of a disabled individual as defined above? YES/NO (circle applicable answer)

If yes, what is your specific request for a reasonable accommodation?

RELEASE: Applicant/Resident: I authorize the housing provider _____ to verify with the third-party listed below whether my handicap or disability is covered by the information provided in this verification form.

Applicant/Resident Signature

Date

RELEASE: Applicant/Resident: I authorize the housing provider _____ to disclose to _____ information about my disability if it is necessary in order to act on my request for a reasonable accommodation and/or reasonable modification.

Applicant/Resident Signature

Date

Attachment C- Page 2

INFORMATION BEING REQUESTED FROM HEALTH CARE PROVIDER

1. Is the individual disabled as defined above? YES _____ NO _____

2. In your professional opinion, may the individual need the reasonable accommodation and/or reasonable modification indicated in order to have an equal opportunity to use the property?

YES _____ NO _____

COMMENTS:

INFORMATION PROVIDED BY:

Health Care Firm / Organization / Physician

Printed Name of Health Care Provider

Phone Number

Signature of Health Care Provider

Date

Attachment D
REASONABLE ACCOMMODATION AND/OR REASONABLE MODIFICATION
POLICY FOR PERSONS WITH DISABILITIES:

If a resident or member of the household has a disability, he or she may request reasonable accommodations and/or reasonable modifications. Reasonable modifications of any rental premises will be made at the expense of the tenant, if such reasonable modification may be necessary to afford such person full enjoyment of the premises. The landlord may, where it is reasonable to do so, as a condition for the modification, require the renter to restore the interior of the premises to its prior condition before the modification, reasonable wear and tear excepted. Reasonable accommodations in rules, policies, practices or services may be made when such reasonable accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling.

It is preferred that all reasonable accommodation and/or reasonable modification requests be submitted in writing to _____. A request for Reasonable Accommodation and/or Reasonable Modification and Release forms are available in _____. If you have difficulty filling in the form, _____ will assist you in completing the form. Oral requests for reasonable accommodations and/or reasonable modifications will be recorded on the attached form, Attachment A-1 and processed in accordance with this policy.

All requesters shall be notified in writing of the decisions regarding the request within fourteen (14) days of receipt of the complete written request, including completed Attachments A, B and C, if necessary. If the request is denied, an explanation for such denial shall be included in the written notification. If the request is denied, the requestor may ask Michael Croom at _____ to reconsider the request.

Attachment E

EMPLOYEE ACKNOWLEDGMENT

I have been given and I have read a copy of the Consent Decree entered in *United States of America v. Michael Croom*, 1:12-cv-01132-JAP-RHS. I understand the terms of that Consent Decree.

I further understand that federal law prohibits:

(1) refusing to permit, at the expense of a person with a disability, reasonable modification of a dwelling when such modification may be necessary to afford the person with a disability full enjoyment of the premises. The landlord may, where it is reasonable to do so, as a condition for the modification, require the renter to restore the interior of the premises to its prior condition before the modification was made, reasonable wear and tear excluded and

(2) refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy his dwelling.

With this understanding, I agree that, as a condition of my employment or contract relationship with Micahel Croom, with respect to the management and/or maintenance of residential housing, neither I nor any other person who serves as my agent in my capacity shall

discriminate in any manner on account of disability in carrying out my employment or contract services.

Signature

Name (Please Print)

Home Address

Home Telephone Number

Date

Attachment F

NON-DISCRIMINATION NOTICE

It is Michael Croom's policy not to discriminate against any person because of that person's race, color, national origin, religion, sex or disability. We allow tenants to make reasonable modifications to units at tenants' expense, in accordance with the requirements of the Fair Housing Act, 42 U.S.C. § 3601,*et seq.* Further, Michael Croom considers any and all requests for reasonable accommodations in his application of rules, policies and practices, in accordance with the requirements of the Fair Housing Act, 42 U.S.C. § 3601,*et seq.*

Attachment G

MUTUAL RELEASE

Pursuant and subject to the terms of the Consent Decree agreed to by the parties and entered by the Court in *Scott v. Croom*, No. 1:12-cv-00680-MCA-ACT, this Mutual Release is hereby made by Dereck Scott, Aisle McGrath, and Michael Croom.

1. Dereck Scott, on behalf of himself and his representatives, agents, servants, successors, heirs, executors, administrators, and attorneys, hereby releases and discharges Defendant Michael Croom from any claims, actions, causes of action, demands, rights, damages, costs, losses, expenses, inclusive of attorneys' fees and litigation costs, liens, compensation, and obligations, that may exist between the parties to this Mutual Release through the date of this Mutual Release concerning the claims arising from and related to the allegations and issues addressed in the consolidated cases *Scott v. Croom*, No. 1:12-cv-00680-MCA-ACT and *U.S. v. Croom*, No. 1:12-cv-01132 JAP-RHS.

2. Aisle McGrath, on behalf of herself and her representatives, agents, servants, successors, heirs, executors, administrators, and attorneys, hereby releases and discharges Defendant Michael Croom from any claims, actions, causes of action, demands, rights, damages, costs, losses, expenses, inclusive of attorneys' fees and litigation costs, liens, compensation, and obligations, that may exist between the parties to this Mutual Release through the date of this Mutual Release concerning the claims arising from and related to the allegations and issues addressed in the consolidated cases *Scott v. Croom*, No. 1:12-cv-00680-MCA-ACT and *U.S. v. Croom*, No. 1:12-cv-01132 JAP-RHS.

3. Michael Croom, on behalf of himself and his representatives, agents, servants, successors, heirs, executors, administrators, and attorneys, hereby releases and discharges Plaintiff Dereck Scott and Aisle McGrath from any claims, actions, causes of action, demands, rights, damages, costs, losses, expenses, inclusive of attorneys' fees and litigation costs, liens, compensation, and obligations, that may exist between the parties to this Mutual Release through the date of this Mutual Release concerning the claims arising from and related to the allegations and issues addressed in the consolidated cases *Scott v. Croom*, No. 1:12-cv-00680-MCA-ACT and *U.S. v. Croom*, No. 1:12-cv-01132 JAP-RHS.

4. This Mutual Release may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

AGREED UPON BY:

Dereck Scott Date

Aisle McGrath Date

Michael Croom Date