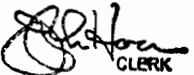


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
OCT 29 2009

CLERK

UNITED STATES OF AMERICA,

Plaintiff,

FAIR HOUSING OF THE DAKOTAS and
STARLA OVERBEE,

Plaintiff-Intervenors,

v.

PHYLLIS ROGERS, RICHARD ROGERS,
and TRIPLE R INDUSTRIES, INC.,

Defendants.

Case No.: CIV 08-4175

CONSENT ORDER

I. INTRODUCTION AND BACKGROUND

1. Plaintiff United States of America (“United States”) initiated this action on November 4, 2008, on behalf of Starla Overbee, Fair Housing of the Dakotas, and other aggrieved persons pursuant to the Fair Housing Act, 42 U.S.C. §§ 3612(o) and 3614(a). Defendants own and manage the subject properties located at 115-121 North Trapp Avenue and 931 West Seventh Street in Sioux Falls, South Dakota (the “subject properties”). On December 8, 2008, Starla Overbee and Fair Housing of the Dakotas moved to intervene as plaintiffs in this action and asserted additional claims under the Act and state law. On June 4, 2009, the United States filed an Amended Complaint.

2. The parties have agreed to the entry of this Consent Order to resolve all claims of the United States and Plaintiff-Intervenors and to avoid further litigation. Nothing herein shall be deemed an admission of liability by the Defendants.

II. GENERAL INJUNCTION

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

- a. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of race or familial status;
- b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or familial status;
- c. Making, printing, or publishing, or causing to be made, printed or published (whether verbally or in writing) any notice, statement, or advertisement, with respect to the rental of a dwelling, that indicates any preference, limitation or discrimination based on race or familial status, or any intention to make any such preference, limitation, or discrimination; or
- d. Coercing, intimidating, threatening, or interfering 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 granted or protected by the Fair Housing Act, 42 U.S.C. §§ 3601 – 3631.

III. NON-DISCRIMINATION POLICIES AND PROCEDURES

4. Defendants' responsibilities under this Consent Order shall apply to each and every dwelling unit in which Defendants, or any of them, have an ownership, management, or

other financial interest at any time during the pendency of this Order. A current list of such units is attached as Exhibit A. Defendants' signature to this Order shall serve to certify that this list is complete and accurate.

5. Defendants shall prepare and implement uniform, non-discriminatory policies and procedures regarding the rental of dwelling units that shall be applied equally to all applicants, whether actual or prospective, regardless of race or familial status. These policies and procedures shall be substantially similar to those contained in Exhibit B.

IV. NOTICE TO PUBLIC OF NON-DISCRIMINATION POLICIES

6. Within thirty (30) days after the date of entry of this Consent Order, Defendants shall take the following steps to notify the public of their non-discrimination policies:

- a. Defendants shall prominently post in each public and common use area of each property (including but not limited to the stairwells and laundry areas) 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 non-discriminatory basis. A poster that comports with 24 C.F.R. Part 110 shall satisfy this requirement.
- b. Defendants shall include the words "Equal Housing Opportunity" and the fair housing logo in any advertising conducted by Defendants, their agents or employees. The words and logo shall be prominently placed and easily readable. For purposes of this Order, "advertising" shall include any statement made for the purpose of soliciting the rental of a dwelling, whether paid or unpaid, in newspapers, telephone directories, on the

Internet, radio or television or other media broadcasts, or on billboards, signs, pamphlets, fliers, handouts, promotional literature, or any other written materials. Defendants are not required to advertise in any of these media; however, should Defendants so advertise, they must comply with this provision.

- c. Defendants shall either provide the following written statement to rental applicants or include this statement in Defendants' standard rental application and rental agreement, if any: "We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status, including having children under age 18." If included in the rental application and rental agreement, this statement shall be written using letters of equal or greater size to those used for the text of the body of the document.

V. MANDATORY TRAINING

7. Within thirty (30) days of the entry of this Consent Order, Defendants shall provide a copy of this Order and the non-discrimination policies and procedures referred to in Paragraph 6, supra, to any agents, employees or other individuals involved in showing, renting or managing any dwellings subject to this Order. Defendants shall secure a signed statement from each such individual acknowledging that he or she has received and read the Order and non-discrimination policies and procedures, has had the opportunity to have questions answered, and agrees to abide by them. This statement shall be in the form of Exhibit C.

