

CLERK, U. S. DIST. CT. OF TEXAS
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF TEXAS
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FILED

JUL 31 1972

V. BAILEY THOMAS
BY DEFENSE *W.H.H. / H.C.B.*

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 72-H-244
	)	
v.	)	
	)	
BERT BUNTON, d/b/a BRASS	)	CONSENT DECREE
BUTTONS REALTY COMPANY, et al.	)	AS TO DEFENDANT BUNTON,
	)	d/b/a BRASS BUTTONS
Defendant.	)	REALTY CO.
	)	

This action was instituted by the United States based on alleged violations of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq. In the complaint filed on this day, it is alleged that the defendant engaged in a pattern and practice of resistance to the enjoyment by black persons of rights secured by the Act. The essence of the complaint is that the defendant, through the use of discriminatory sales techniques, steered and channelled black prospective purchasers to predominantly black or rapidly integrating neighborhoods, while steering and channelling white prospective purchasers to predominantly white areas. */

*/ It is also alleged in the complaint that six individual defendants purchased a home listed with the defendant for the primary purpose of making the home unavailable to a black family on account of their race. Defendant denies any wrongful conduct in selling the subject home and, in fact, denies any knowledge of the alleged wrongful conduct by the individually named defendants. Plaintiff and the individually named defendants have entered into a consent decree which is being submitted simultaneously with this order. The black couple that was unable to buy the home brought suit against the six individual defendants, alleging that they had been denied the right to buy the home on account of race. Neither Brass Buttons Realty Company nor its owner Bert Bunton were made parties to the suit. This case was settled with all but one of the named defendants on June 5, 1972, by payment of \$2,500 to the plaintiff, Alexander v. Henderson, et al., Civil Action No. 72-H-244

The defendant denies the material allegations of the complaint. Without any admission of any violation of the Act, however, the defendant states its willingness to cooperate with the United States to improve housing opportunities for all persons without regard to race, color, religion or national origin and to undertake an affirmative program to promote desegregated housing. In view of the willingness of the defendant to take these steps, the United States has agreed not to prosecute the litigation to seek a determination as to whether or not the defendant has discriminated in the past. Accordingly, without any adjudication of the merits, the parties have consented to the entry of this order as indicated by the signatures of counsel affixed hereto.

I.

THEREFORE IT IS ORDERED that the defendant^{*/} and (while acting in the course of the conduct of the business of the Brass Buttons Realty Company) its officers, agents, employees, and those in active concert or participation with any of them be and they are hereby permanently enjoined from:

(1) Refusing or failing to show, sell or rent, a dwelling to any person because of race, color, religion or national origin.

^{*/} The term defendant, as used in this decree, applies to defendant Bunton, d/b/a Brass Buttons Realty Co.

(2) Otherwise making a dwelling unavailable or denying a dwelling to any person because of race, color, religion or national origin.

(3) Failing to provide and volunteer information to prospective purchasers about homes in all-white or predominantly white residential areas on account of race, color, religion or national origin.

(4) Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services in connection therewith, including services relating to the financing of such dwelling, and including the provision of information with respect to such services relating to financing, because of race, color, religion or national origin.

(5) Making, printing, or publishing, or causing to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, or national origin.

(6) Representing to any person, because of race, color, religion or national origin, that any dwelling is not available for inspection, sale or rental when such dwelling is in fact available.

(7) Inducing or attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion or national origin. For purposes of this Order, a prohibited representation shall include any acts or words to induce the sale of a dwelling that would be likely to convey to a reasonable man, under the circumstances, the idea that members of a particular race, color, religion or national origin are or may be entering his neighborhood. */

(8) The type and amount of solicitation activity **/ shall be essentially similar in all areas in which the defendant conducts business, without regard to race, color, religion, or national origin. The defendant shall not conduct a greater amount or different type of solicitation in racially transitional areas than in all-white areas or other areas in which no racial transition is taking place.

*/ It is neither "blockbusting," nor a violation of the law or of this decree, to show or sell a home to a black person in a previously all-white area. The assignment of black sales personnel to white residential areas is likewise lawful and in compliance with this decree.

**/ "Solicitation" shall mean any telephone contact, personal contact, mailing, distribution of printed material, or any other contact initiated by the defendant without any request from the homeowner for the purpose of his seeking the listing or sale of real estate or advising persons of real estate services offered by defendant.

