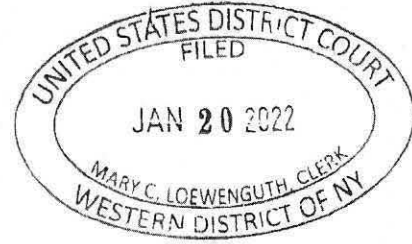


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

v.

HOWITT-PAUL ROAD, LLC d/b/a
GREENWOOD TOWNHOMES,
MIDLAND MANAGEMENT, LLC,
and AMY KELLS,

Defendants.

21-cv-01259 lmd

21cv6735

I. INTRODUCTION

1. The United States filed a Complaint in this action on December 3, 2021 to enforce the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* The United States alleges that Defendants Howitt-Paul Road, LLC d/b/a Greenwood Townhomes, Midland Management, LLC, and Amy Kells (collectively, “Defendants”) denied Oksana Dubilevskaya the reasonable accommodation of an assistance animal in 2019, denied her housing, and discriminated against her, all in violation of the Fair Housing Act.

2. On or about May 13, 2019, Ms. Dubilevskaya filed a complaint with the United States Department of Housing and Urban Development (HUD) alleging that Defendants had discriminated against her on the basis of disability.

3. At all times relevant to the Complaint, Defendant Howitt-Paul Road, LLC owned 8 Mia Terrace, Rochester, New York (the “Subject Property”), a “pet-friendly property” as described in HUD’s Determination of Reasonable Cause.

4. At all times relevant to the Complaint, Defendants Midland Management, LLC and Amy Kells managed the Subject Property. Defendant Kells has since retired.

5. As required by the Fair Housing Act, 42 U.S.C. § 3610(a) and (b), the Secretary of HUD investigated the complaint made by Ms. Dubilevskaya, attempted conciliation without success, and prepared a final investigative report. Based on information gathered in the investigation, on April 22, 2021, the Secretary determined, pursuant to 42 U.S.C. § 3610(g), that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. On April 22, 2021, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g) and charged Defendants with discrimination under the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(B).

6. On May 11, 2021, Defendants elected to have the claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). The Secretary subsequently authorized the Attorney General to file this action on behalf of the aggrieved person, Oksana Dubilevskaya, pursuant to 42 U.S.C. § 3612(o).

7. Defendants deny the claim of discrimination and contend that Dubilevskaya was given the opportunity for an appropriate accommodation, but that she failed to provide relevant documentation and to engage in an interactive dialogue. The United States maintains that its claims against Defendants are well-founded.

II. AGREEMENT

8. The Parties agree that, to avoid additional costly and protracted litigation, the claims against Defendants should be resolved without further proceedings or a trial. This Consent Decree resolves the United States' claims against the Defendants, as well as any claims that could be or have been asserted by Dubilevskaya against any of the Defendants in connection with the conduct alleged in the Complaint.

III. NON-DISCRIMINATION PROVISIONS

9. Defendants, their officers, agents, employees, and all other persons or entities in active concert or participation with them shall not, with respect to the rental of dwellings they own or manage:

a. Discriminate in the rental, or otherwise making unavailable or denying, a dwelling to any renter because of disability, in violation of 42 U.S.C. § 3604(f)(1)(A);

b. Discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2); or

c. Refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

IV. POLICY CONCERNING REQUESTS FOR ASSISTANCE ANIMALS

10. No later than thirty (30) days after the date of entry of this Consent Decree, Defendants shall adopt the reasonable accommodation policy ("the New Policy") set forth in Attachment A for implementation at all dwellings owned or managed by Defendants.

11. The New Policy, once adopted, shall supersede all existing policies and procedures concerning approval of reasonable accommodations at dwellings owned or managed by Defendants.

12. Within forty-five (45) days after the date of entry of this Consent Decree, Defendants shall post and prominently display the New Policy in each location where activity related to the management or rental of dwellings occurs and on its website and shall apprise

each of their employees, agents, and any other persons responsible for the rental of units at dwellings they own or manage of each person's obligations under this Consent Decree, including but not limited to the New Policy, and under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*

13. During the term of this Consent Decree, new employees, or agents who have responsibility related to the management of or rental of units at dwellings owned or managed by Defendants, shall (a) be apprised of the New Policy, and of their obligations under the Fair Housing Act when their term, employment, or agency commences; and (b) be provided copies of the New Policy.

14. In the event that Defendant Midland Management, LLC is replaced as manager of the Subject Property or any other property owned by Defendant Howitt-Paul Road, LLC, Howitt-Paul Road, LLC will require any new manager to continue to abide by the Reasonable Accommodation Policy set forth in Attachment A. Within fourteen (14) days of any such change in management, Howitt-Paul Road, LLC will submit a revised Reasonable Accommodation Policy, subject to approval by the United States, substituting only the references to the new manager for references to Midland Management, LLC.

