

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

EQUAL RIGHTS CENTER,	*	
	*	
Plaintiff,	*	
	*	Case No. 2017 CA 002547 B
v.	*	Calendar No. 11
	*	Judge Todd E. Edelman
THE LENKIN COMPANY MANAGEMENT	*	
INC., et al.,	*	
	*	
Defendants.	*	

CONSENT AGREEMENT

This Consent Agreement ("Agreement") is entered into by and among The Equal Rights Center (the "ERC") and The Lenkin Company Management/Residential, Inc., Leneshire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC, ("The Lenkin Entities" or "Lenkin") (individually, a "Party," and collectively the "Parties"), and made effective as of the Effective Date (as defined in Paragraph 2 below).

RECITALS

WHEREAS, certain disputes have arisen between the Parties regarding The Lenkin Entities' rental policies and their compliance with the D.C. Human Rights Act ("DCHRA") (as defined in Paragraph 1 below) and the Fair Housing Act ("FHA") (as defined in Paragraph 3 below) arising from The Lenkin Entities' alleged discrimination on the basis of source of income and race caused by policies related to Housing Choice Voucher holders at the Subject Properties (as defined in Paragraph 4 below); and

WHEREAS, the ERC filed a complaint before the Superior Court of the District of Columbia, Case Number 2017 CA 00254 7 B (hereinafter referred to as the "DC Superior Court Case") regarding the above-mentioned disputes; and

WHEREAS, The Lenkin Entities deny the allegations in the DC Superior Case; and

WHEREAS, the ERC and The Lenkin Entities wish to resolve the Lenkin Claims (as defined in Paragraph 5) amicably in order to avoid the time, expense, and uncertainty of litigation.

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements, and other undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties mutually agree; and

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

A. DEFINITIONS

In addition to the terms that are defined elsewhere herein, the following terms shall have the following meanings:

1. "DCHRA" means Section 2-1402.21 *et seq.* of the D.C. Human Rights Act of 1977, as amended;
2. "Effective Date" means the date on which the ERC and the Defendants execute the Agreement, whichever is the later date;
3. "FHA" means Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, and its implementing regulations, 24 C.F.R. Parts 100 to 125;
4. "The Subject Properties" mean: (1) The Lencshire House, 3140 Wisconsin Avenue, NW, Washington, D.C. 20016; (2) The Yorkshire, 3355 16th Street, NW, Washington, D.C. 20010; (3) The Parkhill, 1610 Park Road, NW, Washington, D.C. 20010; and (4) The Garfield House, located at 2844 Wisconsin Avenue, NW, Washington, D.C. 20007;
5. "Lenkin Claims" mean all actual and potential claims by or on behalf of the ERC against The Lenkin Entities, arising on or before the Effective Date as defined above, including but not limited to any actual or potential claims raised in the DC Superior Court Case or otherwise relating to the ERC's tests of the Subject Properties, including any claim for attorneys' fees and costs incurred in connection therewith.

B. **SCOPE AND APPLICABILITY**

6. This Agreement applies to the Lenkin Claims arising on or before the Effective Date.

C. **TERM**

7. The term of this Agreement will be from the Effective Date through three (3) years from that date.

D. **NON-DISCRIMINATION POLICY**

8. **Prohibition Against Future Discrimination:** During the term of the agreement, Defendants shall be enjoined from discriminating against prospective renters on any of the bases prohibited by the FHA or DCHRA.
9. **Commitment to a Non-Discrimination Policy:** Within sixty (60) days of the Effective Date, The Lenkin Entities shall certify to the ERC that Lenkin has established and implemented a policy of non-discrimination consistent with the terms of this Agreement to be adhered to by The Lenkin Entities and all Lenkin employees and agents under The Lenkin Entities' control. This policy shall include the following statement:

"The Lenkin Company Management/Residential, Inc., Lencshire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC abide by the Fair Housing Act of 1968 as amended, as well as the District of Columbia Human Rights Act, which together prohibit discrimination in the sale or rental of housing based on race, color, religion, national origin, sex, marital status, age, disability, familial status, family responsibilities, source of income, personal appearance, sexual orientation, gender identity or expression, political affiliation, matriculation, status as a victim of an intrafamily offense, or place of residence/business. The Lenkin Company Management/Residential, Inc., Lencshire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC comply with all applicable federal, state and local laws pertaining to the use of Housing Choice Vouchers and other forms of publicly-funded rental assistance as a source of income. Every applicant and tenant, regardless of any applicable protected factors, shall be treated equally and with dignity and respect."