II

IT IS FURTHER ORDERED that the defendant shall forthwith*/ adopt and implement a program of compliance with the Fair Housing Act in order to assure that in the future all dwellings listed and shown by the defendant in all areas in which it does business will be made available for inspection by and sale to black persons on the same basis that they are made available for inspection by and sale to white persons. Such a program shall include, but shall not be limited to, the following steps:

A. The defendant shall, within thirty (30) days of the entry of this order, conduct an educational program for its sales personnel and other agents and employees to inform them of the provisions of this order and their duties under the Fair Housing Act. Such program shall include the following:

(1) Furnishing a copy of this Order to each agent and employee.

(2) Informing each agent and employee of the provisions of this order and of the duties of the company and its agents and employees under the Fair Housing Act. Each agent and employee shall also be informed that his failure to comply with the provisions of this order shall subject him to dismissal or other disciplinary actions.

*/ The defendant's obligations to implement each provision of this decree for affirmative action shall begin ten (10) days following the entry of this order unless otherwise specified herein.

(3) Securing a signed statement from each agent that he has read this Order and received the instructions described in the preceding paragraph.

B. The defendant shall inform the public generally and its customers or clients specifically of its non-discriminatory policy by the following action:

(1) Include on all listing contracts, exclusive or non-exclusive, in conspicuous type size, that "homes and other dwellings will be shown and made available for sale to all persons without regard to race or color in compliance with the 1968 Fair Housing Act, 42 U.S.C. 3604."

(2) Display fair housing signs in a form approved by the Secretary of Housing and Urban Development in all offices of the defendants where there is sale or rental activity.

(3) Include in four advertisements of conspicuous size per week in each newspaper of general circulation which the defendant customary uses that "homes, including those advertised elsewhere in this newspaper by this company, will be made available to all persons without regard to race, color, religion or national origin." In addition, all advertising placed by the company or its agents shall conform to the Department of Housing and Urban Development advertising guidelines, as published in 37 Fed. Reg., pp. 6700-02, on April 1, 1972. A copy of these guidelines is attached as Appendix "A" to this order.

(4) Advertise on a bi-weekly basis for a period of one year in newspapers that primarily serve the non-white community the availability of homes in all areas in which the defendant does business and the address of each sales office maintained by the defendant.

C. In order to assure that each black prospective purchaser has complete information regarding the availability of homes in all areas and to assure that the purchaser has complete freedom of choice in the selection of a home, the following guidelines with respect to the selection of homes to be shown shall be implemented:

(1) Each prospect shall be advised generally that the company sells homes in most areas of Houston.

(2) No agent shall limit the homes shown, or offered to be shown, to any prospective purchaser, or allocate an unreasonable proportion of such homes shown or offered to be shown, to areas in which a majority of the residents are of the prospective purchaser's race or in which there is a transition to such condition.

(3) If a prospect requests an agent to show a specific home, the prospect shall be shown the home that satisfies the request. If the prospect is not satisfied with that home, the agent shall then select and show homes under the guidelines set out in the preceding paragraph.

(4) Information with respect to racial composition of a particular area or subdivision shall only be made available in response to a specific question. No such information about the racial composition of an area shall be used to encourage any prospect to live in an area predominantly occupied by persons of his own race, and no prospect shall be warned or advised that he will not or may not be welcome in an area because of racial opposition in the neighborhood.

(5) For each home shown, the prospect shall be provided with full and accurate information regarding each means of financing that is acceptable to the seller and the financial requirements necessary or desirable for the purchase of the home, including the amount of family income and down payment required and the sources of mortgage loans for home purchases.

D. In the past, no black sales agents have been associated with the defendant. While the United States has not alleged any violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., prohibiting discriminatory employment practices, plaintiff does contend that this condition abridges equal opportunity in housing in that it tends to discourage black prospective purchasers from seeking to purchase homes from the defendant in areas other than those substantially occupied by members of their own race. In order to assure that black prospective purchasers are not discouraged from seeking homes in all areas where the defendant sells homes, the defendant shall devise and implement an affirmative program for the recruitment and engagement of black sales agents and the assignment of a reasonable number of them to each of its offices. The parties agree that this program should be effected with as little disruption as possible of the defendant's manner of doing business, and that the means by which the goal of this

program is to be implemented should be determined by the defendant, so long as it is consistent with equal opportunity requirements. It is further understood that nothing in this order shall be construed as requiring or authorizing defendant to take any action prohibited by 42 U.S.C. 2000e-(g). Accordingly, no later than ninety (90) days following the entry of this decree, the defendant shall file with the Court, with copies to plaintiff, a report describing the steps that it has initiated and the steps it plans to initiate to satisfy the requirements set out in this provision. If the plaintiff is of the opinion that the plan proposed by the defendant, and the progress made thereunder, are not adequate to meet the obligations set out in this paragraph, the parties shall attempt to negotiate a mutually satisfactory agreement as to what steps should be taken. If no agreement is reached, either party may apply to the Court for appropriate relief.

