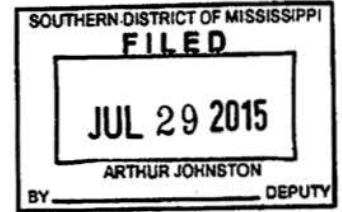


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PETAL, MISSISSIPPI,

Defendant.

Civil Action No. 2:15-cv-102-KS-MTP

CONSENT DECREE

DANNY O. COWART; BRANDI'S HOPE
COMMUNITY SERVICES, LLC; AND
SCIOTO PROPERTIES SP-15 LLC,

Plaintiff,

v.

CITY OF PETAL, MISSISSIPPI,
A MUNICIPAL CORPORATION

Defendant.

Civil Action No. 2:14-cv-188-KS-MTP

I. BACKGROUND

1. The United States initiated this action on July 28, 2015, against the City of Petal, Mississippi ("the Defendant" or the "City") to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the "Fair Housing Act" or "FHA"), 42 U.S.C. §§ 3601-3619, and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.* (the "Americans with Disabilities Act" or "ADA"). In its Complaint, the

United States alleges that the City violated the FHA and the ADA on the basis of disability when it took actions to prevent three men with disabilities (the “Residents”) to reside together in a rented home in Petal, in Forrest County, under the same terms and conditions as residents without disabilities.

2. Specifically, the United States contends that the Defendant violated the FHA and the ADA when, beginning in or about December 2012, it took action to prohibit the Residents from occupying a three-bedroom single-family dwelling located at West Temple Road in the City (the “subject property”). In or about November 2012, Scioto Properties SP-15 LLC (“Scioto”), an Ohio-based limited liability company, purchased the subject property for the purpose of making it available as a supported residence for persons with disabilities. Scioto’s business involves purchasing, renovating, and leasing properties for use by individuals with disabilities as community-based housing. Brandi’s Hope Community Services, LLC (“BHCS”) leased the subject property from Scioto with the intention of establishing a residence for three persons with disabilities. Mississippi’s Department of Mental Health (“DMH”) determined that the Residents were eligible to move to the subject property with appropriate support. The Residents, all life-long Mississippi residents, previously lived at the Ellisville State School (“Ellisville”) in Ellisville, Mississippi. Ellisville, a large, congregate facility operated by the DMH, provides residential care and services to individuals with intellectual disabilities. The City’s Building Inspector and, subsequently, the Planning Commission determined that Mr. Cowart, the owner of BHCS, violated City Zoning Ordinances by permitting the Residents to live at the subject property. The City caused a warrant to be issued to Mr. Cowart pertaining to a misdemeanor

zoning violation. The Planning Commission denied Mr. Cowart's requests for reasonable accommodation. The mayor and Board of Aldermen decided that the residents would be granted an extension limited to six months.

3. In April 2014, the City decided not to pursue its enforcement action against the Residents. In November 2014, the City notified the United States that it had amended the zoning ordinance and indicated its willingness to make further revisions as necessary to comport with the FHA and ADA. The City also caused to be dismissed its prosecution of Mr. Cowart relating to this matter.

4. With regard to the FHA, the United States alleges that the City of Petal's actions described above constitute:

a. violations of the FHA §§ 3601-3619; and

b. a pattern or practice of resistance to the full enjoyment of rights granted by the FHA , or a denial of rights to a group of persons that raises an issue of general public importance in violation of the Fair Housing Act, 42 U.S.C. §§ 3614(a).

5. Regarding the ADA, the United States alleges that the Defendant City of Petal's actions described above:

a. constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35; and

b. interfere with an individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA,

in violation of Title V of the ADA, 42 U.S.C. § 12203(b).

6. On November 24, 2014, Scioto, Brandi's Hope Community Services, LLC ("BHCS"), and Danny Cowart (collectively, "Private Plaintiffs") filed a Complaint against the City in the United States District Court for the Southern District of Mississippi, *Cowart et al v. City of Petal, Mississippi*, 2:14-cv-00188-KS-MTP, alleging discrimination in housing on the basis of disability. The action filed by the Private Plaintiffs makes allegations similar to those alleged by the United States.

7. On July 7, 2015, the City adopted Ordinance 2012 (130-A1), comprised of amendments to the City's Ordinance Establishing a Registration and Inspection Program for Rental Housing Units Located within the City of Petal, Mississippi ("Rental Registration Law"), as set forth in **Attachment A**.