8. During the term of this Order, within five (5) days after each new agent, employee

or individual becomes involved in the showing, rental or management of any dwelling unit subject to this Order, Defendants shall provide this individual with a copy of this Order and the non-discrimination policies and procedures referred to in Paragraph 6, supra, and shall secure the same signed statement referred to in Paragraph 7, supra.

9. Within ninety (90) days of the date of entry of this Order, Defendants, including any agents or employees of Defendants involved in showing, renting or managing any dwellings subject to this Order, shall attend an in-person training on the Fair Housing Act, including the Act's provisions related to race and familial status discrimination and discriminatory statements. The trainer or training entity shall be qualified to perform such training, independent of Defendants, and approved in advance by the United States. Defendants shall bear the cost of any expenses associated with this training. Defendants shall obtain from the trainer or training entity certificates of attendance signed by each individual who attended the training. The certificates shall be in a form acceptable to the United States and 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.

VI. RECORD KEEPING AND COMPLIANCE TESTING

10. Within thirty (30) days of the date of entry of this Order, Defendants shall ensure that the following records are maintained and updated as new information becomes available:

- a. An Availability List that indicates, on a monthly basis, the following:
 - 1) The address and apartment number of each unit known to be available, or reasonably expected to be available, within the next thirty (30) days;

- 2) The monthly rent for each such unit;
- 3) The date on which Defendants first learned the unit would be available for rental; and
- 4) The first date the unit will be available for rental or occupancy by a new tenant.

Defendants and their agents or employees shall share information on the Availability List with each person who visits or calls to inquire about the availability of rental dwellings.

b. A Tenant/Applicant Record Log that sets forth the following:

- 1) The name of each tenant and/or applicant for rental dwellings;
- 2) The date on which each tenant or applicant inquired about rental housing and whether such inquiry was by telephone or in person;
- 3) The number of children under 18, if any, residing with each tenant and/or applicant, regardless whether the application for tenancy was approved or rejected;
- 4) Based on good faith observation and belief, the race and/or ethnicity of the tenant and/or applicant, provided that nothing in this Order shall require Defendants to inquire into tenants' or applicants' race or ethnicity, or for tenants or applicants to disclose their race or ethnicity;
- 5) For approved applicants, the address and unit number of the dwellings rented to them; and

- 6) For rejected applicants, a detailed explanation of why the application was rejected.

11. The United States and/or Plaintiff-Intervenor Fair Housing of the Dakotas may monitor Defendants' compliance with this Order, including, but not limited to, conducting fair housing tests at any dwelling or property covered under this Order.

VII. REPORTING REQUIREMENTS

12. Within ninety (90) days for the date of entry of this Consent Order, and every twelve (12) months thereafter for the duration of this Order, Defendants shall deliver to counsel for the United States¹ and counsel for Plaintiff-Intervenors a report containing information regarding Defendants' compliance with this Order during the preceding reporting period, including but not limited to:

- a. Current photographs of notices posted under Paragraph 6a.
- b. Copies of any advertising, as defined in Paragraph 6b.
- c. A copy of the written statement required under Paragraph 6c.
- d. Any signed employee statements under Paragraph 7 and 8.
- e. Certificates of attendance of fair housing training, pursuant to Paragraph 9.
- f. Availability Lists and Tenant/Applicant Logs pursuant to Paragraphs 10a-b.

¹ For purposes of this Order, documents to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, DJ 175-69-41, U.S. Department of Justice, 950 Pennsylvania Avenue NW – G Street, Washington, DC 20530, or as otherwise directed by the United States. If transmission by facsimile to the United States is required, the following facsimile number should be used: (202) 514-1116.

13. During the effective period of this Order, Defendants shall preserve all records that are the source of, contain, or relate to any information that is pertinent to Defendants' obligations under this Order, including any records required under this Order and rental applications, leases, rental roll ledgers and tenant correspondence, if any, as well as any records relating to the transfer of interest in dwelling units as set forth in Section XI, infra. Upon reasonable notice to 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.

