UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, on behalf of Leo Poole,	)	
Charging Party,	)	HUDALJ No.: 12-JM-073-FH-33 FHEO No.: 05-12-0604-8
and	)	
Leo Poole,	)	
Complainant-Intervenor,	)	
v.	)	
7000 Sandell Condominium Association, Inc., New Concepts Management Group, Inc. and Paul L. Bozonie,	)	
Respondents.	)	

INITIAL DECISION AND CONSENT ORDER

I. JURISDICTION

This matter arose from a complaint of familial status discrimination filed by Complainant Leo Poole ("Complainant Poole")[1] on March 20, 2012, later amended on August 13, 2012, pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* (hereinafter the "Act"). On September 28, 2012, the Charging Party issued a Charge of Discrimination (hereinafter "Charge") against Respondents 7000 Sandell Condominium Association, Inc., New Concepts Management Group, Inc., and Paul Bozonie (collectively referred to as "Respondents"), alleging that Respondents committed a discriminatory housing practice in violation of 42 U.S.C. §§ 3604 (b) and (c) and 3617 of the Act.

II. BACKGROUND

On or about September 28, 2012, the Secretary of the U.S. Department of Housing and Urban Development (hereinafter "the Department" or "HUD") commenced this action on behalf of Complainant Leo Poole, his wife and their two minor children, all aggrieved persons as defined by 42 U.S.C. § 3602(i), pursuant to Section 3610(g)(1) and (2) of the Act, as amended, 42 U.S.C.§ 3610(g)(1) and (2).

[1] Complainant listed his wife, Theresa Poole and his two minor sons as aggrieved persons.

In or around March 2009, Complainant, who was then 57 years old, purchased Unit 1 ("subject unit") at the 7000 Sandell Condominiums building ("subject property"). During 2009, Complainant and his two minor children lived at the subject unit sporadically. In or around 2010, Complainant enrolled his children in schools close to the subject property and his children began to regularly occupy the subject unit. Complainant received no inquiries related to age until in or around 2011, when the events that gave rise to this Charge transpired.

Respondents collectively admit that there is a restriction on children under the age of 18 at the subject property. At all times relevant to this Charge, Respondent Association published and maintained rules and regulations restricting and/or imposing a limitation on occupancy at the subject property by children under the age of 18. Respondents allege that the subject property is a 55 years of age and older building and that an exemption from the Act's familial status protection applies. However, Charging Party alleges that Respondents did not produce documentation evidencing a verification of resident ages prior to 2011, per 24 C.F.R. § 100.307(a), nor did they evidence procedures, per 24 C.F.R. § 100.307(b), for such a verification process.

Eventually, in or around 2011, two members of the Respondent Association's Board of Directors approached Complainant with concerns about his children living with him at the subject property. Between March 2011 and May 2011, Complainant received a number of letters from Respondents, including from legal counsel, concerning his alleged violation of the occupancy restriction on children under 18. Ultimately, Respondents assessed fines for the alleged violation.

Finally, on or about August 3, 2011, the Association initiated a lawsuit against Complainant and his wife in Minnesota state court, alleging that they willingly and unlawfully violated Respondent Association's rules by allowing their children, who are under the age of 18, to remain at the subject property. As part of the state court action, Respondents asked that Complainants' children be prohibited from residing at the subject property. Additionally, Respondents imposed fines and legal fees on Complainant's household.

To avoid uncertain and costly litigation, Respondents have agreed to resolve the above-captioned case with Charging Party, Complainant and the aggrieved parties without the need for a hearing or adjudication on damages and, other than as stated herein, the parties recognize and agree that this Consent Order is the compromise of disputed claims and that the consideration accepted and paid hereunder is not intended, nor shall it be construed by anyone, to be an admission of liability by or on behalf of any of the parties, by whom all such liability is expressly denied. Respondents, Complainants and the aggrieved parties have consented to the entry of this Initial Decision and Consent Order (hereinafter "Consent Order"), as indicated by the signatures of the parties and counsel below. The parties agree that Charging Party shall file with the Office of Hearings and Appeals a Motion for Entry of an Initial Decision and Consent Order, along with this Initial Decision and Consent Order, after this document is executed by all parties.

III. GENERAL PROVISIONS

A. The parties acknowledge that this Consent Order is a voluntary and full settlement of the Charge. No party has been coerced, intimidated, threatened, or in any way

forced to become a party to the Consent Order. The parties have read and fully understand the significance of all the terms set forth herein.

