

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. TERRACE MANOR, LLC. <i>et al.</i> , Defendants.	Civil Action No.: 16-0007767 B
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CONSENT JUDGMENT AND ORDER

This matter comes before the Court on the joint motion of the District of Columbia, (“District”) and Defendants Terrace Manor LLC, Sanford Capital LLC, Oakmont Management Group LLC and Aubrey Carter Nowell (collectively “Defendants”), pursuant to SCR-Civil R. 68-1, for entry of this Consent Judgment and Order (“Consent Order”). The District and Defendants, (collectively, the “Parties”) agree to the relief set forth in this Consent Order, and the Court further finds that the entry of the Consent Order is in the public interest. This Consent Order resolves the District’s remaining claims in this matter as to the above identified Defendants, whom are the only remaining Defendants in this action.

I. THE PARTIES

1. Plaintiff District of Columbia is a municipal corporation empowered to sue and be sued and is the local government for the territory constituting the seat of the government of the United States. Pursuant to D.C. Code §§ 28-3814 and 28-3909(a)-(b), the Attorney General is authorized to bring legal actions seeking injunctive relief, consumer restitution, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

2. Defendant Terrace Manor LLC is a limited liability company organized under the laws of the state of Delaware and maintains a principal place of business at 7605 Arlington Road, Suite 250, Bethesda, Maryland 20814. Terrace Manor LLC is the former owner of the Terrace Manor Apartments ("Terrace Manor").

3. Defendant Sanford Capital LLC ("Sanford Capital") is a limited liability company organized under the laws of the state of Delaware and maintains a principal place of business at 7605 Arlington Road, Suite 250, Bethesda, Maryland 20814. Sanford Capital is a residential real estate development and investment firm based in Washington, D.C., and has an ownership interest in, and control over, Terrace Manor, LLC.

4. Defendant Oakmont Management Group LLC ("Oakmont") is a limited liability company organized under the laws of the state of Delaware and maintains a principal place of business at 7605 Arlington Road, Suite 250, Bethesda, Maryland 20814. Oakmont was responsible for the property management of the Terrace Manor Apartments and acts as the agent for Terrace Manor, LLC and Sanford Capital.

5. Defendant Aubrey Carter Nowell ("Nowell") is an owner, principle, founder and managing partner of Sanford Capital, Terrace Manor LLC, and Oakmont.

II. DEFINITIONS

6. "Consumer" shall include the definition contained in D.C. Code § 28-3901(a)(2) and for purposes of this Consent Order shall refer to any resident of the District of Columbia to whom Defendants have offered or sold rental housing accommodations.

7. "Habitable housing" for purposes of this Consent Order shall mean housing in compliance with the D.C. Housing Code (1 through 16 of Title 14 of the District of Columbia Municipal Regulations or Titles 12A-12L of the District of Columbia Municipal Regulations),

the D.C. indoor mold law (D.C. Code §§ 8-241.01-241.09), and regulations (20 DCMR §§3200-3299).

8. "Terrace Manor" shall refer to the Terrace Manor Apartments, which is comprised of 11 buildings with 12 discrete addresses: 2270 Savannah Street, SE; 2272 Savannah Street, SE; 2276 Savannah Street, SE; 3341 23rd Street, SE; 3343 23rd Street, SE; 3345 23rd Street, SE; 3347 23rd Street, SE; 3349 23rd Street, SE; 3351 23rd Street, SE; 3353 23rd Street, SE; 3371 23rd Street, SE; and 3373 23rd Street, SE.

III. PRIOR PROCEEDINGS

9. On October 24, 2016, the District filed a Petition and Complaint against Terrace Manor LLC, Sanford Capital, and Oakmont alleging violations of (i) the Tenant Receivership Act, D.C. Code §§ 42-3651.01, *et al.*, (ii) 14 DCMR § 101, and (iii) the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq.*

10. The District filed its First Amended Petition and Complaint on April 27, 2017 adding two individuals as Defendants: Aubrey Carter Nowell and Todd Fulmer.

11. The District's Petition and Complaint alleges that, during the time that Defendants have owned Terrace Manor, they have operated it in a manner that demonstrates a pattern and practice of neglect and complete disregard for the District's housing laws. The Petition and Complaint alleges that Defendants' conduct is grounds for the appointment of a receiver under the Tenant Receivership Act and that Defendants have violated the District's CPPA by engaging in unlawful and deceptive practices that misled consumers.

