

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 and ) Civil No. 10-297-LM  
 )  
 BRENDA SANTANA )  
 and ROBERT SANTANA, )  
 )  
 Plaintiff/Intervenors, )  
 )  
 v. )  
 )  
 LOTHAR RIBA, )  
 )  
 Defendant. )

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**CONSENT ORDER**

**I. INTRODUCTION**

1. The United States filed this action to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“Fair Housing Act”), 42 U.S.C. §§ 3601-3631. It was brought on behalf of Brenda Santana, pursuant to 42 U.S.C. § 3612(o).
2. On September 17, 2010, Ms. Santana and her husband, Robert Santana, intervened as plaintiffs in the action.
3. In its Complaint, the United States alleges that Defendant Lothar Riba violated federal law by discriminating on the basis of race, color, or national origin in connection with the ownership, rental, and management of a four-unit apartment building located at 53 Main Street, Monroe, New Hampshire (“the subject property”). Specifically, the United States alleges that Defendant: (1) made statements with respect to the rental of a dwelling that

indicated a preference, limitation, or discrimination based on race, color, or national origin, in violation of 42 U.S.C. § 3604(c); (2) coerced, intimidated, threatened, or interfered with the exercise and enjoyment of a right granted or protected by section 804 of the Fair Housing Act; and (3) acted intentionally and willfully, in disregard of Ms. Santana's federally protected rights.

4. The Plaintiff-Intervenors make the same allegations against the Defendant, seeking damages for both Mr. and Ms. Santana.
5. Brenda and Robert Santana are "aggrieved persons" within the meaning of 42 U.S.C. § 3602(i).
6. The parties agree that this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).
7. The parties have agreed to the entry of this Consent Order to resolve all claims of the United States and Plaintiff-Intervenors against the Defendant to avoid protracted and costly litigation. It is understood and agreed that this Consent Order is the compromise of disputed claims intended to buy peace among the parties. The Defendant denies all claims, and further denies the facts as alleged concerning the conduct as alleged by the Plaintiffs-Intervenors. Thus, this Consent Order is not to be construed as an admission of any liability or improper conduct by the Defendant.

## **II. GENERAL INJUNCTION**

8. Defendant and his agents, employees, successors, and all persons working in active concert or participation with him are enjoined from making statements with respect to the rental of a dwelling that indicate a preference, limitation or discrimination based on race,

color, or national origin, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(c).

9. Defendant and his agents, employees, successors, and all persons in active concert or participation with him are further enjoined from taking any action to coerce, intimidate, threaten or interfere with any tenants' exercised or enjoyed rights, in violation of 42 U.S.C. § 3617.

### **III. MANDATORY EDUCATION AND TRAINING**

10. Within ninety (90) days of the date of entry of this Order, Defendant shall undergo training regarding the provisions of the Fair Housing Act. The training shall cover the provisions of the Fair Housing Act pertaining to discrimination on the basis of race, color and national origin. The training shall be conducted by an independent, qualified third party, approved in advance by the United States, and any expenses associated with the training shall be borne by Defendant. Defendant shall provide to the United States<sup>1</sup>, within thirty (30) days after the training, a certification of attendance confirming his attendance. This confirmation shall include the name of the course, the name of the instructor, the date the course was taken, and the length of the course and/or time within which the course was completed.

### **IV. RECORDKEEPING AND MANAGEMENT**

11. Defendant shall obtain prior consent by a tenant to enter the premises of that tenant, other

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<sup>1</sup> All documents or other communications required by this Consent Order to be sent to counsel for the United States shall be sent by commercial (non-USPS) overnight delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street N.W., Suite 7002, Washington, D.C. 20006, Attn: DJ 175-47-38, and to the United States Attorney's Office, 53 Pleasant Street, Concord, NH 03301, or as otherwise directed by the United States. Facsimile transmissions shall be sent to (202) 514-1116 and (603) 225-1470.

than to make emergency repairs.