B. The parties and their counsel agree that, in the interest of prompt conclusion of this matter, the execution of this Consent Order by the parties may be accomplished by separate execution of consents (the original executed Consent and Signature Pages) to be attached to the body of this Consent Order to constitute one document.

C. The signatures of the parties to this Consent Order may be executed by way of electronic mail and/or facsimile transmission and shall be deemed to be an executed and admissible Consent Order for all purposes as may be necessary under the terms of this Consent Order.

D. The parties and their counsel agree that if the situation arises where a party to this agreement needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained by mutual agreement of the parties and all signatories or their successors in writing.

E. This Consent Order shall govern the conduct of the parties to it for a period of five (5) years following the date this Consent Order becomes final pursuant to 42 U.S.C. § 3612(h).

F. The Consent Order is binding upon Complainant, aggrieved parties, Respondents and their employees, heirs, successors, assigns, and all others working for or associated with Respondents who are involved in the operation of the subject property.

G. It is understood that the Initial Decision and Consent Order shall be a public document.

H. The signatures of the parties to this Consent Order further constitute a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612(p).

IV. RELIEF

A. INJUNCTION FROM DISCRIMINATION

Respondents hereinafter promise and agree to comply with all the provisions of the Act relevant to the subject property and any other properties owned and/or managed by them. Respondents agree that they will rent the subject property and any other properties owned and/or managed by them to qualified occupants on a non-discriminatory basis as required by the federal Fair Housing Act. Respondents will immediately cease all practices which discriminate against families with children, except as allowed when in compliance with the Housing for Older Persons Act ("HOPA") exemption to the Act. Respondents shall operate in compliance with HOPA, and its implementing regulations at 24 C.F.R. §§ 100.300 -100.308 as it relates to the sale or rental of units, and shall

operate in compliance with HOPA and its implementing regulations at all times during the pendency of changes to Respondent Association's governing documents, rules and regulations, as outlined in section IV.C., below.

B. SPECIFIC RELIEF FOR COMPLAINANT

In exchange for the Charging Party's and Complainant's agreement to dismiss this Charge and the waiver, settlement, satisfaction and dismissal of any and all fair housing claims arising out of, or connected with, the instant action,[2] by the Charging Party as to all named Respondents, Respondents shall:

1. Within fourteen (14) days of the effective date of this Consent Order, pay to Complainant, his wife and their two minor children, as aggrieved persons, the sum of $30,000 in full settlement of their claims for damages arising out of the allegations presented in the Charge. Payment shall be in the form of a certified check made payable to "Leo Poole and Theresa Poole" and mailed, by certified mail, to the following address:

   Leo Poole and Theresa Poole c/o
   William L. Lucas, P.A.
   Attorney At Law
   7456 Cahill Road
   Edina, Minnesota 55439

   A copy of the aforementioned check must be mailed to the following address:

   Courtney Minor, Regional Counsel, Region V
   U.S. Department of Housing and Urban Development
   77 West Jackson Boulevard, Room 2617
   Chicago, Illinois 60604-3507

2. Within fourteen (14) days of the effective date of this Consent Order, Respondents agree to pay William Lucas, attorney for Complainant, $12,200 for attorney's fees and costs accrued in the representation of Complainant Leo Poole in HUD case 12-JM-073-FH-33, the unfiled State of Minnesota District Court, Fourth Judicial District in Hennepin County, Minnesota action, filed by Respondent Association against Complainant Leo Poole and his wife Theresa Poole, and the Minnesota Department of Human Rights Case No.: 59564.

   The check shall be mailed to the following address:

   William L. Lucas, P.A.
   Attorney At Law

[2] Except the retaliation claim against Respondents New Concepts Management Group, Inc., and Paul Bozonie officially filed by Complainant with HUD on December 4, 2012, and given HUD File No.: 05-13-0194-8, and any future retaliation claims that may arise out of events occurring subsequent to the date of this Consent Order.

7456 Cahill Road
Edina, Minnesota 55439

A copy of the aforementioned check must be mailed to the following address:

Courtney Minor, Regional Counsel, Region V
U.S. Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, Illinois 60604-3507

3. Respondents agree to remove and/or waive any and all fines, which include legal fees, charged to Complainant Leo Poole, his household or unit, that were related to alleged violations of rules that prohibited his children from occupying his unit at the subject property and to indemnify and hold harmless Complainant, all members of Complainant's family, and Complainant's unit from any claims that may be asserted against them by any attorney or law firm that represented any Respondents in regard to this action.

