

#53019

53018B

ada

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

BANK UNITED d/b/a
COMMONWEALTH UNITED MORTGAGE
AND ERIKA STEINIGER,

Defendants.

**CONSENT DECREE BETWEEN THE UNITED STATES AND BANK UNITED d/b/a
COMMONWEALTH UNITED MORTGAGE AND ERIKA STEINIGER**

This Consent Decree is entered into by Plaintiff United States and Defendants Bank United d/b/a Commonwealth United Mortgage ("Bank United") and Erika Steiniger. The United States has filed a Complaint brought pursuant to 42 U.S.C. § 3612(o) of the Fair Housing Act simultaneously with this Consent Decree. The Complaint alleges that the Defendants discriminated against the Complainants based on their handicaps by otherwise making a dwelling unavailable in violation of 42 U.S.C. § 3604(f)(1), discriminating in the provision of services in connection with a dwelling in violation of 42 U.S.C. § 3604(f)(2), and discriminating in the availability of, or terms and conditions of, a mortgage loan in violation of 42 U.S.C. § 3605.

The Defendants, Bank United and Erika Steiniger expressly deny the allegations in the Complaint and deny they would be liable on any basis if this matter proceeded to litigation or that they have engaged in any wrongdoing. Nothing in this agreement is intended to be, nor shall be deemed to be an admission of liability. However, in the interest of avoiding the costs of litigation the United States and the Defendants agree to resolve this controversy without an evidentiary hearing or any determination of liability. Therefore, the parties have consented to the entry of this Consent Decree as indicated by the signatures appearing below. The United States and the Defendants enter this Consent Decree to resolve and discharge all claims that were or could have been brought as part of the charge of discrimination set forth in HUD Complaint No. 02-97-0942-8 and this action.

It is hereby ORDERED, ADJUDGED and DECREED:

I. Defendants Erika Steiniger and Bank United, its officers, employees, agents, successors and assigns are permanently enjoined from establishing, publishing, or applying policies or practices that request or require the disclosure of confidential personal or medical information or the nature or extent of disability and from any other discrimination on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f)(1), 42 U.S.C. § 3604(f)(2), and 42 U.S.C. § 3605.

II. Upon execution of this Agreement, Bank United will pay compensatory damages to Gertrude Douglas, Angela Douglas, and Teresa Harris in the sum of twenty-five thousand

dollars (\$25,000). In consideration of these payments, Gertrude Douglas, for herself and on behalf of her minor children Angela-Douglas and Teresa Harris, will execute a release substantially in the form of the release attached hereto as Attachment 1.

III. In order to ensure that handicapped persons are not subject to any inquiries about their disability when they apply for a mortgage loan using any income received based on a disability to qualify, the parties agree that the following procedures may be followed by Bank United when gathering information concerning such income:

A. Following receipt of an application for a mortgage loan, in which the applicant relies, in whole or in part, upon the receipt of income based on disability to qualify for the loan, the loan originator (or the loan processor to whom the loan application is thereafter referred) may request the following documentation with respect to such income:

1. A copy of the letter from the source of the payment verifying the amount of such income;
2. Documentation from the source of the payment concerning the period of time for which such income has been received; and
3. Documentation indicating the conditions or circumstances that would lead to the termination of payments.

B. All documentation for loan applications of the nature described in sub-paragraph (A) shall be retained with the loan application file for a period of three years and three months after the execution of this Agreement.

IV. Bank United shall maintain the following records:

- A. A log, as attached hereto as Attachment 2, indicating the name, address, age, and date of application for each person who applies for a mortgage loan seeking to use disability income to qualify;
- B. Information related to any complaints, including but not limited to complaints filed in court or with a regulatory or administrative agency, against Defendants alleging discrimination; and
- C. All loan application files for each person who applies for a mortgage loan seeking to use disability income.