V. MANDATORY EDUCATION AND TRAINING

15. Within ninety (90) days of the entry of this Consent Decree, Defendants (except for Defendant Kells, who is now retired) and their employees, agents, and members who have responsibility related to the management of or rental of units at a dwelling owned or managed by Defendants shall attend a live training program conducted remotely of up to four (4) hours duration regarding the Fair Housing Act, including its disability discrimination provisions.

The training shall be conducted by an employee of HUD's Office of Fair Housing and Equal Opportunity

16. HUD shall provide confirmation that each required individual attended the training.

VI. NONDISCRIMINATION POLICIES

17. Within fourteen (14) days of the date of entry of this Consent Order and throughout its term, Defendants shall, pursuant to 24 C.F.R. Part 110, post and prominently display at any place of business where Defendants conduct rental activity and/or have personal contact with applicants for rental of their property, a Fair Housing Poster.

18. Throughout the term of this Consent Decree, Defendants shall ensure that any new advertising for rental units in newspapers, in telephone directories, on radio, on television, on the internet, or in other media, and any signs, pamphlets, brochures, or other promotional literature include a fair housing logo, the phrase "Equal Housing Opportunity Provider," and/or the following sentences:

We are an Equal Opportunity Housing Provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status or disability.

The words or logo should be prominently placed and easily legible.

VII. REPORTING AND RECORD-KEEPING

19. During the term of this Consent Decree, Defendants shall notify and provide documentation of the following events within fourteen (14) days of their occurrence by mail to the United States Department of Justice Civil Rights Division, through the United States Attorney's Office for the Western District of New York, Attn. David Heitner, 138 Delaware Avenue, Buffalo, NY 14202 or as otherwise directed by the United States.

a. Any change to any of Defendants' rules or practices affecting the keeping of assistance/support animals at the property;

b. Any denial authorized or communicated by Defendants of a request by a tenant or prospective tenant to keep an assistance animal, including the resident's name, address, and telephone number, and the details of the request and the reason(s) for its denial;

c. Any conditions proposed or imposed on the rental of a unit by Defendants on a tenant or prospective tenant who keeps or requests to keep an assistance animal, including the resident's name, address, and telephone number, and the details of the request and the reason(s) for any proposed conditions;

d. Any written complaint alleging disability discrimination in housing received by Defendants, including a copy of the written complaint itself and the name, address, and telephone number of the complainant. Defendants shall also promptly provide the United States with information concerning resolution of the complaint; and

e. Any change of management of the Subject Property or any other property owned by Defendant Howitt-Paul Road, LLC.

20. During the term of this Consent Decree, Defendants shall preserve all records relating to their obligations under this Consent Decree. Representatives of the United States shall be permitted, upon providing reasonable notice to Defendants, to inspect and copy at reasonable times any and all records related to Defendants' obligations under this Decree.

VIII. MONETARY DAMAGES TO AGGRIEVED PERSON

21. No later than fourteen (14) days after the date of entry of this Consent Decree, conditioned upon Dubilevskaya signing and complying with the attached release, Defendants shall pay the sum of ten thousand dollars (\$10,000), which includes monetary damages and attorney's fees, to Dubilevskaya.

22. As a prerequisite to receiving such payment, Dubilevskaya shall execute a release of all claims, legal or equitable, that she may have against Defendants relating to the claims asserted in this lawsuit. Such a release shall take the form of Attachment B. Counsel for the United States shall deliver the original release forms to counsel for Defendants.

IX. OTHER RELIEF FOR AGGRIEVED PERSON

23. No later than fourteen (14) days after the date of entry of this Consent Decree, if Defendants have reported negative information about Ms. Dubilevskaya to any credit bureaus or rental databases, they shall modify such reporting and provide the United States with documentation showing such modification.

X. JURISDICTION, DURATION, MODIFICATION, AND REMEDIES

24. The parties stipulate, and the Court finds, that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

25. This Consent Decree is effective immediately upon its entry by the Court.

26. This Court shall retain jurisdiction over this action and the parties thereto for the duration of this Decree for the purpose of enforcing its terms. This Decree shall be in effect for a period of two (2) years from its effective date.


27. Any time limits for performance imposed by this Decree may be extended by mutual written agreement of the parties.

28. Each party shall notify the other party of any dispute or difference regarding interpretation and compliance with this Decree, whether willful or otherwise, and shall attempt to resolve such a dispute informally. 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 conformance with any provision thereof, any party 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, as well as an award of damages, costs and reasonable attorney's fees occasioned by the violation or failure to perform.