4. Respondents agree to allow Complainant and/or his wife, Theresa Poole, to reside in Complainant's unit at the subject property with their two minor sons free from any harassment or retaliation, pursuant to Section 3617 of the Act, until Complainant's sons attain the age of majority (18 years). Upon Complainant's sons obtaining the age of 18 years they will be allowed to continue to reside in the unit whether or not Respondents enact rules allowing occupancy or ownership for persons 55 years of age and older. In consideration of the aforementioned payments, HUD agrees to waive any and all civil penalties assessable by the Government as to all named Respondents for the matters at issue in the Charge.

5. As an owner of a unit at the subject property, during the effective period of this Consent Order, Complainant Poole or his household shall not be subject to, or liable for, any condominium assessment fee or special assessment resulting from this matter as it relates to the cost of any and all fees arising out of, or connected with, the instant action, including, but not limited to, attorney fees, cost of litigation, payment of settlement in the instant case and/or the need to increase Respondent Association's reserve funds as a result of the instant case. If Complainant Poole or his household is charged such a fee, that will be considered a breach of this Consent Order and Complainant Poole or the aggrieved persons may file a separate retaliation claim under 42 U.S.C. § 3617. The foregoing restriction does not apply to normal budget increases or annual assessment increases for other than such costs, fees or payments.

6. Within in seven (7) days of the entry of this Consent Order, Complainant and Respondent Association will direct their respective legal counsel to execute a Stipulation of Dismissal With Prejudice dismissing the unfiled lawsuit initiated by Respondent Association against Complainant Leo Poole and his wife Theresa Poole, in the State of

Minnesota District Court, Fourth Judicial District in Hennepin County, Minnesota, with prejudice and without costs to any party.

A copy of the aforementioned Stipulation of Dismissal With Prejudice must be mailed to the following address:

Courtney Minor, Regional Counsel, Region V
U.S. Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, Illinois 60604-3507

C. ACTIONS IN THE PUBLIC INTEREST

1. Adoption and Implementation of HOPA and Age Verification Procedures

a. Within ninety (90) days of the entry of this Consent Order, Respondents and Respondent Association's board members, directors, officers and property manager(s) shall amend any and all declaration of condominium, bylaws, rules, policies, practices and/or instructions to comply with HOPA and its implementing regulations, located at 24 C.F.R. Subpart E § 100.300-100.308.[3]

b. Specifically, Respondents will develop, adopt, implement, and maintain age verification procedures to be detailed in Respondent Association's declaration of condominium, by-laws and/or any written rules or policies in compliance with HOPA and 24 C.F.R. § 100.307.

c. Respondent Association will adopt the amended documents described in paragraph (C)(1)(a) and (b) as soon as practicable, but no later than March 1, 2013, which, to the extent legally required, will be recorded and published. All amended documents will be distributed to residents, nonresident owners, purchasers and prospective purchasers in the ordinary course of unit sales.

d. As soon as practicable, but not later than six (6) months after the entry of this Consent Order, Respondent Association, will send to the Department the amended declaration of condominium, bylaw(s), rule(s) and instruction(s), along with proof that all residents, nonresident owners, and purchasers have received copies of each. The aforementioned documents must be submitted to HUD as follows, unless otherwise indicated:

Courtney Minor, Regional Counsel, Region V
U.S. Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, Illinois 60604-3507

[3] In the interim, Respondents will operate in compliance with HOPA and its implementing regulations as described in A(1) of this section.

2. Within three (3) months of the entry of this Consent Order, Respondent Bozonie, Gene Sullivan as Principal for Respondent New Concepts Management Group, Inc., and a member of the Board of Directors, as designated by Respondent Association, must attend a fair housing training conducted by a qualified person or agency, acceptable to HUD, concerning their responsibilities under federal fair housing laws, regulations and ordinances. Respondents may contact HUD Attorney Dana Rosenthal at (312) 913-8614 for assistance in locating an acceptable agency or person for such a training. Respondents shall provide copies of the Consent Order to all such employees and agents in advance of the training. Respondents are responsible for any and all costs associated with such fair housing training.

   Respondents and each employee and/or board member identified above shall provide a certificate of completion to HUD, in the same or similar form as that attached hereto as "Attachment A," evidencing that they have successfully completed the course. Within thirty (30) days of completion of such training course, the certificate of completion shall be completed and mailed to HUD by regular mail to the following address:

   Courtney Minor, Regional Counsel, Region V
   U.S. Department of Housing and Urban Development
   Office of the Regional Counsel
   77 West Jackson Boulevard, Room 2617
   Chicago, Illinois 60604-3507

3. In consideration of the financial and affirmative relief provided by Respondents in this Consent Order, Complainants and the aggrieved parties agree to the dismissal of the Charge of Discrimination against all named Respondents, and the Minnesota Department of Human Rights (59564) claims regarding the same acts as alleged in the HUD Charge of Discrimination.

