

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 08, 2022

SEAN F. McAVOY, CLERK

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL TORKELSON, CANDI
TORKELSON, TINA BRYANT, and
TORKELSON CONSTRUCTION INC.,
doing business as TORKELSON
RENTAL PROPERTIES

Defendants.

No. 1:22-cv-03011-MKD

CONSENT ORDER

Before the Court is the parties Stipulated Consent Order. The United States filed a Complaint in this action on January 28, 2022, to enforce the provisions of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 to 3631 (“Fair Housing Act”). The United States filed this action on behalf of Complainant Matthew McCoy in accordance with 42 U.S.C. § 3612(o). Matthew McCoy resided in a townhome located at 605 Southern Avenue, Unit 3-I, Selah,

1 WA 98942 (“Subject Property”), a “dwelling” under the Fair Housing Act, 42
2 U.S.C. § 3602(b), at times relevant to the Complaint. Defendants owned and
3 managed the Subject Property at all times relevant to the Complaint.

4 The United States’ Complaint alleges that Defendants:

5 1. Discriminated in the terms, conditions, or privileges of the
6 rental of a dwelling, or in the provision of services or facilities in
7 connection therewith, on the basis of disability, in violation of 42
8 U.S.C. § 3604(f)(2);

9 2. Failed to make reasonable accommodations in rules, policies,
10 practices, or services, when such accommodations may have been
11 necessary to afford such person equal opportunity to use and enjoy a
12 dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and

13 3. Made statements with respect to the rental of a dwelling that
14 indicated a preference, limitation, or discrimination on the basis of
15 disability or an intention to make any such preference, limitation, or
16 discrimination, in violation of 42 U.S.C. § 3604(c).

17 Plaintiff and Defendants (collectively “the parties”) agree that, to avoid
18 costly and protracted litigation, the claims against Defendants should be resolved
19 without further proceedings or a trial. By agreeing to the terms of this Consent
20 Order, Defendants do not admit to violating the Fair Housing Act. This Consent

1 Order resolves all claims in the Complaint against Defendants. The Court has
2 reviewed the record and is fully informed.

3
4 **GENERAL INJUNCTION**

5 **It is hereby STIPULATED, ADJUDGED, and ORDERED as follows:**

6 4. This Court has jurisdiction over the subject matter of the action
7 pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

8 5. Defendants, their agents, their employees, and all others in active
9 concert or participation with them, will not discriminate on the basis
10 of a disability as prohibited by the Fair Housing Act, and are hereby
11 enjoined from:

12 a. Discriminating against any person in the terms, conditions, or
13 privileges of rental of a dwelling, or in the provision of
14 services or facilities in connection with such a dwelling,
15 because of a disability, or because of the disability of
16 someone associated with that person, in violation of 42 U.S.C.
17 § 3604(f)(2);

18 b. Refusing to make reasonable accommodations in rules,
19 policies, practices, or services when such accommodations
20 may be necessary to afford an equal opportunity to use and

1 enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B);

2 and

- 3 c. Making statements with respect to the rental of a dwelling that
4 indicated a preference, limitation, or discrimination on the
5 basis of disability or an intention to make any such
6 preference, limitation, or discrimination, in violation of 42
7 U.S.C. § 3604(c).

8 **POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS**

- 9 6. Within 30 days of the entry of this Consent Order, Defendants shall
10 adopt the assistance animal policy (“New Policy”) set forth in
11 Appendix A for implementation at all dwellings owned or managed by
12 Defendants.
- 13 7. The New Policy, once adopted, shall supersede all existing policies,
14 procedures, and resolutions concerning or affecting approval of
15 reasonable accommodations involving assistance animals at
16 dwellings owned or managed by Defendants.
- 17 8. No later than 14 days after adoption of the New Policy, Defendants
18 shall apprise each of their employees, agents, and any other persons
19 responsible for the rental of units at a dwelling owned or managed
20 by Defendants of each person’s obligations under this Consent

1 Order, including but not limited to the New Policy, and under the
2 Fair Housing Act. Defendants shall provide a copy of this Consent
3 Order to each such employee, agent, or other person. Each
4 employee, agent, or other person covered by this paragraph shall
5 sign a statement in the form of Appendix B acknowledging that he
6 or she has received and read the Consent Order, stating that he or
7 she understands the Consent Order, and declaring that he or she will
8 perform his or her duties in accordance with this Consent Order and
9 the Fair Housing Act.