14. During the effective period of this Order, Defendants shall notify counsel for the United States and counsel for Plaintiff-Intervenors in writing within fifteen (15) days of receipt of any written or oral complaint against Defendants, or any of them, or any of their agents and employees, alleging discrimination in the rental of housing based on race or familial status. 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, if known. Defendants shall also promptly provide counsel for the United States with all information Defendants obtain concerning any such complaint and shall inform the United States of any resolution of such complaint within fifteen (15) days of said resolution.

VIII. COMPENSATION OF AGGRIEVED PERSONS

15. Within fourteen (14) days after the entry of this Order, Defendants shall pay Plaintiff-Intervenor Fair Housing of the Dakotas and Starla Overbee the sum of fifty thousand dollars (\$50,000.00) in damages and attorneys' fees. The private parties shall execute a mutual release of all claims, whether legal or equitable, arising out of the facts of this lawsuit. Prior to

receiving such payment, Plaintiff-Intervenors shall deliver their signatures upon the mutual release to Defendants. The sum shall be paid in the form of a check made payable to the Attorney Client Trust Account of Brancart and Brancart and delivered to Brancart & Brancart, 8205 Pescadero Road, Loma Mar, CA 94021. A copy of the check shall be sent to the United States.

IX. CIVIL PENALTY

16. Within thirty (30) days after the entry of this Order, Defendants shall pay a total of nine thousand dollars (\$9,000.00) to the United States as a civil penalty, 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 a cashier's check payable to "United States Treasury."

X. ACQUISITION OF DWELLING UNITS

17. If, at any time during the term of this Order, Defendants, or any of them, acquire a direct or indirect ownership, management or other financial interest in any other rental dwelling unit (other than units occupied by Defendants), such unit shall become subject to this Order. Within thirty (30) days of acquiring such an interest, Defendants shall notify counsel for the United States and counsel for Plaintiff-Intervenors of the nature of Defendants' interest in the dwelling or property; the address of the property; and any other information required under Paragraph 10, supra. Defendants shall further provide a copy of the documents memorializing the transfer in interest and a copy of the lease(s) for any existing tenant(s).

XI. TRANSFER OF INTEREST IN COVERED DWELLING UNITS

18. If, at any time during the term of this Order, Defendants, or any of them, decide or intend to transfer the entirety of their direct or indirect ownership, management, or other

financial interest in a rental dwelling unit to an unrelated party (“purchaser” or “transferee”) in an arms-length transaction,² Defendants shall do as follows:

- a. At least thirty (30) days prior to completion of the sale or transfer, the transferring Defendant(s) shall provide to counsel for the United States, by facsimile and first-class mail, written notice of their intent to sell or otherwise transfer interest in the dwelling unit(s), containing each prospective transferee’s name, address and telephone number;
- b. Within thirty (30) days following completion of the sale or other transfer, the transferring Defendant(s) shall provide to the United States by first-class mail a copy of the documents memorializing the transfer in interest of the dwelling unit(s);
- c. If the transferring Defendant(s) comply with parts a and b, above, and thereby transfers all of Defendants’ ownership, management, or other financial interest in the dwelling unit(s) to the purchaser or other transferee, Defendants will thereafter be relieved of Defendants’ obligations under Sections II - VII and XII - XIII of this Order, but only with respect to the dwelling units in which all interest was so transferred. Defendants shall otherwise remain liable for compliance with all sections of the Order and with respect to all other covered dwelling units.

19. If the proposed transfer of interest is not an arms-length transaction, Defendants

² For purposes of this Order, an “arms-length transaction” is a sale, 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.

must comply with each requirement set out in Paragraph 18, supra. In addition, Defendants shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of this Order with respect to the relevant dwelling unit(s) for the duration of the Order. In addition, the transferring Defendant(s) shall otherwise remain liable for compliance with the Consent Order with respect to all other dwelling units subject to this Order. Furthermore, the transferring Defendant(s) 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 - VII and XII - XIII of this Order for the duration of this Order, with respect to the subject dwelling unit(s).

XII. SCOPE AND DURATION OF CONSENT ORDER

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

21. This Consent Order shall take effect immediately upon its entry by the Court and shall remain in effect for three (3) years.

22. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice.

