UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Fair Housing and Equal Opportunity

Conciliation Agreement

under

Title VIII of the Civil Rights Act of 1968 as amended
By the Fair Housing Amendments Act of 1988

between

The United States Department of Housing and Urban Development

and

[redacted] and
John Trasviña, Assistant Secretary for Fair Housing and Equal Opportunity of
The United States Department of Housing and Urban Development
(Complainants)

and

Erwin H. Miller, Executor of the Estate of Harriet P. Hight; Bowditch & Dewey, LLP; Donna Truex; Maureen Kelleher; and Coldwell Banker Residential Brokerage
(Respondents)

Case Numbers: 01-12-0202-8; 01-12-0203-8; 01-12-0403-8; and 01-12-0404-8

A. PARTIES

· The United States Department of Housing and Urban Development (hereinafter "the Department").

· Complainant [redacted] entered into a purchase and sale agreement with Respondent Erwin Miller, who is the Executor of the Estate of Harriet P. Hight, to purchase a residence at [redacted] in Worcester, Massachusetts ("the subject property").

· Complainant [redacted] represented Complainant Nordquist in his attempted purchase of the subject property as his real estate agent.

· Complainant John Trasviña is the Assistant Secretary for Fair Housing and Equal Opportunity of the United States Department of Housing and Urban Development.

· Respondent Erwin Miller is the Executor of the Estate of Harriet P. Hight and the seller of the subject property.

· Respondent Donna Truex, at the direction of Respondent Miller, drafted and recorded a restrictive covenant against the subject property prohibiting the use of "group homes."

· Respondent Bowditch & Dewey, LLP, is the employer of Respondent Donna Truex.

· Respondent Maureen Kelleher represented Respondent Miller in the marketing and potential sale of the subject property and emailed the restrictive covenant to Elaine Evans.

· Respondent Maureen Kelleher is an independent contractor associated with Respondent Coldwell Banker Residential Brokerage.

B. STATEMENT OF FACTS

On April 16, 2012, Complainants [redacted] filed a complaint of discrimination with the Department alleging that Respondents violated Sections 804(f)(1)(a), 804(c), and 805 of the Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq. ("the Act"), on the basis of disability. The complaints allege that Respondents Miller, Truex, and Bowditch and Dewey, LLP caused to be recorded a restrictive covenant that prohibited future owners of the property from using it as a group home for individuals with disabilities and that Respondent Kelleher, an independent contractor associated with Coldwell Banker Residential Brokerage emailed the restrictive covenant to Complainant Evans. The Respondents deny these allegations.

On August 13, 2012, the Assistant Secretary for Fair Housing and Equal Opportunity initiated a complaint of discrimination with the Department alleging that Respondents violated §§ 804(f)(1)(a), 804(c), 805, and 818 of the Act on the basis of disability. The complaint alleges that Respondents Miller, Truex, and Bowditch and Dewey, LLP caused to be recorded a restrictive covenant that prohibited future owners of the property from using it as a group home for individuals with disabilities and that Respondents Kelleher, an independent contractor

associated with Coldwell Banker Residential Brokerage emailed the restrictive covenant to Complainant Evans. The Respondents deny these allegations.

C. EFFECTIVE DATE

1. The parties agree that this Agreement shall not become effective unless it is approved by the Department through the Office of Fair Housing and Equal Opportunity (FHEO) Region I Director.

2. This Agreement shall become effective on the date it is approved by the Director of the Office of FHEO for Region I.

3. This Agreement shall govern the conduct of the parties to it for a period of two (2) years from when it becomes effective, unless otherwise noted.

D. GENERAL PROVISIONS

4. The parties acknowledge that this Agreement is entered into voluntarily and is in full settlement of the complaint. The parties agree this is a full settlement of all claims set forth in the complaint between the parties now existing both known and unknown. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

5. This settlement is not an admission of any wrongdoing by any of the Respondents. This is a settlement of disputed claims. The Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any matter in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.

6. This Agreement, once approved by the Director of the Office of FHEO for Region I, will bind Respondents, Complainants, their respective employees, independent contractors, heirs, successors and assigns and all others in active concert with them.

