

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD ROSE & SONS, et al.

Defendants

Case No:3:01cv0040AS

Judge Allen Sharp
Magistrate Judge Cherry

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order is entered between the United States of America and Gary Weaver (hereinafter "Gary Weaver") to resolve a lawsuit.

2. On January 18, 2001, and September 3, 2002, the United States filed civil actions in the United States District Courts for the Northern District of Indiana, Case No. 3:01cv0040 (N.D. Ind.) ("Indiana Action") and the Eastern District of Michigan, Case No. 02-CV-73518 (E.D. Mich.) ("Michigan Action"), respectively (hereinafter "actions" or "civil actions"). These civil actions, as amended, allege that the Defendants' discriminated against persons with disabilities by failing to design and construct covered multifamily dwellings ("Covered Multifamily Dwellings") and places of public accommodation in accordance with the features of accessible and adaptable design and construction required by subsection 804(f)(3)(C) of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C), and the Americans with Disabilities Act, 42 U.S.C. § 12183(a)(1).

3. Gary Weaver has answered the complaint in the Indiana Action denying any and all alleged violations of either the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, or the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.* Nothing in this Consent Order shall be construed as an admission of liability by Gary Weaver.

4. In an effort to avoid further contested litigation, the United States and Gary Weaver agree that the controversy should be resolved without further proceedings and without an evidentiary hearing or findings of fact.

5. Contemporaneously with the submission of this Consent Order, the Rose Companies, Dorchon-Martin, Eckert-Wordell, along with three other defendants named only in the Michigan Action² are filing a separate consent order with the United States District Court for the Eastern District of Michigan. That separate consent order resolves the claims raised by both the Michigan and Indiana Actions against all Defendants except for Gary Weaver. As part of the resolution of both actions, all Defendants in the Indiana Action other than Gary Weaver have stipulated to the transfer, pursuant to 28 U.S.C. § 1404(a), of the United States' claims against them in this Court to the United States District Court for the Eastern District of Michigan. The United States' claims against Gary Weaver cannot be transferred pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Eastern District of Michigan because that Court lacks personal jurisdiction over Gary Weaver. The claims against Gary Weaver shall, therefore, be disposed of by this separate Consent Order before the United States District Court for the Northern District of Indiana.

6. Accordingly, as indicated by the signatures appearing below, the plaintiff and Gary Weaver agree to and request entry of this Consent Order.

It is hereby ADJUDGED, ORDERED and DECREED that:

II. GENERAL INJUNCTION

7. Gary Weaver is enjoined from discriminating on the basis of disability, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f)(1)-(3), and the ADA, 42 U.S.C. §§ 12182(a) and 12183(a)(1).

III. FUTURE DESIGNS

8. Gary Weaver shall take the actions set forth in this paragraph to ensure that that all future design and/or construction of covered multifamily dwellings by Gary Weaver shall comply with the design and construction requirements of the Fair Housing Act, 42 U.S.C. § 3604(f)(1)-(3), and, where applicable, the ADA, 42 U.S.C. §§ 12182(a) and 12183(a)(1). If Gary Weaver prepares any architectural plans, drawings or blueprints for Covered Multifamily Dwellings, he shall include on such plans, drawings or blueprints a statement that, to the best of his professional judgment, knowledge and belief at the time of signing and sealing the plans, drawings or blueprints, they comply with the Fair Housing Act, 42 U.S.C. §

GENERAL INFORMATION CIVIL RIGHTS DIVISION HOUSING & CIVIL ENFORCEMENT

LEADERSHIP

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MAILING ADDRESS

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3604(f)(1)-(3), and, where applicable, the ADA, 42 U.S.C. §§ 12182(a) and 12183 (a)(1), and the ADA Standards for Accessible Design. Gary Weaver shall, upon request, provide to the United States a list of all such multifamily housing that he has designed during the term of this Consent Order.

IV. ACKNOWLEDGMENTS AND TRAINING

9. Within one hundred eighty (180) days after the entry of this Order, Gary Weaver shall provide a copy of this Order to all his managers and supervisors involved in the design of Covered Multifamily Dwellings, and secure a signed statement from each manager or supervisor acknowledging that he or she has received, read and understands the terms of this Order.

10. Within ninety (90) days after the date he or she commences an agency or employment with Gary Weaver, each new manager or supervisor involved in the design of Covered Dwelling Units shall be given a copy of this Order and be required to sign a statement acknowledging that he or she has received, read and understands the terms of this Order.

11. Within two hundred ten (210) days after the entry of this Order, Gary Weaver shall provide fair housing training, with a focus on disability issues, to all his managers and supervisors involved in the design, construction or rental of Covered Dwelling Units. The training shall be conducted by a qualified person or organization approved by the United States. Gary Weaver shall pay all fair housing training costs. Within two hundred forty (240) days after the entry of this Order, Gary Weaver shall secure and deliver to counsel for the United States a written certification of each managers and supervisors attendance at the fair housing training.

