

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. HOra10040162
HUD NO. 05-10-0917-8

JAMAL SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION;
and GREGORY D. GILBERT, JR.;

Complainants,

v.

SAM OKNER, HUNTER COLLEGE
CROSSING, LLC;

Respondents.

~~RDL
FILE DATED~~

~~MAY 20 2011~~

~~Indiana State Civil Rights Commission~~

FILE DATED

JUN 24 2011

Indiana State Civil Rights Commission

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, a complaint was filed under ICRC Docket Number HOra10040162 and HUD Number 05-10-0917-8, under the Indiana Fair Housing Act and the federal Fair Housing Act of 1968,

WHEREAS, reasonable cause was found to believe that an unlawful, discriminatory housing practice occurred,

WHEREAS, the Executive Director of the Indiana Civil Rights Commission, Jamal L. Smith, issued a Charge against Respondents,

WHEREAS, a lawsuit was filed by Gregory Gilbert, Jr. against Sam Okner and Hunter College Properties, LLC under case no. 49D12 11 03 PL 010743, in the Superior Court of Marion County, State of Indiana, alleging unfair housing practices and retaliation,

WHEREAS, the matter was mediated between the parties hereto, it is agreed that a settlement be entered into under the following terms and conditions.

GENERAL PROVISIONS

1. This Settlement Agreement ("Agreement") is made and entered into between Jamal L. Smith, in his official capacity as Executive Director of the Indiana Civil Rights Commission ("Smith"); Gregory Gilbert Jr. ("Gilbert") on behalf of his agents, assignees, heirs, executors, administrators, beneficiaries, trustees and legal representatives; Hunter College Crossing, LLC ("Hunter") on behalf of its agents, members, assignees, heirs, executors, administrators, beneficiaries, trustees and legal representatives; and Sam Okner ("Okner"), all collectively, the "Parties".
2. WHEREAS, the Parties desire to fully settle the charge and any and all claims, charges, actions, causes of action or disputed issues of law and/or fact that have been raised or could be raised against them by the other party or by the Indiana Civil Rights Commission ("ICRC") or U.S. Department of Housing and Urban Development ("HUD") (collectively "ICRC/HUD") against Hunter and Okner arising out of or in any way related to Gilbert's tenancy with Hunter.

NOW THEREFORE, in consideration of the monies, mutual promises and mutual covenants contained herein, the receipt and sufficiency of which are acknowledged by all Parties, the Parties agree as follows:

3. Payment and Other Consideration. In consideration for the agreements and covenants set forth in this Agreement, Gilbert agrees to accept as payment in full Thirty Three Thousand Dollars and 00/Cents (\$33,000.00) from Hunter as settlement in full of all outstanding claims he has against Hunter and Okner. Gilbert agrees that this amount includes all claims on his behalf for attorney's fees, alleged discrimination, humiliation, emotional distress, embarrassment, and any other alleged damages. Further, Hunter agrees to make the aforementioned sum of Thirty Three Thousand Dollars and 00/cents (\$33,000.00) payable in two (2) separate checks, one made payable to Gilbert and the law firm of Haskin & LaRue, LLP in the amount of Twenty Two Thousand Seven Hundred Seventy Three Dollars and Ninety Cents (\$22,773.90) and the other made payable to the law firm of Haskin & LaRue, LLP in the amount of Ten Thousand Two Hundred Twenty Six Dollars and Ten Cents (\$10,226.10), within thirty (30) days from receipt of the agreement fully executed by Gilbert, Hunter and Okner.

a. Further, within ten (10) days after Gilbert's attorney's receipt of the settlement check, Gilbert, through his attorney, shall issue a cashier's check or his attorney shall issue a check from its law firm account made payable to Hunter College Crossing, LLC in the amount of Two Thousand Six Hundred Seventy-Nine Dollars and 90/100 (\$2,679.90), plus costs of Ninety-Four Dollars and 00/100 (\$94.00) in satisfaction of the judgment entered by Hunter College Crossing, LLC. in the case of Hunter College Crossing, LLC v. Gilbert, case no. 49K04 1005 SC 01571.

b. Additionally, within seven (7) days after the receipt of the aforementioned payment for satisfaction of the judgment, Hunter will file in the case of Hunter College Crossing, LLC v. Gregory Gilbert et al., case no 49KO4-1005-SC-01571 a satisfaction of that judgment. Furthermore, within seven (7) days after receipt of a file marked copy of the satisfaction of judgment, Gilbert will dismiss with prejudice the case of Gilbert v. Okner, et al., case no. 49D12 11 03 PL 010743) currently pending.

