

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 4:11CV3209

v.

CONSENT ORDER

UNIVERSITY OF NEBRASKA AT
KEARNEY and BOARD OF REGENTS OF
UNIVERSITY OF NEBRASKA

Defendants.

I. INTRODUCTION

1. On November 23, 2011, the United States filed this action against the University of Nebraska at Kearney, the Board of Regents of the University of Nebraska, David L. Brandt, Cheryl Bressington, Christy Horn, and Gail Zeller, alleging violations 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. On August 25, 2015, the Court dismissed David L. Brandt, Cheryl Bressington, Christy Horn and Gail Zeller from this action.

2. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska (collectively referred to hereafter as “Defendants”) operate and control University Heights, an apartment style student housing complex which includes 102 one-bedroom and efficiency units. University Heights is occupied by students enrolled full-time at the University of Nebraska at Kearney who are single parents, married, or twenty-one years of age or older.

II. UNITED STATES' ALLEGATIONS AND DEFENDANTS' DENIALS

3. The United States filed this suit on behalf of a former UNK student, Brittany Hamilton, pursuant to 42 U.S.C. § 3612(o). The United States also alleges that Defendants, in violation of 42 U.S.C. § 3614(a), engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act or a denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance.

4. In its complaint, the United States also alleges that Defendants engaged in discriminatory conduct at university housing owned and/or managed by the Defendants at the University of Nebraska at Kearney. The United States' Complaint alleges that Defendants violated the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* ("FHA"), and specifically 42 U.S.C. § 3604 subsections (f)(1),(2) and (3)(B) by refusing to allow students to live with animals as reasonable accommodations when such accommodations were reasonable and necessary to afford students with disabilities to have an equal opportunity to use and enjoy student housing at the University of Nebraska at Kearney. The United States further alleges that, as a result of this alleged unlawful conduct, two students with alleged disabilities seeking reasonable accommodations for the University of Nebraska at Kearney's student housing suffered damages.

5. The United States' Complaint also alleges that Defendants violated 42 U.S.C. § 3604(c) by making, printing or publishing statements and notices with respect to the rental of student housing that indicated a preference, limitation, or discrimination because of a disability.

6. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska, individually and collectively, deny all of the allegations in the United States' complaint and deny that they have violated the FHA in any manner, and contend that at all times, they operated student housing at the University of Nebraska at Kearney in compliance with all applicable statutes and regulations that prohibit discrimination.

III. AGREEMENT TO COMPROMISE

7. The parties agree that to avoid costly and protracted litigation and trial, the United States' claims against Defendants should be resolved without trial.

8. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska voluntarily enter into this Consent Order to resolve disputed claims solely to avoid the costs of protracted litigation.

9. Nothing in this Consent Order or the decision to compromise and settle this lawsuit is or should be construed as an admission of liability or wrongdoing on the part of the University of Nebraska at Kearney and/or the Board of Regents of the University of Nebraska, individually or collectively.

10. The University of Nebraska at Kearney and the Board of Regents of the University of Nebraska furthermore affirmatively assert that they complied with all applicable federal and state statutes and regulations prohibiting discrimination against persons with disabilities consistent with their goal to develop an academic community accessible to persons with disabilities to ensure equal educational opportunity for all.

Therefore, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

IV. AFFIRMATIVE RELIEF

11. The University of Nebraska at Kearney (“UNK”) is hereby enjoined from:
 - a. Discriminating against persons in the rental and provision of student housing because of a disability in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminating against persons in the terms, conditions, or privileges of student housing, or in the provision of services in connection with student housing because of a disability in violation of 42 U.S.C. § 3604(f)(2);
 - c. Making, printing or publishing or causing to be made, printed, or published, any notice or statement with respect to the rental of student housing that indicates a preference, limitation, or discrimination based on disability, or intending to make such preference, limitation, or discrimination in violation of 42 U.S.C. § 3604(c); and
 - d. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability seeking to live or living in UNK student housing an equal opportunity to use and enjoy student housing in violation of 42 U.S.C. § 3604(f)(3)(B).