8. On July 7, 2015, the City adopted Ordinance 1979 (42-A393) (definition changes) amending the CZL, as set forth in **Attachment B**.

9. On July 7, 2015, the City adopted Ordinance 1979 (42-A394) (reasonable accommodation), amending the CZL, as set forth in **Attachment C**.

10. This Consent Decree (the "Decree") is intended to effect a comprehensive settlement of the United States' and the related claims of the Private Plaintiffs. To avoid costly and protracted litigation, the United States, the Defendant, and the Private Plaintiffs have jointly and voluntarily entered into and consent to the entry of this Decree to resolve the claims presented, as indicated by the signatures below.

11. Defendant expressly denies any wrongdoing. It is understood and acknowledged that

this Consent Decree does not constitute an admission by the City of any violation of the FHA, ADA, or any other law.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

12. The Court has jurisdiction over this action, and may grant the relief sought herein under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a), 3613, and 12133.

III. DEFINITIONS

13. The following definitions apply to the terms when used in this Decree:

a. The terms “**Defendant**” and “**City**” include the City of Petal, the Petal Board of Aldermen, the City’s employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with them;

b. “**Disability**” and the equivalent term “**handicap**” refer to the definitions included in the Fair Housing Act, see 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201; and in the Americans with Disabilities Act, see 42 U.S.C. § 12102(1); 28 C.F.R. § 35.104.

c. The term “**Family**” refers to the following definition, as included in the City of Petal Ordinance Number 1979 (42-A390), Article V, Section 5.23: one or more persons who are related by blood, marriage, or adoption occupying a dwelling unit and living as a single housekeeping unit; or one or more persons [up to four (4) persons] who are not all related by blood, marriage, or adoption, occupying a dwelling unit and who are living as a single housekeeping unit. A person or persons with disabilities will not be excluded from the definition of “family” if the person(s) occupying the dwelling unit otherwise meet this definition,

regardless of whether the person(s) reside in a home established, maintained, or supported by a for-profit or not-for-profit entity.

d. The term “**Group Home**” refers to the following definition, as included in the City of Petal Ordinance Number 1979 (42-A390), Article V, Section 5.32: a dwelling for five (5) or more persons with disabilities (as the term ‘disabilities’ is defined by the Fair Housing Act or the Americans with Disabilities Act) who live as a single housekeeping unit and who receive personal care or other support or supervision. Four or fewer persons with disabilities who live together in a dwelling as a single housekeeping unit constitute a “Family” rather than a “Group Home.”

e. “**Reasonable Accommodation**” refers to accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, within the meaning of 42 U.S.C. § 3604(f); and “reasonable modifications” as used in the implementing regulation for Title II of the ADA at 28 C.F.R. § 25.130(b)(7).

f. The “**effective date of the Decree**” refers to the date the Court enters this Consent Decree.

IV. GENERAL INJUNCTIONS AND NONDISCRIMINATION PROVISIONS

14. The Defendant shall not:

a. deny, or otherwise make unavailable, a dwelling to a buyer or renter because of a disability of that buyer or renter, of any person residing in or intending to reside in such dwelling, or of any person associated with such buyer or renter;

b. discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person;

c. refuse to make reasonable accommodations (as defined in Paragraph 12.d, above) in its rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling; or

d. coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act or the ADA.

15. The preceding injunctions shall specifically, but not exclusively, cover:

a. administering, enforcing, or amending zoning ordinances of the City of Petal, including, but not limited to, receiving, evaluating, or deciding upon applications for building permits, special exceptions, variances, or uses not provided for; and

b. conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or in reviewing any decision made by any zoning, land-use, or building official.

**V. MODIFICATION OF PETAL ZONING CODE AND
RENTAL REGISTRATION LAW**

16. The Defendant acknowledges that:

- a. the individuals residing at the subject property constitute a family under the CZL and the City's Rental Registration Law;
- b. Private Plaintiffs do not require a reasonable accommodation to provide support services to the individuals who reside at the subject property; and
- c. Private Plaintiffs, and other owners/providers of support services to individuals with disabilities who reside in single-family dwellings, do not require Rental Registration Permits to provide support services to the individuals who reside at the subject property.

17. The Defendant shall not modify the definition of "family" in a manner that has the effect of limiting the number of persons who constitute a family compared with the definition listed in Paragraph 13 above, as amended by this Consent Decree. In addition, the Defendant shall not otherwise modify the CZL, the Rental Registration Law, or any other ordinance in a manner such that the modification narrows, reduces or limits the rights of persons with disabilities to reside in a residence of their choosing.