7. The parties understand that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the Director of the Office of FHEO for Region I, this Agreement is a public document.

8. This Agreement represents the full and complete resolution of this matter. It does not in any way resolve or limit or restrict the Department's authority to investigate any additional complaints, including those involving Respondents.

9. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing;

and (c) the amendment, modification or waiver is approved and signed by the Director of the Office of FHEO for Region I.

10. The parties agree that the execution of this Agreement constitutes a release of all claims relating to the subject matter of this Agreement and that there shall be no further claim or inquiry with respect to this matter except to the extent as specifically set forth herein.

11. Complainants hereby forever covenant not to sue the Department or Respondents, their heirs, executors, assigns, agents, employees, directors, officers, representatives, successors, and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of FHEO Case Numbers 01-12-0202-8, 01-12-0203-8, 01-12-0403-8, or 01-12-0404-8, or which could have been filed in any action or suit arising from said subject matter.

12. Respondents hereby forever covenant not to sue the Department or Complainants, their heirs, executors, assigns, agents, employees, insurers, directors, officers, representatives, successors, and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 01-12-0202-8, 01-12-0203-8, 01-12-0403-8, or 01-12-0404-8, or which could have been filed in any action or suit arising from said subject matter.

E. RELIEF FOR COMPLAINANTS

13. Respondent Erwin Miller agrees to pay to Complainant [redacted], the sum of $39,000.00 as settlement of his claim of damages within ninety (90) days of the effective date of this Agreement.

14. Respondent Erwin Miller agrees to pay to Complainant [redacted] the sum of $6,000.00 as settlement of her claim of damages within ninety (90) days of the effective date of this Agreement.

15. Respondents Coldwell Banker Residential Brokerage and Kelleher agree to pay to Complainant [redacted] the sum of $39,000.00 as settlement of her claim of damages within ninety (90) days of the effective date of this Agreement.

16. Respondents Coldwell Banker Residential Brokerage and Kelleher agree to pay to Complainant [redacted] the sum of $6,000.00 as settlement of her claim of damages within ninety (90) days of the effective date of this Agreement.

17. Complainants [redacted] understand and agree that they must provide their respective Federal Tax Identification Numbers to all Respondents in order to facilitate Respondents' to process the payments referenced above.

F. RELIEF IN THE PUBLIC INTEREST

18. Respondents agree not to retaliate against Complainant or any other person who participated in the investigation of these complaints.

19. Respondent Bowditch & Dewey, LLP shall provide one-hundred (100) hours of plaintiff-side pro bono legal services directly related to fair housing rights and one-hundred (100) hours of pro bono legal services directly related to the promotion of disability rights. Respondent Bowditch & Dewey, LLC shall prepare a plan to accomplish this requirement and submit the plan to the Department, for the Department's approval, within sixty days of the effective date of this Agreement. Upon completion of such services, Bowditch & Dewey will certify that such services have been provided and will provide any reasonably requested documentation to the extent that same does not violate the attorney-client privilege.

20. Respondent Bowditch & Dewey, LLC shall identify every every attorney and professional staff member whose work involves housing or residential real estate related transactions and submit a list of such employees to the Department within thirty (30) days of the execution of this Agreement.

21. Within ninety (90) days of the execution of this Agreement, Respondent Bowditch & Dewey, LLP shall provide three (3) hours of training to each employee identified in the list described in paragraph 20 above regarding the firm's obligations under the Act. Respondent shall submit to the Department for approval at least twenty-one (21) days prior to the training the name and qualifications of the trainer, the training curriculum, and the date of the training.

22. Within thirty (30) days of the execution of the Agreement, Respondent Bowditch & Dewey, LLP shall place fair housing materials in its office lobby for distribution to clients. The Department will provide such materials to Respondent.

23. For a period of two (2) years, Respondent Bowditch & Dewey, LLP shall report to the Department any request from a client to create a restrictive covenant affecting the use of housing as well as the content of the covenant, to the extent that such disclosure does not violate attorney-client privilege. The Department shall advise Respondent Bowditch & Dewey, LLP if the Department identifies possible violations with fair housing laws.