10. Within sixty (60) days of the Effective Date, The Lenkin Entities shall create and display signage in the Subject Properties and its corporate office in Washington, DC, bearing the following statement:

"The Lenkin Company Management/Residential, Inc., Lencshire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC and its clients accept Housing Choice Vouchers and other forms of publicly-financed rental assistance as rental payments, including Section 8 vouchers. It is illegal to discriminate based on any protected class under the FHA and DCHRA."

and (in Spanish)

"The Lenkin Company Management/Residential, Inc., Lencshire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC y sus clientes aceptan vales de eleccion de vivienda y otras formas de asistencia de alquiler financiadas publicamente como pagos de renta, incluyendo vales de Seccion 8. Es ilegal discriminar basado en cualquier clase protegida bajo la FHA y DCHRA"

11. Advertising Materials: Within sixty (60) days of the Effective Date, Lenkin shall include the following language in all advertisements for District of Columbia properties offered for rent by The Lenkin Entities: "Housing Choice Vouchers Welcome" and (in Spanish) "Se Aceptan Vales de Eleccion de Vivienda."

E. EMPLOYEE TRAINING

12. **Fair Housing Training:** The Lenkin Entities shall agree to fair housing training for leasing agents and/or property management staff involved in the rental process at the Subject Properties. The ERC will provide two such trainings at a cost of \$3,500 per training for up to 25 people (in each training). The first training will occur in the first quarter of 2018. The second training will occur no later than the third quarter of 2020. The training will not count toward The Lenkin Entities' mandatory continuing education fair housing requirement for District of Columbia licensees but would consist of the following:
 - a. Three hours of fair housing instruction led by civil rights content area specialists and industry practitioners who support both newcomers and seasoned professionals in addressing fair housing, civil rights, and FHA and DCHRA compliance.
 - b. The course content covers the background and history of the Fair Housing Act and other laws that impact housing; a discussion of federal and DC protected classes; common scenarios related to fair housing compliance; and race and source of income-specific protections afforded under federal and District fair housing laws;
 - c. A question & answer portion, which will allow time for Lenkin staff to gain insight on fair housing issues and best practices as needed, including race and source of income as protected classes; and,
 - d. Training will be delivered in an interactive manner and suitable for a diverse audience group.

F. MONETARY PAYMENT

13. **Monetary Payment:** The Lenkin Entities shall provide the ERC a monetary payment in the amount of \$125,000 which includes compensation for attorneys' fees and costs, and the Defendants shall provide the cost of future fair housing training and compliance testing, totaling \$31,000, in the manner set forth below:
 - a. Within thirty (30) business days of the Effective Date, The Lenkin Entities will jointly make the \$125,000 payment to the ERC in full settlement of all damages, including attorneys' fees and costs. The Parties further agree that The Lenkin Entities shall make the payment by check, payable to the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC"), and shall send the check to the address for the WLC set forth in Paragraph 24 below.
 - b. The ERC will invoice The Lenkin Entities on a monthly basis for the services rendered by the ERC for ongoing compliance testing (described in Paragraph 17 below) during the preceding month. All such invoices will be paid by Lenkin within thirty (30) days of their receipt by The Lenkin Entities.

- c. Following each Fair Housing Training in calendar years 2018 and 2020, the ERC will invoice The Lenkin Entities for the respective trainings rendered by it, at \$3,500 per training (described in Paragraph 12 above). All such invoices will be paid by Lenkin within thirty (30) days of their receipt by The Lenkin Entities.

G. AFFIRMATIVE MARKETING

14. **Affirmative Marketing:** The Lenkin Entities will create and disseminate an email to housing counseling agencies when its Craigslist advertisement is updated with new vacancies which would indicate the rent range and types of units at each property, subject to availability, and that Voucher holders are welcome. The Lenkin Entities will copy the ERC's Training and Compliance Manager, Brian McKenzie (bmckenzie@equalrightscenter.com) on each email to housing counseling agencies, and the ERC will provide the list of agreed upon housing counseling agencies to The Lenkin Entities, which is the list that will be used to fulfill this marketing obligation. The Lenkin Entities shall not have an affirmative duty to seek information to update the list, but will revise the list, if notified by ERC or the receiving agency contact. ERC may provide an updated list annually to The Lenkin Entities, if it chooses to do so to ensure current information. The Lenkin Entities will also post on its existing websites that Lenkin properties welcome Housing Choice Voucher holders. Accordingly, Voucher holder tenant applicants' rental applications for units at the Subject Properties will be considered on a first applicant basis in line with The Lenkin Entities' general practice. If a Voucher holder is the first applicant, the unit will be held for 30 days for satisfaction of Housing Choice Voucher Program ("HCVP") requisites.
15. **Knowledgeable Employees:** To facilitate the effectiveness of this marketing and to ensure compliance with the HCVP, Lenkin Entities shall ensure that in addition to participating in the ERC's fair housing training described in Section D, two employees will be trained separately with respect to HCVP through external providers [ERC will provide a list of suitable providers]. These Lenkin employees shall be available to answer Voucher holder tenant applicants' housing inquiries. The employees shall include a designated manager and Al Moler, Vice President. Should Mr. Moler separate from The Lenkin Entities while this agreement is in effect or become unable to perform this role, The Lenkin Entities shall designate another employee at the managerial or executive level to obtain the necessary training described in this paragraph and fill this role. The Lenkin Entities shall apprise the ERC of the identity of the employees for the duration of the agreement.