12. Defendant shall submit compliance reports containing information about the Defendant's compliance efforts during the proceeding reporting period. The first report shall be received ninety (90) days from the date of entry of this Consent Order, the second report shall be received twelve (12) months after the date of entry of this Consent Order, the third report shall be received twenty-four (24) months after the date of entry of this Consent Order, and a fourth report, if the Consent Order is still in force, shall be received 34 months from the date of entry of this Consent Order. The compliance reports shall contain information including but not limited to:
  - a. Copies of all certifications of attendance pursuant to Section III; and
  - b. Copies of lists setting forth the occupancy of each covered dwelling unit by address and apartment number, including the name and race, color or national origin of each tenant in that dwelling unit during the reporting period.

Defendant shall preserve all records that are the source of, contain, or relate to any of the information pertinent to the obligations under this Order, including all rental applications, leases, and occupancy lists for the subject property. Upon reasonable notice to Defendant, representatives of the United States shall be permitted to inspect and copy all such records at any and all reasonable times.

13. Defendant shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint against Defendant regarding race, color or national origin discrimination in housing. If the complaint is written, Defendant 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.

Defendant shall also promptly provide the United States all information it may request concerning any such complaint and shall inform the United States within fifteen (15) days of any resolution of such complaint.

#### **V. COMPENSATION OF AGGRIEVED PERSONS**

14. Defendant shall pay Brenda Santana and Robert Santana the sum of \$15,000 dollars as aggrieved persons within the meaning of the Fair Housing Act, provided that no amount shall be paid pursuant to this paragraph before Brenda and Robert Santana have executed a written release of all claims, legal or equitable, that they may have against Defendant relating to the claims asserted in this lawsuit. A copy of the release is attached as Exhibit A. Defendant shall send a check for this amount to counsel for Plaintiff-Intervenors<sup>2</sup> within thirty (30) days after the date of entry of this Order. The time period to make this payment will not be extended.

#### **VI. ACQUISITION OR TRANSFER OF DWELLING UNITS**

15. If, at any time during the term of this Consent Order, Defendant acquires a direct or indirect ownership, management, or other financial interest in any residential rental property, said unit shall become subject to all relevant provisions of this Order. Defendant shall notify counsel for the United States within thirty (30) days of acquiring said interest. The notice shall include identification of the nature of Defendant's interest in the property; the address; the number of individual dwelling units; the number of bedrooms in each unit; the names of any existing tenants; and the race, color, or national

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<sup>2</sup> Defendants shall deliver, via overnight courier, the settlement check to Christine Lavalley and David Feltes, C/O New Hampshire Legal Assistance, 1361 Elm Street, Suite 307, Manchester, New Hampshire 03101.

origin of each tenant. In the notice to counsel for the United States, Defendant shall also include a copy of the documents memorializing the transfer in interest and copy of the lease(s) for any existing tenant(s).

16. If at any time while this Order remains in effect, Defendant decides to transfer the entirety of Defendant's direct or indirect ownership, management, or other financial interest in a covered dwelling unit to an unrelated party ("purchaser" or "transferee") in an arms-length transaction<sup>3</sup>, the Defendant shall take the following steps:
  - a. At least thirty (30) days prior to completion of the sale or transfer, provide to the United States, by facsimile and by commercial (non-USPS) overnight delivery service a written notice of its intent to sell or otherwise transfer Defendant's 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, Defendant shall provide to the United States a copy of the documents memorializing the transfer in interest of the dwelling unit(s);
  - c. If the Defendant complies with parts a and b, above, and thereby transfers all of the Defendant's ownership, management, or other financial interest in the dwelling unit(s) to the purchaser or other transferee, Defendant will thereafter be relieved of Defendant's obligations under Sections II, IV, VII, and VIII of this Order, but only with respect to the dwelling unit(s) in which all interest was so transferred.

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<sup>3</sup> For purposes of this Consent Order, "arms-length transaction" is defined as a transaction such as a 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.

Defendant shall otherwise remain liable for compliance with all sections of the Order and with respect to all other covered dwelling units.

17. If the proposed transfer of interest is not in an arms-length transaction, the Defendant must comply with each requirement set out in Paragraph 16, Subsections (a), (b), and (c), above. In addition, the transferring Defendant 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–IV and VII–VIII of this Order for the duration of this Order, with respect to the transferred dwelling unit(s). The Defendant 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 Defendant shall otherwise remain liable for compliance with the Consent Order and with respect to all other covered dwelling units.