III.

IT IS FURTHER ORDERED that forty-five (45) days after the date of this agreement, each defendant shall file with the Court and serve on counsel for the United States, a report enumerating the preliminary steps it has taken to implement the provisions of this decree. This report shall include a copy of a new exclusive listing form and copies of all signed employee statements.

IV.

IT IS FURTHER ORDERED that ninety (90) days after the date of this order and at four-month intervals for the next two years, the defendants shall serve on counsel for

the plaintiff a report containing the following information with respect to the preceding reporting period:

- A. The number of sales by race.
- B. The name of each new agent, his race, the office to which he is assigned, and a copy of his signed statement.
- C. For each black person who personally contacts an agent of the defendant to purchase a home or who purchases a home:
 - (1) His name.
 - (2) Address, including subdivision, of home purchased.
 - (3) Dates of initial contact and sale.
 - (4) Sales agent handling transaction.
 - (5) Addresses, including subdivision, of other homes shown.
 - (6) Brief explanation if only homes shown in areas of minority concentration.

In addition, each defendant shall make available to the plaintiff for inspection and copying at all reasonable times. all records (the term "records" includes all papers, correspondence, applications, credit reports, offers, contracts, and other writings which constitute or contain information bearing on the defendant's obligations under this order) which relate to the sale or rental of any dwelling. The plaintiff shall accomplish the inspection and copying with a minimum of inconvenience to the defendant and its representatives. The plaintiff shall preserve the confidentiality of all information contained in the defendant's records excepting only uses of such information directly related to this order.

Informal Proceedings to Resolve Complaints

If during the effective life of this order, the plaintiff has a complaint against any defendant arising out of the reports furnished pursuant to this order, or if information about possible discrimination by the defendant is brought to plaintiff's attention by a prospective purchaser or by any other person, the plaintiff shall furnish to the defendant by certified mail the substance of its information about the alleged discrimination, including, (if known to plaintiff) the name and address of the person allegedly discriminated against and a brief description of the nature and substance of the complaint, including the date of the alleged incident, where it took place, and the name of the agent or agents of the defendant involved in the incident, and the names and addresses of all persons having knowledge relevant thereto. Thereafter, the defendant shall have fifteen (15) days after receipt of the complaint to investigate the complaint. If the complaint is determined by defendant to be valid, the defendant shall advise the plaintiff what steps have been taken to correct the conditions leading to such discriminatory handling or treatment. If the complaint is determined by defendant to be invalid, the defendant shall advise the plaintiff of the basis for such determination. Upon the expiration of the fifteen (15) days, the plaintiff may initiate action where it is deemed appropriate. If, however, it appears that a lapse of fifteen (15) days would effectively preclude adequate relief, the plaintiff may initiate appropriate action at any time after advising the defendant in writing (or, in an emergency,

by telephone or telegram) of the alleged violation.

VI.

The United States shall not institute legal proceedings of any kind against the defendant on the basis of any act or omission of any agent alleged to be in violation of this agreement if:

(1) The agent has been instructed in accordance with the provisions of this decree and has signed a statement as provided in Part II A (3); and

(2) The defendant, after receiving any notice required from the plaintiff by Part V of this decree, takes appropriate disciplinary or other action against such agent and such additional steps as may be necessary to correct the effects of the agent's allegedly improper act or omission.

VII

IT IS FURTHER ORDERED that:

A. In the event of a dispute under this order, either of the parties may apply to the Court for direction and resolution of such dispute, upon giving of reasonable notice to the other parties.

B. The defendant's keeping of racial records for the purpose of complying with this order shall not be considered discriminatory.

C. No costs shall be assessed against any party with respect to any matter predating the date of acceptance of this order.

Done this 31st day of July, 1972.