- 10 9. During the term of this Consent Order, new employees, agents, and
11 any other persons responsible for the rental of units at a dwelling
12 owned or managed by Defendants shall (a) be apprised of the
13 contents of this Consent Order, including but not limited to the New
14 Policy, and of their obligations under the Fair Housing Act, when
15 their term, employment, or agency commences; (b) be given copies
16 of this Consent Order and the New Policy; and (c) execute the
17 statement contained in Appendix B no later than 5 days following
18 their first day of employment.

19 **REPORTING AND RECORD KEEPING**

- 20 10. Defendants shall notify and provide documentation to the United States

1 of the following events within 14 days of their occurrence:

- 2 a. The adoption, in accordance with Part III of this Consent
3 Order, of the New Policy;
- 4 b. The implementation of any change to the New Policy;
- 5 c. Any denial of a request for a reasonable accommodation
6 involving an assistance animal at any dwelling owned or
7 managed by Defendants, including the requester's name,
8 address, e-mail, and telephone number, the date of the request,
9 the details of the request, and the written explanation provided
10 to the requester for denying the request;
- 11 d. Any conditions proposed or imposed by Defendants on a
12 tenant or prospective tenant who keeps or requests to keep an
13 assistance animal, including the resident's name, e-mail,
14 address, and telephone number, and the details of the request
15 and the reason(s) for any proposed conditions; and
- 16 e. Any written or oral complaint against Defendants regarding
17 discrimination on the basis of disability at the Subject
18 Property, including a copy of the written complaint itself or a
19 written summary of an oral complaint, and the name, address,
20 e-mail and telephone number of the complainant. Defendants

1 shall also promptly provide the United States with information
2 concerning resolution of the complaint.

- 3 11. While this Consent Order remains in effect, Defendants shall
4 preserve all records relating to their obligations under this Consent
5 Order. Representatives of the United States shall be permitted, upon
6 providing reasonable notice to Defendants, to inspect and copy at
7 reasonable times any and all records related to Defendants'
8 obligations under this Consent Order.

9 **RELIEF FOR COMPLAINANT MATTHEW MCCOY**

- 10 12. Within 14 days of the entry of this Consent Order, Defendants shall
11 deliver to the United States a check payable to Matthew McCoy in the
12 amount of \$6,000. Such check shall fully satisfy any claim by Mr.
13 McCoy against Defendants relating to the events giving rise to this
14 lawsuit or his tenancy at the Subject Property.
- 15 13. As a prerequisite to receiving payment pursuant to Paragraph 15,
16 Mr. McCoy shall execute a release of all claims, legal or equitable,
17 that he may have against Defendants relating to the claims asserted
18 in this lawsuit or his tenancy at the Subject Property. This release
19 shall take the form of Appendix C to this Consent Order. The
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1 United States shall deliver the signed release to counsel for
2 Defendants.

- 3 14. In consideration of the resolution of the claims stated herein and the
4 release of claims to be executed by Matthew McCoy, Defendants
5 release all claims against Mr. McCoy stemming from his tenancy
6 and eviction from the Subject Property, and waive their rights to
7 pursue any alleged outstanding obligations relating to that tenancy
8 and eviction.