V. REASONABLE ACCOMMODATION POLICIES

12. Within thirty (30) days of the date of entry of this Consent Order, UNK shall adopt the "University Housing Reasonable Accommodation Policy" that is attached hereto as Exhibit A1, and the “University of Nebraska at Kearney Assistance Animal Policy and Agreement” that is attached hereto as Exhibit A2. UNK shall follow these policies for receiving, evaluating, and determining whether to grant or deny reasonable

accommodations requested by students with disabilities in rules, policies, practices, or services relating to UNK's student housing and assistance animals in student housing.

13. Within thirty (30) days of the date of the entry of this Consent Order by the Court, UNK shall provide copies of the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement to UNK's Director of Disability Services and any employees of Disability Services who have responsibility for implementing¹ reasonable accommodation requests in student housing. During the term of this Consent Order, UNK shall also provide a copy of these policies to each newly hired Director of Disability Services and any newly hired employees of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing.

14. Within thirty (30) days of the date of the entry of this Consent Order by the Court, UNK shall provide a copy of the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement to UNK's Director of the Office of Residence Life ("Residence Life") and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests. During the term of this Consent Order, UNK shall also provide copies of these policies to each newly hired Director of Residence Life and any newly hired employees of Residence Life who have responsibility for implementing reasonable accommodation requests.

15. Within thirty (30) days of the date of entry of this Consent Order by the Court, and for the term of this Consent Order, UNK shall post and prominently display

¹ For purposes of Sections V and VI of this Consent Order, the term "implement" means involvement in the review, consideration, decision-making and appeal of reasonable accommodation requests related to university housing and the creation, implementation or revision of housing-related reasonable accommodation policies.

the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement in the Office of Disability Services and the Office of Residence Life. UNK shall also post both of these policies, or a link to both of these policies, on the official UNK website for Disability Services.

16. Any proposed changes to the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement and related posted webpages referred to in Paragraphs 12 - 15 during the duration of this Consent Order must be provided to the United States by facsimile and next-day delivery to the United States for its review and comment at least 30 days before being implemented. The proposed changes shall be considered approved upon the expiration of the 30th day unless UNK receives a written objection from the United States within the 30-day notice period. To the extent the United States objects to any changes to these policies proposed in accordance with this paragraph, and the parties cannot resolve the dispute among themselves, such dispute may be submitted to the Court in accordance with the dispute resolution provisions of Paragraph 34 of this Consent Order.

VI. NOTICE AND TRAINING

17. Within thirty (30) days of the date of entry of this Consent Order by the Court, UNK shall provide the Summary of this Order (“Summary”), attached as Exhibit B, to the Director of Disability Services and any employees of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing. UNK shall also secure the signed statement from each person with responsibility for implementing reasonable accommodation requests in student housing acknowledging that he or she has received and read the Summary and agrees to abide

by the relevant provisions of this Order. This statement shall be in the form of Exhibit C attached hereto.

18. Within thirty (30) days of the date of entry of this Consent Order by the Court, UNK shall provide the Summary to the Director of Residence Life and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests in student housing. UNK shall also secure the signed statement from each person with responsibility for implementing reasonable accommodation requests in student housing acknowledging that he or she has received and read the Summary and agrees to abide by the relevant provisions of this Order. This statement shall be in the form of Exhibit C, attached hereto.

19. Within ninety (90) days from the date of entry of this Consent Order by the Court, the Director of Disability Services, any employees of the Office of Disability Services who have responsibility for implementing reasonable accommodation requests in student housing, the Director of the Residence Life, and any employees of Residence Life who have responsibility for implementing reasonable accommodation requests, shall attend, at the UNK's expense, an in-person education and training program on the FHA, with specific emphasis on discrimination on the basis of disability. The training shall be conducted by a qualified person approved in advance by the United States, with experience and understanding of the reasonable accommodation requirements of the FHA. UNK shall obtain from the trainer, certifications of attendance, executed by each individual who received the training, confirming his or her attendance. The certification shall include the name of the course, the date the course was attended, and the length of the course and/or time within which the course was completed.