18. At least thirty (30) days prior to adopting any amendments or modifications to the CZL or to other City rules, laws, or ordinances, that affect the definitions, terms, or provisions of this Decree, the Defendant shall provide the United States copies of the proposed amendments or modifications.

19. Within ten (10) days of adopting any amendments or modifications described in

Paragraph sixteen (16) of the Decree, the Defendant shall send copies of the enacted amendments or modifications to the United States.

VI. ESTABLISHMENT AND IMPLEMENTATION OF REASONABLE ACCOMMODATION POLICY

20. On November 18, 2014, the Defendant adopted an ordinance, providing for Reasonable Accommodation/Modification relating to its rules, policies, practices, and in the provision of its services regarding the CZL. On July 7, 2015, the City amended the Reasonable Accommodation/Modification ordinance, as set forth in **Attachment C**. Within sixty (60) days after the date of entry of this Decree, the Defendant shall: implement specific written rules for receiving and handling requests made by people with disabilities for reasonable accommodations/modifications (“Reasonable Accommodation Policy for Persons with Disabilities” or “Policy”), and provide copies of the Policy to counsel for the United States and BHCS.

21. Within sixty (60) days of the entry of this Decree and throughout the term of this Decree, the Defendant shall post and publicly display the Reasonable Accommodation Policy for Persons with Disabilities on the City's website, and at the offices of the Defendant in which announcements or vacancies are posted.

22. The Defendant shall keep written records of each request for reasonable accommodation it receives. 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.

23. Nothing in this Decree shall be interpreted to require persons with disabilities – or providers of housing for persons with disabilities – acting or operating in accordance with applicable zoning, licensing, and/or land use laws and practices, to seek permission from the Defendant to begin or continue such action or operation.

VII. FAIR HOUSING ACT AND AMERICANS WITH DISABILITIES ACT TRAINING

24. The Defendant shall, no later than forty-five (45) days from the effective date of the Decree, provide training in the requirements of the Decree, the Fair Housing Act, and the Americans with Disabilities Act to the members and professional staff of the Board of Aldermen, the professional staff of the City of Petal's Building Department, and the Mayor and the members of the Board of Aldermen and their respective staff who have direct or supervisory authority in connection with building, zoning, and land use. The City may schedule and conduct the training required by this paragraph at any time within the 45-day period at the convenience of the City, whether in the evening or daytime, and the training may be divided in two portions to accommodate the schedules of those attending the training.

a. The training shall be conducted by a qualified third party, subject to the approval of the United States. The trainer shall be unconnected to the Defendant or its employees, officials, agents, or counsel, and any expenses associated with this training shall be borne by the Defendant.

b. As part of the training, each person trained shall be given a copy of the Decree, the FHA, and the ADA.

c. The Defendant shall, no later than ten (10) days after training, provide to the

United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of **Attachment D**.

d. For each person commencing employment or service in any of the positions listed in this part, the Defendant shall, no later than ten (10) days after such commencement or service, give each such person a copy of the Decree and the Fair Housing Act and shall obtain each such person's signed a certification acknowledging that he or she has received and read the Decree and the Act. This certification shall be in the form of **Attachment E**.

VIII. COMPLIANCE COORDINATOR(S)

25. No later than ten (10) days after the effective date of this Decree, the Defendant shall designate an employee(s) or official(s) of the City of Petal to receive complaints against the City of alleged housing discrimination involving housing for persons with disabilities, and to coordinate compliance with this Decree. The designated person(s) shall maintain copies of the Decree, the HUD complaint form, and the pamphlet entitled "Are You a Victim of Housing Discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to Defendant. The Defendant shall notify the United States in writing of the name, address, and title of the designated person(s) no later than thirty (30) days after the effective date of the Decree.

IX. REPORTING AND RECORD KEEPING

26. The Defendant shall send all documents, notices, and other communications required by the Decree to be sent to the United States to: Chief, Housing and Civil Enforcement Section,

Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., G Street, Washington, D.C. 20530, Attn: DJ #175-3-99. The Defendant shall send all documents, notices, and communications required by or relating to this Decree by regular United States mail and by facsimile to (202) 514-1116.

27. The Defendant shall prepare bi-annual reports in a format provided by the United States that detail the actions it has taken to fulfill its obligations under the Decree. The Defendant shall submit its first Compliance Report to the United States no later than six (6) months after the effective date of the Decree, and subsequent reports every six months thereafter, for the duration of the Decree, except that the final report shall be delivered to the United States no fewer than sixty (60) days prior to the date upon which the Decree is scheduled to expire.