12. Each new manager or supervisor involved in the design or construction of Covered Dwelling Units shall attend fair housing training, with a focus on disability issues within ninety (90) days after the date he or she commences an agency or employment relationship with Gary Weaver, or as soon thereafter as such training may be available. Gary Weaver shall pay all fair housing training costs for new managers or supervisors.

V. REPORTING AND DOCUMENT RETENTION REQUIREMENTS

A. Records

13. Gary Weaver shall preserve all records related to the acknowledgments, and training required by this Consent Order for all Covered Multifamily Dwellings that he designed. Upon reasonable notice to Gary Weaver and his attorneys, representatives of the United States shall be permitted to inspect and copy any non-privileged records of Gary Weaver related to this Consent Order.

B. Reporting

14. Within six (6) months following the date of entry of this Consent Order, where applicable, Gary Weaver shall serve upon counsel for the United States an initial report containing:

(a) Copies of the acknowledgment forms signed by any and all employees and agents pursuant to Section IV. of this Consent Order; and

(b) Copies of certification of attendance for fair housing educational programs pursuant to Section IV. above (to the extent such training has been completed).

15. Thereafter, Gary Weaver shall, where applicable, on the anniversary of the date of entry of this Consent Order, except for the final report, which will be provided thirty (30) days before the five (5) year anniversary, submit to the United States a report containing: (a) Copies of the acknowledgment forms signed by any and all new employees and agents pursuant to Section IV. of this Consent Order; and

(b) Copies of certification of attendance for fair housing educational programs for any and all new employees and agents pursuant to Section IV. of this Consent Order.

VI. MISCELLANEOUS

A. Duration of Consent Order and Retention of Jurisdiction

16. This Consent Decree shall remain in effect for five (5) years after date of its entry.

17. The Court shall retain jurisdiction for the duration of this Consent Order to enforce the terms of the Decree, after which time, the case shall be dismissed as to Gary Weaver with prejudice. Either plaintiff or Gary Weaver may move the Court

to extend or modify the duration of this Order in the interests of justice.

B. Dispute Resolution

18. The plaintiff and Gary Weaver 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. In the event the parties cannot resolve their differences informally, any party may move the Court for an order compelling compliance with the Consent Order and for attorney's fees and costs. Any such motion shall be titled "Motion to Compel Performance Under Consent Order." Nothing in this Paragraph shall prevent a party, in appropriate circumstances and for good cause shown, from moving the Court to impose any other remedy authorized by law or equity to enforce the provisions of this Consent Order.

C. Time for Performance

19. Any time limits for performance imposed by this Consent Order may be extended or modified by the mutual written agreement of the United States and Gary Weaver. The plaintiff or Gary Weaver may move the Court to extend or modify the time limits for performance in the interests of justice.

D. Costs of Litigation

20. The plaintiff and Gary Weaver will each bear its own costs and attorneys fees associated with this litigation.

1. Limitation of Liability

21. Nothing in this Consent Order shall be read as an admission of liability by Gary Weaver under the Fair Housing Act or the ADA.

G. Notice

22. Unless otherwise specified in this Consent Order, all documents or other communications required by this Consent Order to be sent to the United States or counsel for the United States shall be sent via first class U.S. mail, addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Ave. NW Building, G St., Washington, D.C. 20530. Attn: DJ No. 175-37-302.

23. Unless otherwise specified in this Consent Order, and until further notice, all documents or other communications required by this Consent Order to be sent to Gary Weaver shall be sent via first class U.S. mail to: James Dimos, Locke Reynolds LLP, P.O. Box 44961, 201 North Illinois Street, Suite 1000, Indianapolis, IN 46244-0961.

SO ORDERED this ____ day of _____, 2005.

UNITED STATES DISTRICT COURT JUDGE

The undersigned hereby apply for and consent
to the entry of this Consent Order:

For the United States
Bradley J. Schlozman
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Steven H. Rosenbaum, Chief
Timothy J. Moran, Deputy Chief
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1. For purposes of this Consent Order, "Defendants " refers to the Rose Companies, Dorchon-Martin, Eckert Wordell, SSOE, Inc., Gerald Peterson, James Saule, and Gary Weaver. For purposes of this Consent Order, " the Rose Companies " refers to: Edward Rose & Associates, Inc., a Michigan corporation; Edward Rose of Indiana, L.L.C., an Indiana limited liability company (formerly Edward Rose of Indiana, L.P., an Indiana limited partnership); Edward Rose Assoc., L.L.C., a Michigan limited liability company; Edward Rose Development Co., L.L.C., a Michigan limited liability company; Edward Rose Realty, Inc., a Michigan corporation; Occidental Development, L.L.C., a Michigan limited liability company (formerly Occidental Development Ltd, a Michigan limited partnership); Huron Development, L.L.C., a Michigan limited liability company (formerly, Huron Development Limited Partnership, a Michigan-chartered limited partnership).

2. The three Michigan-only defendants are Gerald Peterson, James, Saule, and SSOE, Inc.. These three defendants are not defendants in the Indiana action.

Document Entered: October 3, 2005