24. Respondent Coldwell Banker Residential Brokerage's Worcester, Massachusetts office will continue with its charitable commitments in relation to the building of a home in conjunction with Habitat for Humanity. Respondent Coldwell Banker Residential Brokerage's Worcester, Massachusetts office gifted two-thousand ($2,000) dollars to Habitat for Humanity and participated in the ceremonial ground breaking for this house. Respondent Coldwell Banker Residential Brokerage's Worcester, Massachusetts office will continue its efforts by participating in the actual construction of the house, which will be occurring in the winter and spring of 2013. A certification of participation shall be completed by each employee and/or independent contractor affiliated with Respondent Coldwell Banker Residential Brokerage's Worcester, Massachusetts office and submitted to HUD no later than July 1, 2013.

25. Within ninety (90) days of the execution of this Agreement, Coldwell Banker Residential Brokerage shall make available to the employees and independent contractor real estate sales associates affiliated with its Worcester, Massachusetts office - including Respondent Maureen Kelleher - a two (2) hours Fair Housing training course. Respondent Coldwell Banker

Residential Brokerage shall submit to the Department for approval at least twenty-one (21) days prior to the training the training curriculum and the date of the proposed training. Each employee and/or independent contractor in attendance at the training shall complete a certification form to be submitted to HUD with ten (10) days after completing the training.

26. Respondent Maureen Kelleher agrees to attend the Fair Housing training course described in paragraph 25 above.

G. MONITORING AND ENFORCEMENT

27. Respondent Bowditch & Dewey, LLP agrees to provide quarterly reports to the Department demonstrating its compliance with terms of paragraph 18 of this Agreement. Such reports shall include the number of hours of work performed for each client, and a description of the type of legal services provided to each client.

28. Respondent Coldwell Banker Residential Brokerage shall provide quarterly reports to the Department demonstrating its compliance with the terms of paragraph 24 of this Agreement. Such reports shall include a description of each community service activity performed, the number of hours devoted to each activity, and the names of the employees and/or independent contractors who engaged in the activity.

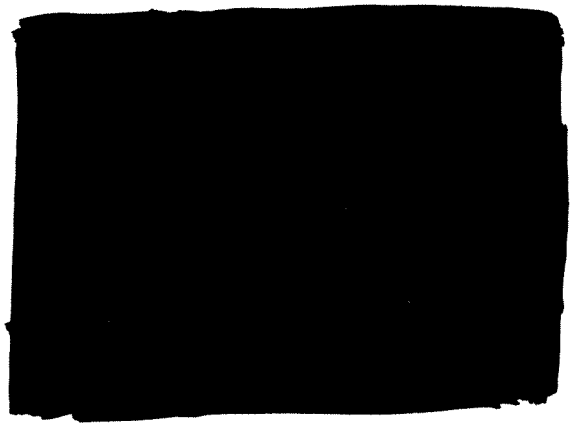
29. The Department shall determine compliance with the terms of this Agreement and may review the compliance of Respondents Bowditch & Dewey, LLC and Coldwell Banker Residential Brokerage with the terms of the Agreement. Such reviews may include but are not limited to the inspection of records and examination of witnesses. Respondents Bowditch & Dewey, LLC and Coldwell Banker Residential Brokerage agree to cooperate with the Department with respect to same.

30. All submissions required under this Agreement shall be mailed to: United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, 10 Causeway St., Room 321, Boston, MA 02222, Attention: Susan M. Forward, FHEO Region I Director.

31. In the event the Department has reasonable cause to believe that the Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to Sections 810(c) and 814(b)(2) of the Fair Housing Act.

H. SIGNATURES

COMPLAINANTS:



3-15-2013
DATE

3/15/13
DATE

John Trasviña
Assistant Secretary
Office of Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development

DATE

RESPONDENTS:

John W. Medbury
Executive Director, Bowditch and Dewey LLP

2/25/13
DATE

Donna Truex

2/26/13
DATE

Erwin H. Miller

2/25/13
DATE

Maureen Kelleher

3/11/13
DATE

Robert J. McCauley, V.P.
for Coldwell Banker Residential Brokerage

3/5/13
DATE

APPROVAL ON BEHALF OF THE SECRETARY

Susan M. Forward
Region I Director
Office of Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development

3/25/2013
Date