4. Complainant, within 30 days of the entry of this Consent Order, will provide Respondents and HUD, at the address listed above in subsection (2), an affidavit or copy of the order dismissing the Minnesota Department of Human Rights Case Number 59564 against Respondents.

V. COMPLIANCE AND MONITORING BY HUD

Between the date of the entry of this Consent Order and five (5) years from said date, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations. As part of such review, HUD may, upon providing advance notice of said inspection, inspect the subject property, examine witnesses, and request Respondents to provide copies, in a timely fashion, of pertinent records of Respondent Association, and/or the then current property management company responsible for managing the subject property. Respondents agree to provide their full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.

VI. MUTUAL RELEASE

In consideration of Respondents' payment to Complainant Poole, Theresa Poole and the other aggrieved parties, compliance with the conditions and terms of this Consent Order and with all orders of this tribunal described herein, and for other good and valuable consideration, Complainant, Theresa Poole, and the other aggrieved parties, their successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue Respondents or the Department, their successors, heirs, executors, assigns, agents, employees, or attorneys, including any subsequent owner of the subject property, 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 HUDALJ No.: 12-JM-073-FH-33, or FHEO No.: 05-12-0604-8 which could have been filed in any action or suit arising from said subject matter, except this release does not waive, release, or provide a covenant not to sue Respondents New Concepts Management Group, Inc., and Paul Bozonie with respect to the retaliation claim officially filed by Complainant with HUD on December 4, 2012, and given HUD File No.: 05-13-0194-8, or any future retaliation claims against any Respondent that may arise out of events occurring subsequent to the date of this Consent Order. Further, this Consent Order does not in any way limit or restrict the Department's authority to investigate any other subsequent complaint involving Respondents and/or the subject property made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction, which may include any future retaliation claims that may arise out of events occurring subsequent to the date of this Consent Order. Specifically, this Consent Order does not release HUD from continuing its investigation of HUD File No.: 05-13-0194-8, filed by Complainant against Respondents New Concepts Management Group, Inc., and Paul Bozonie.

In consideration of the execution of this Consent Order, and other good and valuable consideration, all named Respondents, their successors, assigns, agents, employees, or attorneys, hereby forever waive, release, and covenant not to sue the Department, Complainant, the aggrieved parties, or their heirs, officers, successors, assigns, agents, employees or 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 HUDALJ No.: 12-JM-073-FH-33, and FHEO No.: 05-12-0604-8 or which could have been filed in any action or suit arising from said subject matter.

VII. DISMISSAL OF CHARGE

In consideration of Respondents' payment to Complainant, Theresa Poole and the aggrieved parties, compliance with the terms and conditions of this Consent Order, and all orders contained herein, the Charging Party agrees to the dismissal, without a formal determination, of the allegations that Respondents injured Complainant or the aggrieved parties by violating the Act. Therefore, the Charge against Respondents is hereby DISMISSED with prejudice. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order.

VIII. COMPLIANCE

The dismissal herein shall not constitute an adjudication of a discriminatory housing practice pursuant to 24 C.F.R. § 180.671(a). Failure to satisfy the terms of this Consent Order is a breach of the Consent Order, which may be enforced in the United States Court of Appeals pursuant to 42 U.S.C. § 3612(j) and (m).

IX. CONSENT AND SIGNATURES

The undersigned parties have read the foregoing Consent Order, HUDALJ No.: 12-JM-073-FH-33 and FHEO No.: 05-12-0604-8, and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes upon them, as signified by their signature below:

FOR COMPLAINANT AND AGGRIEVED PARTY:

Leo Vincent Poole

Leo Poole

Date: 12-21-2012

Theresa Poole

Theresa Poole

Date: 12-21-2012

COUNSEL FOR COMPLAINANT/INTERVENOR:

WILLIAM L. LUCAS, P.A.
Attorney At Law
7456 Cahill Road
Edina, Minnesota 55439

FOR RESPONDENTS:

7000 Sandell Condominium Association, Inc.:

By: Mary Ann Martin

Title: president 7000 Sandell Condominium Association

Date: 12/26/2012

New Concepts Management Group, Inc.