20. During the term of this Order, within thirty (30) days after the hiring of a new Director of Disability Services, any new employee of the Office of Disability Services who has responsibility for implementing reasonable accommodation requests in student housing, a new Director of Residence Life, and any new employee of the Office of Residence Life who has responsibility for implementing reasonable accommodation requests, UNK shall provide a copy of the Summary to such new employee and secure the signed statement from such employee acknowledging that he or she has received and read the Summary, had the opportunity to have questions about the Summary and Order answered, and agrees to abide by the relevant provisions of the Order. This statement shall be in the form of Exhibit C.

VII. RELIEF FOR ALLEGED AGGRIEVED PERSONS

21. The United States has identified Brittany Hamilton ("Hamilton") and Denise Kraft ("Kraft") as alleged aggrieved persons whom it believes were harmed by the Defendants' conduct. Defendants agree to pay the total sum of **ONE HUNDRED FORTY THOUSAND DOLLARS and 00/100 (\$140,000.00)** to a Settlement Fund. Within thirty days (30) days of the date of entry of this Consent Order by the Court, the United States shall notify Defendants of the amount of monetary damages that should be paid from the Settlement Fund to Hamilton and Kraft. Within thirty (30) days of receiving such notice, Defendants shall deliver to the United States checks payable to Hamilton and Kraft in the amounts identified by the United States, and checks shall be delivered to each upon execution of a release in the form of Exhibit D. In no event shall the aggregate of the checks exceed the amount of the Settlement Fund.

VIII. REPORTING AND RECORD KEEPING REQUIREMENTS

22. For the term of this Consent Order, UNK shall also preserve all records related to this Consent Order. Such documents include housing contracts, student housing files, student housing policies and procedures, and written communications (or records of oral communications) between UNK (including but not limited to Disability Services and Residence Life) and any student who has requested a reasonable accommodation in UNK student housing that are related to such a request.

23. For the term of this Consent Order, UNK shall keep written records of each request for reasonable accommodation in student housing it receives. These records shall include: (a) the name, address, and telephone number of the person making the request; (b) the date upon which the request was received; (c) the nature of the request (i.e. the accommodation requested and disability for which the accommodation was requested); (d) whether the request was granted or denied; and (e) if the request was denied, the reason(s) for the denial.

24. For the term of this Consent Order, UNK shall notify counsel for the United States of any written complaint filed against it or any of its employees by a student alleging failure to provide a reasonable accommodation in student housing which is filed in a court of law or with a governmental civil rights enforcement agency, such as the U.S. Department of Housing and Urban Development through its Office of Fair Housing and Equal Opportunity or the Nebraska Equal Opportunity Commission within thirty (30) days of the filing of such written complaint. The notification shall include a copy of the written complaint. UNK shall also promptly provide the United States all information, documents, or records it reasonably requests concerning any such complaint after UNK

has fulfilled its obligation to provide notice and an opportunity for the student to object to the proposed disclosure of such information or documents pursuant to Family Educational Rights and Privacy Act ("FERPA"). If, pursuant to FERPA, a student objects to the release of his or her personal information pursuant to this paragraph, UNK shall be relieved of its obligation to provide such information, documents, or records. UNK shall inform the United States in writing within thirty (30) days after the date on which UNK resolves any complaint covered by this paragraph of the terms of such resolution.

25. Within one hundred twenty (120) days of the date of entry of this Consent Order, and annually thereafter from the date of entry of this Consent Order during the term of this Consent Order, UNK shall submit to counsel for the United States a compliance report which shall contain the following:

- a. The information in Paragraph 24 above, if not yet reported;
- b. The signed statements and certifications of each employee referred to in Paragraphs 17, 18, and 20;
- c. Photographs establishing that the University Housing Reasonable Accommodation Policy and the Assistance Animal Policy and Agreement are posted in Disability Services and Residence Life as described in Paragraph 15; and
- d. copies of certifications of attendance for fair housing training pursuant to Paragraph 19.