c. Smith and Gilbert, by counsel, will submit to the ICRC an agreed Motion to Dismiss the Charge now pending before the Administrative Law Judge.

d. Gilbert agrees that he will not return to Hunter's properties for any reason without the express permission of Hunter.

e. Hunter agrees that it will not commit any act of discrimination against any person in the terms, conditions, or services in any real estate-related transaction on the basis of race, color, religion, sex, disability, familial status and national origin.

f. Hunter agrees to refrain from interfering with any person in their exercise of enjoyment of the right to lease/rent, in any manner that might result in, or be interpreted as an act of discrimination on the basis of race, color, religion, sex, disability, familial status and national origin.

g. Hunter agrees that in both its rental applications and advertising, it will incorporate therein text in a contrasting and larger font stating that it will extend and maintain housing opportunities on an equal basis to all applicants and tenants regardless of their race, religion, sex, disability, national origin, familial status, or ancestry.

h. Hunter agrees that within six (6) months of the effective date of this agreement, it will provide training to all of its employees, including those of managerial status, regarding the Fair Housing Laws of the United States and the State of Indiana in a format that is acceptable to the ICRC. Within the same time period, Okner agrees to receive the same training as that provided to the Hunter College Crossing, LLC employees.

4. Waiver and Release of All Claims. In exchange for the monies and benefits described herein, Gilbert agrees not to sue Hunter or Okner, and fully and completely waives, releases, and forever discharges Hunter and Okner from any and all claims, actions, causes of action, complaints, grievances, demands, allegations, promises, and obligations for damages (including but not limited to, compensatory, exemplary and punitive damages for mental anguish, loss of consortium, pain, embarrassment, humiliation, emotional distress), losses, expenses, fees, attorneys' fees or costs, debts and any and all other demands which he may have against Hunter or Okner, as of the effective date of this Agreement, arising out of his tenancy with Hunter. Mutually, Hunter and Okner agree not to sue Gilbert, and fully and completely waive, release, and forever discharge Gilbert from any and all claims, actions, causes of action, complaints, grievances, demands, allegations, promises, and obligations for damages (including but not limited to, compensatory, exemplary and punitive damages for mental anguish, loss of consortium, pain, embarrassment, humiliation, emotional distress), losses, expenses, fees, attorneys' fees or costs, debts and any and all other demands which they may have against Gilbert, as of the effective date of this Agreement, arising out of Gilbert's tenancy with Hunter. Hunter and Okner's release does not include a release of Gilbert's obligations outlined in Paragraph 3a above relating to the case of Hunter College Crossing, LLC V. Gilbert, case no.49K04 1005 SC 01571.

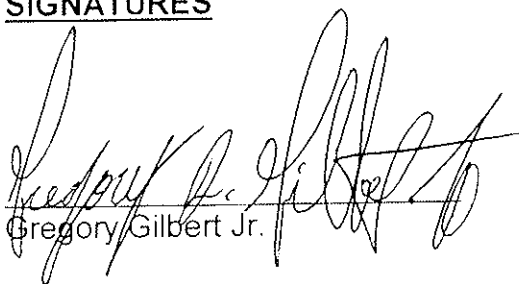
5. Confidentiality. Except to the extent the law requires disclosure, Gilbert, Hunter and Okner mutually agree to keep the facts and terms of the ICRC/HUD charge, the lawsuit and this Agreement confidential and prevent disclosure to anyone, including but not limited to the press, news

media, or any social media such as Facebook, unless required to make disclosure by lawful court process or regulatory agency. This prohibition would not restrict the Parties or their respective attorneys from responding to any inquiry about this Agreement or its underlying facts and circumstances propounded by any self-regulatory agency or by lawful court process, or disclosure to the Parties' respective attorneys or tax advisors. If inquiries arise, Gilbert, Hunter and Okner agree that they will respond, "I cannot discuss it" or words to that effect and will make no other comment. Gilbert, Hunter and Okner further agree that if they, or any of their representatives or anyone acting on their behalf violates this confidentiality provision, the non-offending party shall have the right to seek enforcement of this confidentiality provision in a court of competent jurisdiction and to recover liquidated damages in the amount of Two Thousand Five Hundred Dollars 00/100 (\$2,500.00) and attorney fees, as well as any other damages which it is entitled to recover by law. This Agreement of non-disclosure shall be kept in perpetuity and shall remain binding upon Gilbert, Hunter and Okner.