9 **JURISDICTION, DURATION, AND SCOPE**

- 10 15. This Consent Order is effective immediately upon its entry by the
11 Court, and shall remain in effect for three years from the date of its
12 entry.
- 13 16. The Court shall retain jurisdiction over this action and the parties
14 thereto for the purpose of enforcing and modifying its terms while
15 the Consent Order remains in effect.
- 16 17. The United States may move the Court to extend the period in which
17 this Consent Order is in effect if the United States believes it is
18 likely that Defendants violated one or more terms of the Consent
19 Order or if the interests of justice so require to effectuate the rights
20 and obligations arising from this Consent Order. This action and the

1 Complaint shall be deemed dismissed with prejudice upon the
2 expiration of this Consent Order.

3 18. Any time limits for performance imposed by this Consent Order
4 may be extended by mutual written agreement of the parties.

5 19. The terms of this Consent Order shall not be modified, revised, or
6 altered unless mutually agreed upon in writing by the parties and
7 approved by the Court.

8 20. The parties shall endeavor in good faith to resolve informally any
9 differences regarding interpretation of and compliance with this
10 Consent Order prior to bringing such matters to the Court for
11 resolution. However, in the event Defendants fail to perform in a
12 timely manner any act required by this Consent Order or act in
13 violation of any provision of this Order, the United States may move
14 the Court to impose any remedy authorized by law or equity,
15 including, but not limited to, an order requiring performance or non-
16 performance of certain acts and an award of damages, costs, and
17 reasonable attorney's fees that may have been occasioned by
18 Defendants' violation or failure to perform.
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1 21. The United States may take steps to monitor Defendants’
2 compliance with the Agreement, including conducting fair housing
3 tests at rental housing owned or managed by Defendants.

4 22. If, at any time before the expiration of this Consent Order,
5 Defendants sell or otherwise relinquish their interest and
6 management responsibilities for all rental dwellings to a bona fide,
7 independent, third-party in an arms-length transaction,¹ their
8 obligations under this Consent Order, except for Paragraphs 15 and
9 17, shall cease.

10 23. If, at any time while this Consent Order remains in effect,
11 Defendants maintain that their obligations under this Consent Order

13 ¹ For purposes of this Consent Order, “arms-length transaction” is defined as
14 a transaction that has been arrived at in the marketplace between independent, non-
15 affiliated persons, unrelated by blood or marriage, with opposing economic interests
16 regarding that transaction. A transaction involving a corporate entity in which the
17 Corporate Defendants, or any person related to the Corporate Defendants by
18 corporate affiliation are officers, members, executives, managers, partners,
19 employees, subsidiaries, affiliates, or agents, shall not be considered an arms-length
20 transaction.

1 have terminated or changed because they have relinquished, sold, or
2 transferred their management duties or interest in the Subject
3 Property to a bona fide third party in an arms-length transaction,
4 Defendants shall inform the United States within 30 days of the
5 transaction and provide the date of the sale or transfer, copies of the
6 sale or transfer documents, and the name(s) and contact information
7 of the transferee.

8 24. If any transfer of interest in the Subject Property is not an arms-
9 length transaction, Defendants shall remain jointly and severally
10 liable, along with the transferee, for any violations of this Consent
11 Order.

12 **COSTS OF LITIGATION**

13 25. Except as provided for in Paragraph 23, all parties shall be
14 responsible for their own attorney's fees and costs associated with
15 this action.

16 **TERMINATION OF LITIGATION HOLD**

17 26. The parties agree that, as of the effective date of this Consent Order,
18 litigation is not "reasonably foreseeable" concerning the matters
19 described in the United States' Complaint. To the extent that any of
20 the parties previously implemented a litigation hold to preserve

1 documents, electronically stored information (ESI), or things related
2 to the matters described in the Complaint, they are no longer
3 required to maintain such a litigation hold. Nothing in this
4 paragraph relieves any of the parties of any other obligations
5 imposed by this Consent Order.

6 **IT IS SO ORDERED.** The District Court Executive is directed to file this
7 order and provide copies to counsel.

8 DATED April 8, 2022.

9
10 *s/Mary K. Dimke*
MARY K. DIMKE
11 UNITED STATES DISTRICT JUDGE
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