26. The final report required under Paragraph 25 above shall be submitted no later than sixty (60) days prior to the expiration date of this Consent Order.

27. All documents or other communications required by this Consent Order to be sent to the United States shall reference "DJ#175-45-61" and shall be sent by facsimile to (202) 514-1116 or by overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street NW, Suite 7032, Washington, D.C. 20006.

28. During the term of this Consent Order, UNK shall maintain all records relating to implementation of and compliance with all provisions of this Consent Order. Upon request, UNK shall provide the United States with copies of any records maintained as required by this Consent Order.

IX. INSPECTION OF DOCUMENTS

29. For the duration of this Order, upon reasonable notice to UNK and at reasonable times as agreed upon by the parties, representatives of the U.S. Department of Justice shall be permitted to inspect and copy, at the United States' expense, all records UNK is required to maintain as provided in this Consent Order to monitor Defendants' compliance with this Order.

X. RELEASE OF LITIGATION HOLDS AND ELECTRONICALLY STORED INFORMATION

30. The parties agree that, as of the date of entry of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by the Consent Order.

**XI. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND
REMEDIES FOR NON-COMPLIANCE**

31. This Court shall retain jurisdiction of this case for purposes of enforcing this Consent Order, which shall be effective for a period of two (2) years following the date of its entry.

32. Any provisions of this Consent Order, including but not limited to time limits for performance, may be modified by mutual written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective thirty (30) days from the date of the filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through a written order that it has not approved the modification.

33. The parties to this Consent Order shall be responsible for their own attorney's fees and court costs.

34. The parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by UNK, whether willful or otherwise, to perform in a timely manner any act required by this Order, or in the event of any other act violating any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity.

XIV. TERM AND DISMISSAL WITH PREJUDICE

35. The term of this Consent Order is two (2) years. Upon entry of this Consent Order by the Court, this case shall be automatically dismissed with prejudice.

However, the Court shall retain jurisdiction over the action for the term of this Consent Order.

It is so ORDERED, ADJUDGED and DECREED.

On this _____ day of _____, 2015.

United States District Judge

Agreed to by the parties as indicated by the signatures of counsel below.

Date: September 3, 2015

<p><u>/s/ Scott P. Moore</u> Scott Parrish Moore (NE# 20752) Allison D. Balus (NE#23270) of BAIRD HOLM LLP 1500 Woodmen Tower 1700 Farnam St Omaha, NE 68102-2068 Phone: 402-344-0500 Email: spmoore@bairdholm.com</p>	<p>STEVEN H. ROSENBAUM Chief SAMEENA SHINA MAJEED Deputy Chief</p>
<p>and</p> <p>Alison D. Basye (NE# 23337) of UNIVERSITY OF NEBRASKA Varner Hall 3835 Holdrege Street Lincoln, NE 68583-0745 Phone: 402-472-1201 Fax: 402-472-2038 Email: abasye@nebraska.edu</p>	<p><u>/s/ Elise Sandra Shore</u> ELISE SANDRA SHORE Georgia Bar No. 557131 ONJIL McEACHIN New York Bar ALAN MARTINSON California Bar No. 258820 Trial Attorneys Housing and Civil Enforcement Section Civil Rights Division U.S. Department of Justice 950 Pennsylvania Avenue NW Northwestern Building, 7th Floor Washington, DC 20530 Phone: (202) 305-0921 Fax: (202) 514-1116</p>
<p>and</p> <p>John C. Wiltse, NSBA (NE# 16689) Deputy General Counsel University Of Nebraska Varner Hall, Room 237 3835 Holdrege Street Lincoln, Ne 68583-0745 jwiltse@nebaska.edu (402) 472-1201 (402) 472-2038 (facsimile)</p>	<p>and</p> <p>DEBORAH R. GILG United States Attorney</p>
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