H. DISCLOSURES

16. **Disclosures:** The Lenkin Entities shall disclose its tenant selection criteria attached hereto as Exhibit A to all applicants prior to the submission of an application. The Lenkin Entities shall ensure that the disclosure remains up to date and reflective of the current tenant selection criteria. Should the tenant selection criteria change, the Lenkin Entities shall provide a modified disclosure to the ERC for review and

approval within five (5) days of any such changes to the criteria that may affect voucher recipients. If the ERC does not approve the modified criteria, the Parties will make a good faith effort to reach an acceptable written modification to the criteria within thirty (30) days. If the parties in good faith cannot reach an agreement, the parties retain all rights and defenses available under the law.

In addition, The Lenkin Entities will comply with all federal, state, and local reporting and disclosure requirements, including the adverse action notice under the Fair Credit Reporting Act.

I. COMPLIANCE TESTING

17. Compliance Testing: The Lenkin Entities agree to retain the ERC to conduct twenty-four (24) compliance tests over a three-year term at a cost of \$1,000/test, for a total cost of \$24,000.00.

- a. Utilizing trained ERC testers, the ERC will design and conduct tests of the Subject Properties, as selected by the ERC, in order to evaluate compliance with fair housing requirements by Lenkin leasing and real estate management staff.
- b. The ERC will report the test results to The Lenkin Entities as soon as practicable, but no later than thirty (30) business days after the date on which such testing is conducted. ERC will advise at the time the test results are conveyed whether it maintains a violation of federal, state, or local fair housing laws has occurred and its suggested remedial action. In instances where the ERC has identified what in its opinion are violations of federal, state, or local fair housing laws resulting from what in its opinion are outright denials of housing on the bases of a protected category, the ERC will use best efforts to advise The Lenkin Entities through an informal report of the test results within five (5) business days. Nothing herein, however, shall be construed to require the ERC to provide advanced notice to The Lenkin Entities of violations for outright denials of housing described hereto where such advance notice is rendered impracticable. The full report of the test results and suggested remedial measures will be provided as previously described in this paragraph.

The Lenkin Entities shall have a period of thirty (30) days from receipt of the test results to implement the remedial action suggested by the ERC or to otherwise demonstrate to the ERC why the conduct should not be considered a violation or why an alternative means of remedying the violation is a sufficient solution. If the parties in good faith cannot reach an agreement, either party can seek resolution from the Court, which shall retain jurisdiction during the period of the Agreement. However, in the event of a failure by either Party to perform in a timely manner any act

required by this Agreement or otherwise to act in accordance with any provision hereof, the other Party may seek to enforce this Agreement and ask the 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, an award of any damages and costs which may have been occasioned by the violation or failure to perform, and an award of attorney's fees to the prevailing Party.

The ERC, on behalf of itself and its testers, expressly waives any and all claims and rights of action pertaining to the allegations in the complaint for the D.C. Superior Court case against The Lenkin Entities based upon the results of any Compliance Testing required under this Section I.b., except to enforce this agreement.

- c. The ERC is free to conduct other testing of the Subject Properties, outside the Compliance Testing required under this Section I, but will not initiate any legal proceeding against The Lenkin Entities based on those tests during the term of this Agreement, without first giving The Lenkin Entities written notice of the alleged violation identified by the testing and providing The Lenkin Entities with a period of thirty (30) days to remedy the violation or to otherwise convince the ERC why the conduct should not be considered a violation. During the thirty (30)-day period, the ERC may, but shall not be required to, offer Lenkin suggestions as to remedial options suitable for addressing the identified discriminatory conduct. It is understood and agreed between the Parties that by "remedy" they mean to correct the offending conduct or policy and do not necessarily mean to pay any money or provide any other form of consideration to ERC or its testers regarding the violation. However, the ERC retains its right to recover any and all damages, costs, and fees associated with any legal proceeding against Lenkin based on testing not paid for by The Lenkin Entities once the notice period expires. Further, nothing in this provision bars Lenkin from voluntarily determining that an adequate remedy should entail the provision of additional services by ERC not yet contemplated, and, in any event, Lenkin would be responsible for compensating ERC for the services to which it has already agreed under paragraphs 12 and 17 of this Agreement.

