

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:10-cv-186 DCB-JMR
)	
JANIE KELLY, <u>et al.</u>)	
)	
Defendants.)	

CONSENT DECREE

On November 18, 2010, the United States instituted this action against Janie Kelly, Richard Cowart and Phylis Cowart (collectively, “Defendants”), on behalf of Breezie Penny and M. E., her minor daughter, pursuant to 42 U.S.C. § 3612(o).

This action was filed to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3631. The United States initiated this action for conduct that occurred at Shamrock Apartments, which is owned by Mr. and Mrs. Cowart and managed by Ms. Kelly. Specifically, the complaint alleges that Ms. Kelly, as an agent for Mr. and Mrs. Cowart, terminated Ms. Penny’s lease due to the race or color of her daughter, M. E., and Ms. Penny’s association with African Americans.

Defendants deny any violations of the Fair Housing Act.

The United States and Defendants stipulate that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. 3612(o). The parties have agreed that to avoid protracted and costly litigation, this dispute should be resolved without the

necessity of further proceedings or trial. Therefore, the parties consent to the entry of this Consent Decree (“Decree”), as indicated by the signatures appearing below.

Accordingly, it is hereby ORDERED, ADJUDGED AND AGREED as follows:

I. INJUNCTIVE RELIEF

1. Defendants deny any violation of the Fair Housing Act; however, to avoid protracted and costly litigation and resolve this matter, Defendants and their agents, employees, successors, and assigns, and all those acting in concert or participation with either of them in their ownership, operation, or management of Shamrock Apartments, hereby agree to be enjoined from violating the Fair Housing Act, 42 U.S.C. §§ 3604(a)-(c) & 3617, including inter alia:

- A. Making housing unavailable because of race or color;
- B. Discriminating in the terms, conditions, or privileges of rental of a dwelling because of race or color;
- C. Making discriminatory statements with respect to housing because of race or color; and
- D. Intimidating or interfering with the exercise or enjoyment of any right granted or protected by the Fair Housing Act.

II. NOTIFICATION TO PUBLIC OF NONDISCRIMINATION POLICIES

2. Within ten (10) days after the date of entry of this Decree, Defendants shall post and prominently display a Fair Housing Poster in any rental office where they conduct rental activity or have personal contact with applicants for rental of Shamrock Apartments.

3. Defendants shall also include the fair housing logo and the words “Equal Housing Opportunity” in all advertising conducted for Shamrock Apartments in newspapers, telephone

directories, radio, television, the Internet or other media, and all billboards, signs, pamphlets, brochures, and other promotional literature.

4. Within thirty (30) days after the date of entry of this Decree, Defendants shall provide to all employees whose duties involve, in whole or in part, management or administration of Shamrock Apartments a written notice, conforming with Appendix A, describing their policy of nondiscrimination based on race or color. Defendants shall also post this policy in the leasing office, and shall provide a copy of the policy to any tenant or prospective tenant who requests it. The posted policy shall be on a minimum of eleven-by-seventeen (11x17) inch paper with the words "nondiscrimination policy" at the top of the page in all caps, bold typeface, and a minimum of thirty-four (34) point, Times New Roman font. The text of the policy shall also be in a minimum of twenty (22) point, Times New Roman font. Within thirty (30) days after the date of entry of this Decree, Defendants shall provide the United States a photograph of Shamrock's leasing office showing that this policy has been posted in conformance with this paragraph.

III. MANDATORY EDUCATION AND TRAINING

5. Within thirty (30) days after the date of entry of this Decree, Defendants shall provide a copy of this Decree to all agents and employees whose duties, in whole or in part, involve the management or administration of Shamrock Apartments and shall secure the signed statement from each agent or employee acknowledging that he or she has received, read and understands the Decree and nondiscrimination policy, and has had an opportunity to have questions about the Decree and nondiscrimination policy answered. This statement shall be substantially in the form of Appendix B.

6. Each new employee or agent hired during the term of this Decree whose duties, in whole or in part, involve the management or administration of Shamrock Apartments shall be given a copy of this Decree and shall be required to sign a statement substantially in the form of Appendix B.