By: [signature]

Title: Gene Sullivan - President

Date: 12/26/12

Paul Bozonie

By: [signature]

Date: 12/26/12

COUNSEL FOR RESPONDENTS 7000 SANDELL CONDOMINIUM ASSOCIATION, INC., NEW CONCEPTS MANAGEMENT GROUP, INC., AND PAUL BOZONIE

By: _____

DAVID OSKIE
OSKIE HAMILTON & SOFIO, P.A.
970 Raymond Avenue, Suite 202
St. Paul, Minnesota 55114
Telephone: (651) 287-9129

COUNSEL FOR THE CHARGING PARTY
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

COURTNEY B. MINOR
Regional Counsel
Region V

1/2/2013
Date

LISA M. DANNA-BRENNAN
Associate Regional Counsel for Litigation

1/2/13
Date

JARET R. FISHMAN
Trial Attorney

1/2/2013
Date

DANA E. ROSENTHAL
Trial Attorney
U.S. Department of Housing
and Urban Development
Office of Regional Counsel
Region V
77 West Jackson Boulevard, #26th floor
Chicago, Illinois 60604-3507
(312) 913-8614
FAX: (312) 886-4944

1/2/2013
Date

XI. ORDER OF THE COURT

This Consent Order is entered pursuant to the Fair Housing Act, 42 U.S.C. § 3612(g)(3), and shall become final upon the expiration of thirty (3) days or by confirmation of the Secretary within that time. See 42 U.S.C. § 3612(h). The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the 30 day Secretarial review period, and a waiver of any right to challenge the validity of this Consent Order at any time.

The hearing in this matter was previously scheduled for January 29, 2013. On January 3, 2013, the foregoing Order was filed with the Court, incorporating the terms of the parties' agreement. The Court, having read the agreement, finds that it appears to be in the public interest. All parties have given their consent as reflected by their signatures to the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and issued.

So **ORDERED**, this 4th day of January 2013.

J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

ATTACHMENT A

I, _____, hereby certify that I attended the training session on fair housing law given by a qualified fair housing enforcement agency or instructor on _____, 2013, pursuant to Section IV in the foregoing Consent Order, HUDALJ No.: 12-JM-073-FH-33, and FHEO No.: 05-12-0604-8.

_____
Print Name

_____
Position/Title

_____
Signature

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND CONSENT ORDER, issued by J. Jeremiah Mahoney, Chief Administrative Law Judge (Acting), in HUDALJ 12-JM-073-FH-33, were sent to the following parties on this 4th day of January, 2013, in the manner indicated:

Cinthia Matos, Staff Assistant

REGULAR MAIL and EMAIL:

David Oskie, Esq.
Attorney for Respondents
Oskie, Hamilton, & Sofio, P.A.
970 Raymond Avenue, # 202
St. Paul, MN 55114
doskie@oskielaw.com

William L. Lucas, Esq.
Attorney for Intervener
William L. Lucas, P.A.
7456 Cahill Road
Edina, MN 55439-2728
wclucas@msn.com

INTEROFFICE MESSENGER and EMAIL:

Dana Rosenthal, Trial-Attorney
Office of Regional Counsel – Region V
U.S. Department of Housing and Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, Illinois 60604-3507
dana.e.rosenthal@hud.gov

Kathleen M. Pennington, Assistant General
Counsel for Fair Housing Enforcement
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451 7th Street, S.W., Room 10270
Washington, DC 20410
Kathleen.M.Pennington@hud.gov

Sara K. Pratt, Deputy Assistant
Secretary for Enforcement & Programs
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5204
Washington, DC 20410
Sara.K.Pratt@hud.gov

Aten, Nina R.

Subject:	Wade ePerformance Element 4
Location:	Nina's Office
Start:	Thu 2/14/2013 10:00 AM
End:	Thu 2/14/2013 10:30 AM
Recurrence:	Weekly
Recurrence Pattern:	every Thursday from 10:00 AM to 10:30 AM
Meeting Status:	Meeting organizer
Organizer:	Aten, Nina R.
Required Attendees:	Wade, Arthur D
Categories:	ePerformance

Discuss Element 4 – Internet Support

4.O.1 – Establishes HUD.gov web certification process that results in the GDAS signing OPA's standard language

4.O.2 – Ensure no FHEO HUD.gov red and gold pages

4.O.3 – Expand the content of the FHEO Mobile adaptive web pages

4.O.4 – Develops and implements two (2) or more automated data processes and/or web applications to improve data collection, analysis or display

4.F.1 – Published HUD.gov site map – **COMPLETED**

4.F.2 – Develop list of remaining FHEO red and gold HUD.gov web pages

4.F.3 – Posts new content, as requested, to HUD.gov

4.F.4 – Creates and launches new pages, as requested, to HUD.gov

4.F.5 – Develops and implements one (1) automated data processes and/or web applications to improve data collection, analysis or display