6. Non-Disparagement. Gilbert agrees to refrain from making any derisive, disparaging, or derogatory comments about Hunter or Okner, or Hunter's management, personnel or service/maintenance staff. Also, he will refrain from making any derisive, disparaging, or derogatory comments to include any type of social media, mainstream media, any publication, or to a third-party. Mutually, Hunter and Okner agree that they will refrain from making any derisive, disparaging, or derogatory comments about Gilbert to include the mainstream media, social media, any publication, or any third-party. Gilbert, Hunter and Okner further agree that if they, or any of their representatives or anyone acting on their behalf violates this non-disparagement provision, the non-offending party shall have the right to seek enforcement of this non-disparagement provision in a court of competent jurisdiction and to recover liquidated damages in the amount of Two Thousand Five Hundred Dollars 00/100 (\$2,500.00) and attorney fees, as well as any other damages which they are entitled to recover by law. This Agreement of non-disparagement shall be kept in perpetuity and shall remain binding upon Gilbert, Hunter and Okner.
7. Severability. If any portion of this Agreement is found to be unenforceable or prohibited, the remainder of this Agreement shall remain in full force and effect.
8. Non-Admission. Hunter and Okner do not admit to any allegations made against them in any charges, complaints or grievances currently pending between the Parties. Nothing contained in this Agreement shall be deemed as an admission of liability or of any violation of any applicable law, rule, regulation, order or contract of any kind.

9. Breach of Agreement. In the event of a breach of any provision of this Agreement by any of the Parties, and if any of the Parties is required to commence an action, in law and/or equity to enforce its rights under any provision of this Agreement and prevails, the other party shall be liable for the reasonable attorneys' fees and costs incurred in connection with such action.
10. Non-Use. This Agreement may not be used as evidence in any subsequent proceeding of any kind (without the written consent of the other party) except one which either party institutes alleging a breach of this Agreement.
11. Full Knowledge, Consent and Voluntary Signing. Gilbert acknowledges that: (1) he is aware that the Indiana Fair Housing Act and the federal Fair Housing Act protects his right to file a complaint of discrimination (2) he has carefully read this Agreement and fully understand its meaning and intent; (3) he has had this Agreement explained to him by his attorneys and that he understands its legal consequences; (4) Gilbert agrees to all the terms of the Agreement and is voluntarily signing below; and (5) the only consideration for his signing this Agreement is the terms stated herein and no other promises or representations of any kind have been made by any person or entity whatsoever to cause Gilbert to sign this Agreement.
12. The Parties and Counsel. if any, agree that in the interest of speedily concluding this matter, the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one documentary page.
13. Non Retaliation. Hunter and Okner agree not to retaliate against Gilbert or any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.

SIGNATURES



Gregory Gilbert Jr.

4-29-11


DATE

Hunter's Authorized Representative

DATE

Sam Okner

DATE



Jamal Smith, ICRC Director by
Fred Bremer, Staff Attorney

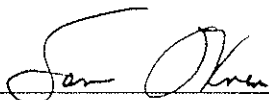
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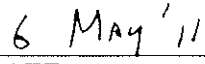
SIGNATURES

Gregory Gilbert Jr.

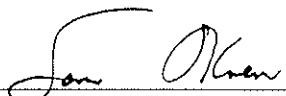
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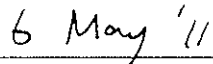
Hunter's Authorized Representative



DATE



Sam Okner



DATE

Jamal Smith, ICRC Director by
Fred Bremer, Staff Attorney

DATE

The foregoing Consent Agreement, styled "Settlement Agreement and Release" has been signed and entered as record before the Indiana Civil Rights Commission this 24th day of JUNE 2011.

David Carter (cic)
COMMISSIONER

Steven Damas (cic)
COMMISSIONER

Bruce Bayne
COMMISSIONER

[Signature]
COMMISSIONER

To be served by mail on the following parties and attorneys:

Gregory D. Gilbert, Jr.
4310 North Guilford Avenue
Indianapolis, IN 46205

HASKIN & LaRUE, LLP
Denise K. LaRue & Jason P. Cleveland
255 N. Alabama Street, Second Floor
Indianapolis, IN 46204-2131

Hunter College Crossing, LLC
c/o Sam Okner
1840 National Avenue
Indianapolis, IN 46227

SHULTZ & POGUE, LLP
J. Kirk LeBlanc., Joseph K. Mummert &
Rachel K. Hehner
520 Indiana Avenue
Indianapolis, IN 46202

Kristine S. Phillips
O'HAGAN SPENCER, LLC
One E. Wacker Drive, Suite 3400
Chicago, IL 60601

and to be personally served on the following attorney of record:

Frederick S. Bremer, Staff Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Rm. N103
Indianapolis, IN 46204-2555