Thomas J. Mahoney
United States District Judge

The undersigned hereby agree to the entry of this
consent order.

For the plaintiff:

For the Defendant:

ANTHONY J. P. FARRIS
United States Attorney

Mary Sinderson
MARY SINDERSON
Assistant U.S. Attorney

Heberman, Tishas & Markowitz
By
Robert Markowitz
Attorney at law

Frank E. Schwelb
FRANK E. SCHWELB
Attorney.
Department of Justice
Washington, D. C.

Norman P. Goldberg
NORMAN P. GOLDBERG
Attorney
Department of Justice
Washington, D. C.

TRUE COPY I CERTIFY

ATTEST:

V. BAILEY THOMAS, CLERK

By Michael Thomas
Deputy Clerk

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Equal
Opportunity

(H.U.D. No. 200-410)

ADVERTISING GUIDELINES FOR FAIR HOUSING

Notice of Statement of Policy

In order to facilitate and promote compliance with the requirements of Title VIII of the Civil Rights Act of 1968, and particularly section 804(c) thereof (42 U.S.C. 3601, 3609(c)) regarding notices, statements or advertisements, the Department of Housing and Urban Development has prepared guidelines to indicate proper and written references that are appropriate for the preparation, publication, and general use of advertising matter with respect to the sale or rental of a dwelling as defined by the Act.

Notice of a proposed statement of policy was published in the Federal Register on May 21, 1971 (36 F.R. 9366). Comments were received from 26 interested

persons and organizations and consideration has been given to each comment.

Several comments observed that the proposed policy statement was at times unnecessarily limited to the field of newspaper advertising. In response to the comments, the policy statement has been revised in several places to clarify that the guidelines apply to advertisements in all media, including, e.g., television and radio, as well as to advertising agencies and other persons who use advertising.

Several organizations suggested additional catchwords connecting a discriminatory effect for inclusion in section A-3. That section has been expanded to include several additional terms which may have a discriminatory effect when used in a discriminatory context.

In response to other comments, section A-6 has been revised to clarify how directional references could be employed in a discriminatory context with an ethnically, as well as a racially, discriminatory effect. Also, section A-7 has been added relating specifically to designation of religious, ethnic or racial facilities to identify an area or neighborhood.

A number of comments indicated that human models or Equal Opportunity advertisements can and have been used selectively to promote the development of racially exclusive communities. A new section C-4 has been added in order to meet this specific problem. The previous human models section has been clarified by revision and reorganization in the new section C, in light of comments which indicated confusion or uncertainty surrounding the use of human models.

Comments also suggested that the guidelines should be more specific regarding the use of human models. The Department has revised the guidelines to clarify that the use of human models is prohibited in advertisements for the sale or rental of a dwelling, except where the model is used to illustrate a specific feature of the dwelling, such as a fireplace or a view. The guidelines also state that the use of human models is prohibited in advertisements for the sale or rental of a dwelling, except where the model is used to illustrate a specific feature of the dwelling, such as a fireplace or a view.

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alter or affect agreements or orders obtained by the Department and other agencies.

This document is issued pursuant to section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

The statement of Policy reads as follows:

PUBLICATION GUIDELINES FOR COMPLIANCE WITH TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

POLICY STATEMENT

Section 804(c) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3609(c), makes it unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling (any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereof of any such building, structure, or portion thereof) that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation or discrimination.

These advertising guidelines are being issued for the purpose of assisting all advertising media, advertising agencies, and all other persons who use advertising to make, print, or publish or cause to be made, printed, or published any statement or display advertisement with respect to the sale or rental of a dwelling by the owner or his agent, in compliance with the requirements of Title VIII.

Comments also suggested that the guidelines should be more specific regarding the use of human models. The Department has revised the guidelines to clarify that the use of human models is prohibited in advertisements for the sale or rental of a dwelling, except where the model is used to illustrate a specific feature of the dwelling, such as a fireplace or a view. The guidelines also state that the use of human models is prohibited in advertisements for the sale or rental of a dwelling, except where the model is used to illustrate a specific feature of the dwelling, such as a fireplace or a view.

1. Words descriptive of dwelling, landlord, and tenant. White private home, colored home, Jewish home.

2. Words indicative of race, color, religion, or national origin. Negro, Nigger, KKK, Indian, Oriental, Black, White, Arab, Hebrew, Irish, Italian, European, etc.