J. **RELEASES**

- 18. In consideration of this Agreement, and except as otherwise provided herein, the ERC agrees to release The Lenkin Company Management/Residential, Inc., Lenchire Associates LLC, Parkhill Apartments, LLP, Yorkshire Apartments, LLP, and Garfield Associates LLC, their predecessors or successors in interest, and all of their past and current directors, officers, employees, attorneys, agents, and assigns from the Lenkin Claims; provided however, that this release shall not apply

to the enforcement of this Agreement. The ERC further agrees to dismiss the complaint with prejudice as to all defendants.

19. In consideration of this Agreement, The Lenkin Entities, on behalf of itself and its employees involved in the events which are referenced in the "Recitals" above, agree to release the ERC and all of its past and current directors, officers, employees, agents, attorneys, and assigns, from any and all claims which could have been brought on or before the Effective Date of this Agreement—including claims for damages, costs, attorneys' fees, penalties, and injunctive relief—relating to the Lenkin Claims; provided however, that this release shall not apply to the enforcement of this agreement.

K. PRESS RELEASE

20. **Press Release:** The Agreement shall be a public document and shall not be subject to any confidentiality restrictions. The ERC will issue one or more press releases regarding the resolution of this matter and present such press release(s) to The Lenkin Entities in advance for comment. The Lenkin Entities will similarly provide any press release regarding this matter to the ERC in advance for review and comment. Each party agrees to give good faith consideration to the other party's suggested release in the hopes of reaching a mutually agreeable release. Each party will have 48 hours from the receipt of a proposed press release to provide any comments. Nothing herein shall restrict any Party or their respective counsel from commenting to the press with respect to this matter or to communicating in any way concerning this matter.

L. DISPUTE RESOLUTION

21. The Court shall retain jurisdiction over this matter. If either Party believes that the other Party has failed to comply with a material provision of this Agreement, the complaining Party will make a good faith effort to resolve the dispute prior to resorting to Court action to enforce the Agreement. However, in the event of an alleged failure by either Party to perform in a timely manner any material act required by this Agreement or otherwise to act in accordance with any provision hereof, the other Party may seek to enforce this Agreement and ask the 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. The prevailing Party shall be entitled to costs and reasonable attorneys' fees.

M. OTHER PROVISIONS

22. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties on the matters addressed herein, and the Parties expressly agree that it supersedes and controls any and all prior communications, whether oral or written, between the Parties regarding the matters addressed herein.

23. Modification: This Agreement may be modified only by writing signed by the Parties.

24. Communications Among the Parties: All notices, demands, and other communications to be provided pursuant to this Agreement shall be in writing and sent by regular mail, postage prepaid or by Federal Express to the following persons and addresses (or other such persons or addresses as the Parties may designate from time to time in writing):

a. For the ERC:

Deputy Director
The Equal Rights Center
11 Dupont Circle NW
Suite 450
Washington, DC 20036

With a copy to:

Matthew Handley, Fair Housing Project
Washington Lawyer's Committee for Civil
Rights and Urban Affairs
11 Dupont Circle NW
Suite 400
Washington, DC 20036

Steven F. Cherry
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
Telephone: 202-663-6000
Facsimile: 202-663-6363

b. For The Lenkin Entities:

Dawn Boyce
BANCROFT, McGAVIN, HORVATH & JUDKINS, P.C.
9990 Fairfax Boulevard, Suite 400
Fairfax, Virginia 22030
Telephone: (703) 385-1000
Facsimile: (703) 385-1555

25. Waiver: Failure of any party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such party's rights or remedies or a waiver by such party of any default by another party in performance or compliance with any terms of this Agreement.

26. Authority: Each signatory warrants that he or she is competent and possesses the full and complete authority to covenant to this Agreement on behalf of the Party that he or she represents.
27. Counterparts: This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument.
28. Public Document. This Agreement is a public document and shall not be subject to any confidentiality agreement.

[SIGNATURE PAGES TO FOLLOW]

Name: Edward J. Lenkin
Title: General Partner

So ordered.

12.6.17
Date

Ja. ?
Judge