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

XIII. REMEDIES FOR NON-COMPLIANCE, TIME FOR PERFORMANCE, AND MODIFICATIONS

24. The United States may move the Court to extend the period in which this Order is in effect if Defendant violates one or more terms of the Order or if the interests of justice so

require.

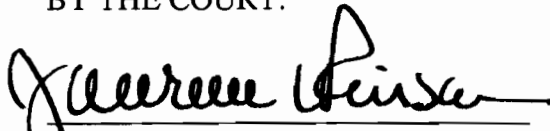
25. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties.

26. Each party shall notify the other party of any dispute or difference regarding interpretation and compliance with this Order and shall attempt, within the next 15 days, to resolve such dispute informally. The parties shall not bring such disputes to the Court's attention prior to the 15-day period, except in exigent or emergency circumstances. In the event the United States contends that there has been a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Order or otherwise to comply with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity.

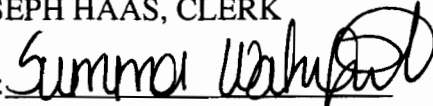
IT IS SO ORDERED.

This 29th day of October, 2009.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY

BRENDAN V. JOHNSON
United States Attorney

JAN HOLMGREN
Assistant United States Attorney
325 S. First Ave., Ste. 300
Sioux Falls, SD 57104
Phone: (605) 330-4400

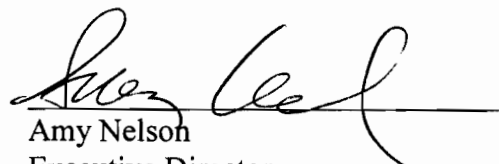
FOR THE UNITED STATES:

THOMAS E. PEREZ
~~Assistant Attorney General~~

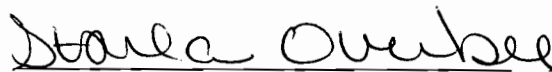


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FOR PLAINTIFF-INTERVENORS:



Amy Nelson
Executive Director
Fair Housing of the Dakotas




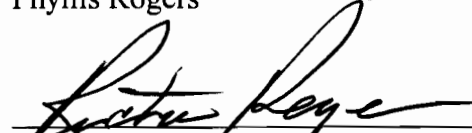
Starla Overbee




Christopher Brancart
Brancart & Brancart
P.O. Box 686
Pescadero, CA 94060

FOR DEFENDANTS:


Phyllis Rogers


Richard Rogers


Susan Sabers
Fuller & Sabers
7521 South Louise Avenue
Sioux Falls, SD 57108

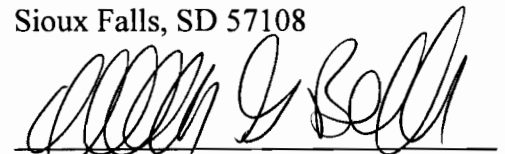

William Beck
Woods Fuller Schultz & Smith
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57104

Exhibit A

List of Covered Dwelling Units

<u>Address</u>	<u>No. of Rental Units</u>
115-121 North Trapp Avenue Sioux Falls, SD 57104	16
930 West Seventh Street Sioux Falls, SD 57104	12
2001 North Wayland Avenue Sioux Falls, SD 57103	1

Exhibit B

NONDISCRIMINATION POLICY

It is the policy of Phyllis Rogers, Richard Rogers and Triple R Enterprises to comply with 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 *et seq.*, by ensuring that apartments are available to all persons without regard to race or familial status (having children under age 18). This policy means that, among other things, Phyllis Rogers, Richard Rogers and Triple R Enterprises and all agents or employees with responsibility for renting, or managing any dwelling units must not discriminate in any aspect of the rental of dwellings against qualified applicants or tenants because of familial status. Such agents and employees may not:

- a. Refuse to rent after the making of a bona fide offer, or refuse to negotiate for rental of, or otherwise make unavailable or deny, a dwelling to any person because of race or familial status;
- 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 or familial status;
- 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 or familial status, or an intention to make any such preference, limitation, or discrimination; 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 granted or protected by the Fair Housing Act.

Any agent or employee who fails to comply with this non-discrimination policy will be subject to appropriate disciplinary action, which may include termination and/or eviction. Any action taken by an agent or employee that results in the unequal service, treatment or behavior to tenants on the basis of race or familial status may constitute a violation of state and federal fair housing laws.