7. Within sixty (60) days after the date of entry of this Decree, Defendants Richard Cowart and Janie Kelly shall attend a fair housing training. The Defendants may extend this deadline, if necessary, upon the Court's approval. The training shall focus on the race-related provisions of federal, state and local fair housing laws, regulations and ordinances, and shall be conducted by a qualified individual or organization unconnected to Defendants or their counsel that has been approved in advance by the United States. If the parties are unable to reach an agreement regarding which entity or individual will provide the training, the Court will approve the training provider. Any new employees hired during the term of this decree to perform, in whole or in part, management and administrative duties similar to those performed by Janie Kelly shall likewise attend fair housing training within thirty (30) days of the start of their employment. Defendants shall bear the cost of any expenses associated with this training. Defendants shall provide the United States, within ten (10) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s) and certifications executed by the trainer(s) confirming their attendance. A sample certification is attached as Appendix C.

IV. NOTIFICATION OF OTHER COMPLAINTS OF DISCRIMINATION

8. Defendants shall give counsel for the United States written notice (as provided below) within fifteen (15) days of receipt of any complaint against Shamrock, regarding discrimination on the basis of race or color, and a description of the resolution of any such complaint within

fifteen (15) days. If the complaint is made orally, the Defendants shall request that the complaint be placed in writing. If the complaining party is unwilling to place the complaint in writing, Defendants shall create a written summary of the complaint and request that the complaining party sign the written summary. Defendants shall only provide the United States any and all written complaints or summary of complaints that are signed by the complaining party, along with a written notice. The notice shall include the summary of the complaint, including the complainant's name, address, and telephone number. Defendants shall also promptly provide the United States with all information it may request concerning any such complaint and its actual or attempted resolution.

V. RELIEF FOR BREEZIE PENNY AND HER DAUGHTER

9. Defendants will pay a total sum of Seventeen Thousand Five Hundred Dollars (\$17,500) in settlement of the case, to Breezie Penny and her daughter, M.E. by one check made payable to Breezie Penny and one check made payable to Breezie Penny, as mother and natural guardian of M.E. A division of this total sum between Ms. Penny and her daughter shall be determined by the Warren County Chancery Court. Within ten (10) days after the Warren County Chancery Court issues its decision regarding the division of this sum, Defendants shall send the check(s) to Mitzi Dease Paige, Assistant United States Attorney, 501 East Court Street, Suite 4.430, Jackson, Mississippi, 39201, for her to forward to Ms. Penny and her daughter. Upon receipt of the check(s), the United States shall send to Defendants executed release(s) from Breezie Penny as approved by the Chancery Court of all claims, legal or equitable, that Breezie Penny and her daughter might have against Defendants relating to the claims asserted in this lawsuit (Appendix D).

VI. DURATION OF CONSENT DECREE

10. This Decree is effective immediately upon its entry by the Court. The Court will retain jurisdiction to enforce the terms of this Decree for a period of two (2) years after the entry of this Decree. The United States may move the Court to extend the duration of the Decree if it determines that any defendant has violated one or more terms of the Decree or if the interests of justice otherwise require, with notice to all parties and counsel of record.

11. The United States and Defendants 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. In the event that no resolution is reached, any party may move this Court to resolve such dispute and impose any remedy authorized by law or equity that may have been occasioned by the violation or failure to perform by the other party.

VII. TIME FOR PERFORMANCE

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

VIII. COSTS OF LITIGATION

13. All parties shall be responsible for their own attorney's fees and costs associated with this action.

IT IS SO ORDERED.