3. Catch words. Restricted, private, discriminated. Also, words such as "exclusive", "integrated", "traditional", "board approved", or "membership approved" if used in a discriminatory context.

4. Symbols or logos. Symbols or logos which imply or suggest race, color, religion, or national origin.

5. Colloquialisms. Locally accepted words or phrases which imply or suggest race, color, religion, or national origin.

6. Directions to the real estate for sale or rent (use of maps or written instructions). References to real estate location in terms of racially or ethnically significant landmarks such as an existing Black development (signal to Blacks) or an existing development known for its exclusion of minorities (signal to Whites). Specific directions given from a racially or ethnically significant area.

7. Area (location) description. Use of religious, ethnic, or racial facilities to describe an area, neighborhood, or location.

B. Selective use of advertising media or content with discriminatory effect. The selective use of advertising in various media and with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of Title VIII.

1. Selective geographic impact. Such selective use may involve the strategic placement of billboards, brochure advertisements distributed within a limited geographic area by hand or in the mail, or advertising in particular geographic coverage editions of major metropolitan newspapers, or in local newspapers which are mainly advertising vehicles for reaching a particular segment of the community, or in displays or announcements only in selected sales offices.

2. Selective use of equal opportunity slogan or logo. Such selective use may involve using the equal opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

3. Selective use of human models. Such selective advertising may also involve the use of human models primarily in media that cater to one racial or ethnic segment of the population that is not balanced by a com-

plementary advertising campaign that is directed at other groups, or the use by a developer of racially neutral models to advertise one of the developments and not others.

(c) Policy and practice guidelines. The following guidelines are offered as suggested models of assuring equal opportunity in real estate advertising:

1. *Guidelines for use of logotype, statement, or slogan.* All advertising of residential real estate for sale or rent can contain an Equal Housing Opportunity logotype, statement or slogan as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, religion, or national origin. Table 1 (see appendix) illustrates suggested sizes for the use of the logotype in all space advertising which is less than 4 column inches or a page in size. The Equal Housing Opportunity slogan should be used. The advertisement may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, or national origin. Alternatively, 3-5 percent of the advertisement copy may be devoted to a statement of the equal housing opportunity policy of the owner or agent. Table 2 (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

2. *Guidelines for use of human models.* Human models in photographs, drawings, or other graphic techniques may be used to indicate racial inclusiveness. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing both majority and minority groups in the metropolitan area. Models, if used, should indicate to the general public that the housing is open to all without regard to race, color, religion, or national origin, and is not for the exclusive use of one such group.

3. *Guidelines for notification of Fair Housing Policy.* (a) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale or rental of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(b) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous place wherever persons come to place advertising and should have copies available for all firms and persons using their advertising services.

(c) *Publisher's notice.* All publishers are encouraged to publish at the beginning of the real estate advertising section a notice such as that appearing in Table 3 (see appendix).

Effective date. This statement of policy shall be effective May 1, 1973.

Samuel J. Simmons,
Assistant Secretary
for Equal Opportunity.

The following is a guide for the use of the Equal Housing Opportunity logotype, statement, and slogan.

A simple form of the Equal Housing Opportunity logotype is shown in the illustration. The logotype should be of a size equal to the other logotypes; if no logotypes are used, then the following should be used. In all instances, the logotype should be in a bold display face and no smaller than 8 points.

Approximate size of advertisement	Size of Logotype in inches
1/2 page or larger	2 x 2
1/3 page up to 1/2 page	1 x 1
4 column inches to 1/2 page	1/2 x 1/2
Less than 4 column inches	(1)

1 Do not use.

TABLE II.—ILLUSTRATIONS OF LOGOTYPE, STATEMENT, AND SLOGAN

Equal Housing Opportunity logotype.



Equal Housing Opportunity statement:

We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion or national origin.

Equal Housing Opportunity slogan:
"Equal Housing Opportunity."

TABLE III.—ILLUSTRATION OF PUBLISHER'S NOTICE

Publisher's notice:

All real estate advertised in this newspaper is subject to the Federal Fair Housing Act of 1968 which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination."

This newspaper will not knowingly accept any advertising for real estate which is in violation of the law. Our readers are hereby informed that all dwellings advertised in this newspaper are available on an equal opportunity basis.

[FR Doc.72-4983 Filed 3-31-72;8:45 am]