29. Non-Admission. This Agreement is being entered into solely to amicably resolve all potential issues between the parties without any admission of wrongdoing or violation of law, express or implied.

30. All parties shall be responsible for their own attorney's fees and costs, except as otherwise provided in this Decree.

So ORDERED this 14 day of January, 2022.


United States District Judge

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

For the Defendants,

s/ Sharon P. Stiller, Esq.
BY:

Date: 12/3/2021

For Plaintiff United States of America,

TRINI E. ROSS
United States Attorney
Western District of New York

s/ David N. Heitner
BY: DAVID N. HEITNER
Special Assistant United States Attorney

Date: 12/3/2021

s/ Mary E. Fleming
BY: MARY E. FLEMING
Assistant United States Attorney

Date: 12/3/2021

ATTACHMENT A

Reasonable Accommodation Policy

The Federal Fair Housing Act and other state and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Midland Management, LLC, and its employees, agents, and designees, are committed to granting reasonable accommodations when necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling at any and all of their rental units. Midland Management, LLC may work with a third-party screener that will assist it in receiving, reviewing, verifying, and recommending approval of reasonable accommodation requests in compliance with the Fair Housing Act.

Reasonable accommodations may include waiving or varying rules or policies to allow a resident with a disability to keep an "assistance animal." An assistance animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that may be necessary to afford the person an equal opportunity to use and enjoy housing ("Assistance Animal"). The most common Assistance Animals are dogs, although other animals may qualify as assistance animals. Assistance Animals are not considered "pets" under Midland Management, LLC's policies. Midland Management, LLC recognizes the importance of Assistance Animals and is committed to ensuring that its tenants with Assistance Animals – whether occupants or renters – may keep them in their units.

Residents may make a reasonable accommodation request at any time before or during their tenancy. If a resident with a disability requests a reasonable accommodation for an Assistance Animal, Midland Management, LLC will determine whether the animal may be necessary to afford the resident an equal opportunity to enjoy living in one of its units. In some cases, both the disability and the necessity for the Assistance Animal are obvious – for example, a dog guiding an individual who is blind or has low vision, or a dog pulling the wheelchair of a person with a mobility disability. If this is the case, no further inquiry will be made and Midland Management, LLC will grant the resident the accommodation unless the presence of the animal (1) imposes an undue financial and administrative burden; (2) fundamentally alters the nature of Howitt-Paul Road, LLC or Midland Management, LLC's operations; or (3) would pose a direct threat to the health and safety of other people or result in the substantial physical damage to the property of others.

In the case of a resident who requests a reasonable accommodation for an Assistance Animal and the disability of the resident and/or the necessity for the Assistance Animal is not obvious, Midland Management, LLC, its agents, or the third-party screener may request

a written verification from a health or social service professional¹ indicating that the applicant has a disability² and the presence of the animal may be necessary to provide the resident an equal opportunity to use and enjoy his/her apartment.

Neither Midland Management, LLC nor its third-party screener will require:

- i. That the Assistance Animal have any special training or certification;
- ii. That the Assistance Animal be subject to breed, weight or age restrictions;
- iii. That the Assistance Animal be required to wear a vest or other insignia that identifies it as an Assistance Animal; or
- iv. That the resident pay any fee, deposit, or other charge for keeping the animal, or obtain insurance as a condition of keeping the animal.

If Midland Management LLC or its third-party screener seeks verification of a tenant's disability and the need for an Assistance Animal, they will not:

- i. Request whether a health or social service professional would be willing to testify in a court proceeding regarding the request for accommodation;
- ii. Require the health or social service professional to provide a curriculum vitae;
- iii. Require an interview with the health or social service professional.

In processing requests for Assistance Animals, Midland Management, LLC will take reasonable measures to protect the confidentiality of any information or documentation disclosed in connection with the requests. Such measures may include limiting access to such information to persons specifically designated to deal with requests for reasonable accommodations, who will disclose information only to the extent necessary to determine whether to grant the request, and keeping all written requests and accompanying documentation in a secure area to which only those designated persons have access, except as otherwise required by law.

¹ "Health or social service professional" means a person who provides medical care, therapy or counseling to persons with disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers.

² Under fair housing laws, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, is regarded as having such an impairment, or has a record of such an impairment.

A person with a disability may request a reasonable accommodation orally, but Midland Management, LLC may ask the person with the disability to complete an online form on Midland Management, LLC's third-party screener's website or Midland Management, LLC may ask the requestor to complete a paper "Form to Request An Assistance Animal" (attached to this Policy). If the requestor is unable to complete the request on the online form, he or she may submit a paper "Form to Request An Assistance Animal."