This 19th day of March, 2012.

s/David C. Bramlette

DAVID C. BRAMLETTE III
UNITED STATES DISTRICT JUDGE

The terms of this Consent Decree have been agreed to by the parties as indicated by the signatures of counsel below, and the parties request entry of this Consent Decree:

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

JOHN M. DOWDY, JR.
United States Attorney



MITZI DEASE PAIGE
Assistant United States Attorney
501 East Court Street
Suite 4.430
Jackson, Mississippi 39201
(601) 973-2840
(Mississippi Bar No. 6014)

THOMAS E. PEREZ
Assistant Attorney General



STEVEN H. ROSENBAUM
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MICHAEL S. MAURER
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JESSICA CLARKE CROCKETT
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Northwestern Building, 7th Floor
Washington, D.C. 20530
Phone: (202) 305-4013
Fax: (202) 514-1116

FOR THE DEFENDANT JANIE KELLY:



Jeffrey A. Walker
Arlson Tasma Vance
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
P.O. Box 6010
Ridgeland, MS 39158-6010
Phone: (601) 948-5711

FOR THE DEFENDANTS RICHARD COWART AND PHYLIS COWART:

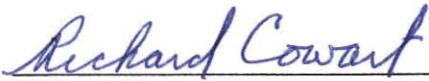


R. E. Parker, Jr.
Clifford C. Whitney III
Varner Parker & Sessums PA
PO Box 1237
Vicksburg MS 39181-1237
Phone: (601) 638-8741

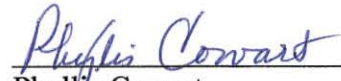
Vicksburg, MS 39181-1237

Phone: 601-638-8741

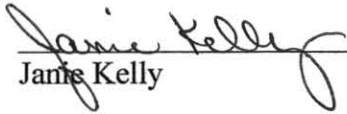
Fax: 601-638-8666



Richard Cowart



Phyllis Cowart



Jamie Kelly

APPENDIX A

NONDISCRIMINATION POLICY

It is the policy of Shamrock Apartments to comply with Title VIII of the Civil Rights Act or 1968 (commonly known as the Fair Housing Act) by ensuring that apartments at Shamrock Apartments are available to all persons without regard to race, color, religion, national origin, disability, familial status, or sex. This policy means, among other things, that Shamrock Apartments and all of its agents or employees with the responsibility for renting, managing or administering any dwelling units at Shamrock Apartments must not discriminate on the basis of race or color in any aspect of the rental of dwellings to qualified applicants or tenants. Such agents and employees must refrain 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 color;

B. Discriminating 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 therewith, because of race or color;

C. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race or color, or an intention to make any such preference, limitation, or discrimination;

D. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.

Any agent or employee who fails to comply with this nondiscrimination policy will be subject to appropriate disciplinary action. 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 color may constitute a violation of state and federal fair housing laws. Any tenant who believes that any of the above policies has been violated by any owner, agent or employee may contact the U.S. Department of Housing and Urban Development at 1-800-669-9777 or the U.S. Department of Justice at 1-800-896-7743 or 202-514-4713.

APPENDIX B

EMPLOYEE ACKNOWLEDGMENT

On _____, 201__, I, _____, was instructed by Richard Cowart and/or Janie Kelly with respect to my responsibilities under the Consent Decree entered by the U.S. District Court in United States v. Kelly, Civil No. 10-186 (S.D. Miss.) and the federal Fair Housing Act. I was also instructed as to Richard Cowart's (or Janie Kelly's) rental policies and procedures. I have received copies of and have read the Consent Decree and the nondiscrimination policy (Exhibit A). I understand my legal responsibilities and will comply with those responsibilities.

Signature

Print name

Job Title

Date

APPENDIX C

TRAINING CERTIFICATION

On _____, 201__, I, _____, successfully completed training on the race-related provisions of federal, state and local fair housing laws, regulations, and ordinances.