V. Defendant, Bank United, shall conduct training concerning the requirements of the Fair Housing Act and this Decree for all employees or agents of Bank United with responsibility for processing mortgage loans or assisting applicants in completing applications for mortgage loans. Such training shall be provided to all current employees and agents within 60 days of the date of the entry of this Decree and, during the next three years and three months, to all new employees in these job categories within 30 days of the commencement of their employment. Such training may consist of video tapes or in-house classroom instruction and shall be approved by the United States. All employees required to attend this session shall complete a form acknowledging their attendance. Employees who have received fair housing training

within the six-month period prior to the entry of the Decree are exempt from this requirement, provided such training is approved by the United States. However, those employees must receive training on the requirements of this Decree, but this training may consist entirely of written materials.

VI. Every six months, starting six months from this agreement for three years, Bank United will provide the United States a copy of the log described in IV(A) above and complaints described in IV(B). Upon written request of the United States, Bank United will also make available copies of loan application files described in IV(C) above, the acknowledgment forms described in V, and any other documents relevant to compliance with this Decree.

VII. Duration of Decree and termination of legal action:

A. This Consent Decree shall remain in effect for three (3) years and three (3) months after the date of its entry.

B. The parties agree that in the event it is determined in any future action or proceeding brought by the United States or any agency thereof that either Defendant has engaged in any violation(s) of the Fair Housing Act, this Decree shall not be used as a basis to find such violation(s) to be a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C) (ii).

C. Each Defendant is separately responsible for compliance with this Decree.

D. This case is dismissed with prejudice, except that this Court shall retain jurisdiction for the duration of the Consent Decree to enforce the terms of this Consent Decree. After the three-year and three month term of this Consent Decree, the Defendants may move the Court to terminate this Consent Decree.

E. The parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendants to perform in a timely manner any act required by this Consent Decree, or otherwise to act in violation of any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

VIII. The United States and Defendants Bank United and Erika Steiniger will bear their own costs and attorney's fees associated with this litigation.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

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

FOR PLAINTIFF UNITED STATES:

BILL LANN LEE
Acting Assistant Attorney General for Civil Rights

JOAN A. MAGAGNA
Chief
ISABELLE M. THABAULT
Deputy Chief
ERIC I. HALPERIN
Attorney
Housing and Civil Enforcement Section
Civil Rights Division
Department of Justice
P.O. Box 65998
Washington, D.C. 200355998
202-353-9706

DENISE E. O'DONNELL
United States Attorney

MARY PAT FLEMING
Civil Chief
13 8 Delaware Avenue
Buffalo, NY 14202
716-551-4811

FOR DEFENDANTS BANK UNITED & ERIKA STEINIGER:

R. SCOTT DAVIES
Briggs and Morgan
2400 IDS Center
80 South 8th Street
Minneapolis, MN 55402

ATTACHMENT 1

RELEASE

In consideration for the covenants and agreements made and reflected in a certain Consent Decree entered in United States v. Bank United d/b/a Commonwealth United Mortgage and Erika Steiniger, Civil Action No. 99- on , 1999, as well as in consideration of the payments required to be made thereunder, I hereby release all claims that I and my children Angela Douglas and Teresa Harris, may have against Bank United and Erika Steiniger, arising out of, or related to my application for a mortgage loan with Bank United.

I further understand that this Release shall be binding upon my heirs, successors, family members, and any and all persons acting in concert with me. I further understand that I am releasing not only the claims which were raised in the aforementioned lawsuit, but all claims, of any kind, nature or description whatsoever, whether they be in contract, tort, or otherwise, and whether they

were raised or could have been raised in the litigation referenced above, for any actions or events that have occurred or that may have accrued up until the date of this **Release**.

I also acknowledge that I have had the opportunity to review the terms of this Release with an attorney of my choosing, and, to the extent that I have not obtained that legal advice, I voluntarily and knowingly waive my right to do so.

_____ Gertrude Douglas for herself and as legal guardian of Angela Douglas and Teresa Harris

County of _____

State of New York

SUBSCRIBED and sworn to before

me this _____ day of _____, 1999.

Notary Public

My commission expires:

ATTACHMENT 2

Application Log

Name	Address	Date of Application	Outcome	Reason
------	---------	---------------------	---------	--------