If the applicant requires assistance in completing the online or paper form, the Property Manager, on-site property caretaker, his or her designee, or Midland Management, LLC's third-party screener will provide assistance or will fill out the form based on an oral request. Midland Management, LLC is using the online or paper form to record reasonable accommodation requests so that it can obtain only the information necessary to make a reasonable accommodation decision and not obtain confidential information not needed to make a reasonable accommodation decision.

Once Midland Management, LLC receives the request for an assistance animal and, if applicable, additional verifying information, it will provide a response within fourteen days. If a request is denied, an explanation for the denial will be included in the written notification of denial. If a person with a disability believes that a request has been denied unlawfully or that the response is delayed unreasonably, he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
451 Seventh Street, SW
Washington, DC 20410
(800) 669-9777

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op/online-complaint

-or-

United States Attorney's Office-Western District of New York
Attn: Civil Rights-Fair Housing
138 Delaware Avenue
Buffalo, NY 14202

FORM TO REQUEST AN ASSISTANCE ANIMAL

The Federal Fair Housing Act and other state and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Midland Management, LLC and its employees, agents and designees are committed to granting reasonable accommodations when necessary to afford persons with disabilities the equal opportunity to use and enjoy a dwelling at any and all of their rental units.

Under fair housing laws, a person is entitled to a reasonable accommodation if he or she has a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities. The person also must show that he or she may need the accommodation because of the disability. Reasonable accommodations may include waiving or varying rules or policies to allow a resident to keep an assistance animal. An assistance animal is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support or other assistance that may be necessary to afford the person an equal opportunity to use and enjoy housing (“Assistance Animal”).

If you or someone associated with you has a disability and you believe that there is a need for an Assistance Animal as a reasonable accommodation at a property managed by Midland Management, LLC, please complete this form and, if applicable, the

verification from the health care provider,¹ and return them to Midland Management, LLC. Please check all items that apply and answer all questions. Midland Management, LLC will answer this request in writing within 14 days of receiving the request. All information provided to Midland Management, LLC in connection with this request will be kept confidential, except as otherwise required by law. If you require assistance in completing this form or are otherwise unable to submit the required documentation, please call the management office at (telephone number) for assistance or to make an oral request for a reasonable accommodation.

1. Do you require assistance filling out this form?

Yes No

If your answer is "Yes," and you do not have someone who can assist you, please ask [name and phone number] to assist you in filling out this form.

If your answer is "No," continue on to Question No. 2.

2. Today's Date:

3. I am (please check one):

The person who has a disability and is requesting an Assistance Animal.

If so, continue to Question 4.

A person making a request on behalf of or assisting the person with a disability who needs an Assistance Animal. Please fill out the information below:

¹ Your healthcare provider may complete this form or provide the requested information in any other written format.

Name of person filling out form:

Address:

Telephone number:

Relationship to person needing Assistance Animal:

4. Name of person with a disability for whom a reasonable accommodation is being requested:

Phone number:

Address:

5. Identify the species of animal for which you are making a reasonable accommodation request, e.g., "dog," "cat":

6. Provide the name and physical description (size, color, weight, any tag and/or license) of the animal for which you are making a reasonable accommodation request:

Signature of person making request

Date

Signature of person with disability

Date

Name: _____

DRAFT--SUBJECT TO FRE 408 AND DEPARTMENT OF JUSTICE APPROVAL
TO BE COMPLETED BY THE PHYSICIAN, PSYCHIATRIST, OR OTHER
HEALTH OR SOCIAL SERVICE PROFESSIONAL:

1. Please provide a statement verifying that the person has an impairment that substantially limits one or more of the person's major life activities.

2. Please state whether the animal is necessary for the person to have an equal opportunity to use and enjoy housing or alleviate one or more of the effects of the person's disability. If so, please explain how it helps.

Name: _____

Title: _____

Address: _____

Telephone: _____

Signature

Date

TO BE COMPLETED BY MANAGEMENT:

Form accepted by: _____

Signature

Date

ATTACHMENT B
Release

In consideration of the Consent Order entered in *United States of America v. Howitt-Paul Road, LLC d/b/a Greenwood Townhomes, et al.* (W.D.N.Y.), Civil Action No. 21-cv-01259 and of the payment of the sum of \$10,000 to me pursuant to that Consent Order, I, Oksana Dubilevskaya, hereby release the Defendants named in this action, their respective current and former directors, officers, insurers, administrators, trustees, employees, agents, and other representatives from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in the action as of the date of the entry of the Consent Decree. I fully acknowledge and agree that this release of Defendants shall be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

Dated:

Oksana Dubilevskaya