#### **VII. SCOPE AND DURATION OF CONSENT ORDER**

18. The parties consent to the entry of this Order as indicated by their signatures below. They agree that facsimile or electronic signatures shall be treated as originals. This Consent Order is effective immediately upon its entry by the Court and shall remain in effect for two (2) years, unless the Defendant retains any direct or indirect ownership, management, or other financial interest in any residential rental property, in which case the Consent Order will remain in effect for three (3) years.
19. The Court shall retain jurisdiction over this action from the date of entry of this Consent Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. The United States and the Defendant shall jointly notify the Court upon the

expiration of the Order.

20. All Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraphs 14 and 23.

**VIII. REMEDIES FOR NON-COMPLIANCE, TIME FOR PERFORMANCE, AND MODIFICATIONS**

21. The United States or Plaintiff-Intervenors may move the Court to extend the duration of the Order if they determine that Defendant has violated one or more terms of the Order, or if the interests of justice otherwise require. By consenting to entry of this Consent Order, the parties further agree that in the event Defendant engages in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).
22. Any time limits for performance imposed by this Order, except the time of payment as provided in paragraph 14, may be extended by mutual written agreement of the United States and the Defendant. The other provisions of this Order may be modified by motion to the Court.
23. The Parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by the Defendant to perform in a timely manner any act required by this Consent Order or otherwise to act in accordance with any provision thereof, the United States or Plaintiff-Intervenors may move this Court to impose any remedy authorized by law or equity.

**IT IS SO ORDERED**

This 7<sup>th</sup> day of April, 2011.

/s/ Landya B. McCafferty  
LANDYA BOYER MCCAFFERTY,  
United States Magistrate Judge  
UNITED STATES DISTRICT COURT  
District of New Hampshire

By their signatures below, the parties consent to the entry of this Order:

Dated: April 7, 2011

Respectfully submitted,

**For the United States:**

JOHN J. KACAVAS  
United States Attorney

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

/s/ John J. Farley  
JOHN J. FARLEY  
Assistant United States Attorney  
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/s/ Dana Mulhauser  
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Chief  
R. TAMAR HAGLER  
Deputy Chief  
DANA MULHAUSER  
Trial Attorney  
Housing and Civil Enforcement Section  
Civil Rights Division  
United States Department of Justice  
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E-mail: Dana.Mulhauser@usdoj.gov

**For Plaintiff-Intervenors Brenda Santana and Robert Santana:**

/s/ Christine Lavallee

Christine Lavallee, Bar #13057

Daniel Feltes, Bar #17689

New Hampshire Legal Assistance

1361 Elm Street, Suite 307

Manchester, NH 03101

(603) 668-2900, ex. 2221

clavallee@nhla.org

/s/ Brenda Santana

Brenda Santana

/s/ Robert Santana

Robert Santana

**For Defendant Lothar Riba:**

/s/ Jason R.L. Major

Jason R.L. Major, Bar #14782  
Douglas, Leonard & Garvey, P.C.  
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/s/ Gary M. Burt

Gary M. Burt, Bar #5510  
Wiggin & Nourie, P.A.  
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(603) 629-4744

/s/ Lothar Riba

Lothar Riba

**EXHIBIT A**

**FULL AND FINAL RELEASE OF CLAIMS**

In consideration for the Consent Order entered in *United States, and Brenda and Robert Santana v. Lothar Riba*, Civ. No. 10-297-LM, and of the payment of the sum of fifteen thousand dollars (\$15,000), pursuant thereto, we, Brenda and Robert Santana, hereby release the Defendant named in this action from any and all liability for any claims, legal or equitable, we may have against him arising out of the issues alleged in the action from the date of the entry of the Consent Order. We fully acknowledge and agree that this release of the Defendant shall be binding on our heirs, representatives, executors, successors, administrators, and assigns. We hereby acknowledge that we have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Executed this 28<sup>th</sup> day of March, 2011.

/s/ Brenda Santana  
Signature

Brenda Santana  
Print Name

/s/ Robert Santana  
Signature

Robert Santana  
Print Name