Signature

Name

Date

APPENDIX D

FULL AND COMPLETE RELEASE WITH COVENANTS

In consideration of the parties' agreement to the terms of the Consent Decree entered in **United States of America versus Janie Kelly, Richard Cowart and Phyllis Cowart, Civil Action No. 5:10-cv-186 DCB-JMR** (S.D. Miss.) and Defendants payment of \$17,500.00, I, **BREEZIE PENNY**, individually and as Mother and Natural Guardian of M.E., ("Releasor"), after receiving Chancery Court approval, do hereby release, acquit, and forever covenant not to sue Janie Kelly, Richard Cowart, Phyllis Cowart, Shamrock Apartments or their successors, administrators, executors, employees, insurers, reinsurers, assigns, Lessees, Lessors, officers or agents and any and all other persons, firms or corporations liable or who might be claimed to be liable, but none of whom admit any liability (collectively, "Releasees"), for any and all claims of every kind and character, past, present or future, that Releasor might have against Releasees on account of the allegations made in the above-mentioned civil action. Releasor further agrees to release, acquit, and forever covenant not to sue Releasors for any and all resulting injuries and damages, including all claims or damages of any kind, arising out of the above-mentioned civil action or claims that are resulting from that civil action and the allegations therein.

Releasor understands that she and/or her child M.E. may have suffered injuries, damages or losses that are unknown at present or that may arise, develop, or be discovered in the future. Releasor acknowledges that the sums paid in consideration of this Agreement are intended to and do hereby release and discharge any claims derived through them by common law or statute and Releasor hereby waives any rights to assert in the future any claims against Releasees not now

known or suspected that arise out of the claims asserted in the above-mentioned civil action, even if such claims were known, such knowledge would materially affect the terms of this Agreement and agrees to indemnify Releasees from any future liability from any action, liability, cause of action, costs, or damages arising out of the above civil action, including attorney fees.

Releasor agrees and acknowledges that she accepts payment of this sum as a full, complete, final and binding compromise of all matters involving disputed issues of the above-mentioned civil action regardless of whether too much or too little may have been paid. Releasor further acknowledges that this payment is not to be considered admissions by Releasees of any liability or wrongdoing and that no past or present wrongdoing on the part of Releasees shall be implied by such payment. Releasees emphatically deny that they are in any way, legally or otherwise, responsible for the alleged injuries or damages to Releasor, or that any act or omission of any of them caused or contributed in any way to the alleged injuries and damages arising out of this civil action.

This Agreement contains the entire agreement between Releasor and Releasees with regard to the matters set forth herein.

Releasor hereby declares that the terms of this Release have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise of any and all claims and allegations contained in the above-mentioned lawsuit, and for the express purpose of precluding forever any further or additional claims arising out of the allegations contained in the above-mentioned lawsuit.

Releasor further states and declares that in making this release and agreement that she has relied wholly upon her own judgment, and receiving permission of the Chancery Court of Warren County, Mississippi and that she has not been influenced in any extent whatsoever in making this release by any representations or statements concerning the liability questions or any other matters made by the persons, firms, organizations and corporations who are hereby released, or by any person or persons representing or acting for them.

Releasor acknowledges that the sum stated herein will be paid by two (2) checks, one made payable to **BREEZIE PENNY** individually and the other to her daughter M.E. in an amount to be determined by the Chancery Court of Warren County, Mississippi. Upon execution of this Release and delivery of a check to Releasor, Releasees shall be fully released hereunder and have no further duties or obligations to Releasor whatsoever.

Releasor certifies that she has initialed each page of the original and two (2) copies of this document and have executed said copies in view of a notary.

Should it develop that there are any mistakes in this instrument which would cause the release of the Releasees herein to be defective or less than complete, Releasor will execute any and all instruments and do any and all things necessary to effectuate a full, final and complete release.

WITNESS our signatures this the _____ day of _____, 2012.

BREEZIE PENNY

STATE OF MISSISSIPPI
COUNTY OF _____

PERSONALLY APPEARED before me, the undersigned authority in and for the jurisdiction above, the within named, **BREEZIE PENNY**, who, acknowledged that she signed and delivered the above and foregoing Full and Complete Release with Covenants on the day and year therein mentioned, after having been first duly authorized so to do, and for the purposes therein stated on the day above mentioned, and that the matters and facts stated therein are true and correct.

SWORN to and subscribed before me this the ____ day of _____ 2012.

NOTARY PUBLIC

My Commission Expires:

Jackson 7684732v1