28. The Defendant shall include the following information in the Compliance Reports:

- a. the name, address, and title of the employee or official serving as the designated person referred to in Paragraph fourteen (14);
- b. copies of the training certification and acknowledgment forms signed since the last report;
- c. any written complaint received since the last report alleging discrimination by Defendant with respect to any matter subject to the injunctions in part III, above, including a description of any action taken in response to the complaint and copies of all pertinent documents, such as a copy of the complaint, any documents filed with the complaint, and any written response to the complaint made by Defendant;

d. the identity of each zoning, land-use, or building application or request for reasonable accommodation related to housing for disabled persons (including those for building permits, special exceptions, variances, or other uses not provided for) for which Defendant has made a determination, indicating: (1) the date of the application; (2) the applicant's name; (3) the applicant's current residential street address; (4) the street address of the proposed housing; (5) the disposition of the application, including any appeals, indicating reasons for that outcome; and (6) if a vote was taken, how each participant voted and the date of the vote; and

e. all documents presented in support of oral testimony offered by any member of the public at any hearing held with respect to each such application or request that is denied by Defendant.

29. For the duration of this Decree, the Defendant shall maintain all records relating to implementation of and compliance with all provisions of the Decree, including, but not limited to, all records related to zoning, land-use, or building applications or requests for reasonable accommodation related to housing for disabled persons. The United States shall have the opportunity to inspect and copy any records maintained as required by the Decree after giving reasonable notice to the Defendant.

X. MONETARY RELIEF

30. The Defendant shall pay the sum of \$25,000 within ten (10) days of the effective date of this Decree by sending a check to counsel for private plaintiffs, payable to Brandi's Hope Community Services, LLC and Maxey Wann, PLLC.

To receive this payment, Brandi's Hope Community Services, LLC must execute a

release-of-claims form, in the form of **Attachment F**, signifying that the payment constitutes full settlement of any claims the payee may have relating to the subject matter of this action.

Counsel for private plaintiffs shall obtain the signed release form and provide it to counsel for the Defendant upon receipt of the check.

XI. CIVIL PENALTY

31. Within ten (10) days of the effective date of this Decree, the Defendant shall pay \$25,000 to the United States Treasury as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. The payment shall be in the form of an electronic fund transfer pursuant to written instructions to be provided by the United States.

32. In the event that the Defendant, its agents, or its employees engage in any future violation(s) of the FHA, against persons with disabilities or perceived disabilities, such violation(s) shall constitute a “subsequent violation” under 42 U.S.C. § 3614(d)(1)(C)(ii).

XII. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

33. The Decree shall remain in effect for a period of three (3) years after its effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree in the interests of justice, or for other good cause, including on the basis that the Defendant has failed to comply with a provision of the Decree.

34. The parties agree to work cooperatively with one another in good faith to resolve informally any differences regarding interpretation of, and compliance with, the Decree prior to

bringing such matters to the Court for resolution. However, in the event of a failure by Defendant 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, 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 attorney's fees that may have been occasioned by the violation or failure to perform.

35. The parties shall have the right to seek from the court modifications of the Decree, provided that any request for a modification has been preceded by good faith negotiations between the parties. The parties may agree in writing to modify the deadlines established by this Decree without Court approval.

XIII. COSTS OF LITIGATION

36. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

XIV. RELEASE OF LITIGATION HOLDS

37. The parties agree that, as of the date of the entry of this Decree, litigation is not "reasonably foreseeable" concerning the matters described in Paragraphs 1-4, above. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matter described in Paragraphs 1-4, above, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Consent Decree.

It is hereby ORDERED, ADJUDGED, and DECREED this 29th day of
July, 2015.

s/Keith Starrett

United States District Judge

FOR THE UNITED STATES:

GREGORY K. DAVIS
United States Attorney

Mitzi Dease Paige

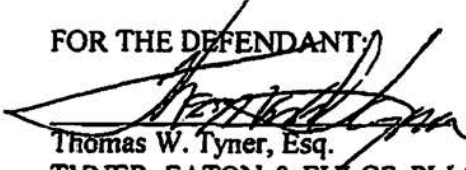
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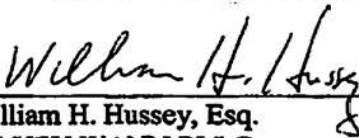
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