12. On March 30, 2017, Defendant Terrace Manor LLC, which held title to the Terrace Manor Apartments, filed for bankruptcy: *In re Terrace Manor*, LLC Case no. 17-00175

(Bk. D.D.C.). The District filed a claim in the bankruptcy related to its claims for restitution, costs and penalties under the CPPA in this case.

13. As a part of the Order confirming the bankruptcy plan, entered on September 27, 2017, the Parties agreed that the District would receive the sum of \$325,000 from the sale of the Terrace Manor Apartments in exchange for the resolution of the District's claims under the CPPA for restitution, costs, and penalties.¹

14. On December 4, 2017, the Court signed and entered a Consent Judgment and Order resolving the District's claims against Defendant Todd Fulmer.

15. The District's claims in this case under the Tenant Receivership Act subsequently resolved through the agreement of the subsequent purchaser of the Terrace Manor Apartments to a Court-approved abatement Plan.

16. The only remaining claims in this case are the District's CPPA claims for non-monetary relief against Defendants Terrace Manor LLC, Sanford Capital LLC, Oakmont Management Group LLC, and Aubrey Carter Nowell.

IV. APPLICATION

17. The provisions of this Consent Order shall apply to Defendant Nowell and his agents, employees and assigns, and any partnership, corporation or entity in which he either currently, or in the future, has an ownership interest, has authority to control, or has the authority to establish policy.

¹ On November 21, 2017, the Court issued an Order authorizing the District to distribute the proceeds of the settlement payment from the sale of the Terrace Manor Apartments as restitution to consumers harmed by Defendants.

18. The provisions of this Consent Order shall apply to Defendants Terrace Manor LLC, Sanford Capital, and Oakmont, and all persons or entities that they control or have the ability to control, including without limitation its principals, officers, directors, employees, agents, successors, assignees, affiliates, merged or acquired entities, or wholly owned subsidiaries, and all other persons acting in concert with Defendants Terrace Manor LLC, Sanford Capital, and Oakmont now and in the future.

V. **REPRESENTATIONS OF DEFENDANTS**

19. Defendants represent that they are taking all practicable steps to divest all ownership interest(s) in residential apartment properties in Washington, D.C.

VI. **INJUNCTIVE TERMS**

a. **General Prohibitions**

20. Defendants shall not engage in any act or practice in violation of the CPPA in connection with the offer or sale of any consumer good or service.

21. Defendants shall not make any representations that their goods or services have a certification or characteristic that they do not have.

22. Defendants shall not make any representations that their goods or services are of a particular standard or quality if in fact they are of another.

23. Defendants shall not make any oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers.

24. Defendants shall not make any misrepresentations concerning a material fact that have the tendency to mislead consumers.

25. Defendants shall not fail to state a material fact, the omission of which deceives or tends to deceive consumers.

26. Defendants shall not make any statements that mislead consumers concerning their willingness and ability to supply them with habitable housing.

27. Defendants shall not offer for rent any residential housing in the District of Columbia unless they are able to supply habitable housing to any prospective tenant.

b. Ownership of Residential Apartments in Washington, D.C.

28. Defendants shall divest all ownership interest(s) they have in any residential apartments in Washington, D.C. within six (6) months of the entry of this Order by the Court, subject to Paragraph 29 below.

29. To the extent Defendants are not able to divest all ownership interest(s) they have in any residential apartments in Washington, D.C., within six (6) months of the entry of this Order by the Court due to circumstances outside of their control, including, but not limited to, lack of control over properties due to foreclosure or compliance with District laws and regulations regarding the sale of property in Washington, D.C., Defendants shall:

- a. Cease any involvement in and control over the management or day-to-day operations at any residential apartment property in Washington, D.C., except for any otherwise required financial involvement to fund such operations;
- b. Hire and pay for a management company approved by the District to manage the day-to-day operations of any residential apartment property in Washington, D.C. covered by this Order until such time as it is sold, with the District agreeing in advance to the designation of Novo Management as a management company for purposes of this subparagraph;
- c. Continue their good faith efforts to divest any ownership interest(s) they have in any residential apartments in Washington, D.C.; and
- d. Submit to the Office of the Attorney General a sworn statement on the first day of each month (i) identifying each residential property in Washington, D.C. for which Defendants retains an ownership interest(s), and (ii) fully describing Defendants' ownership status in each property and all efforts undertaken to divest such ownership interest(s).

30. Defendants shall, for seven (7) years following the date of this Consent Order, not acquire any ownership interest(s) in any residential apartment properties in the District of Columbia that fall into any of the below categories:

- a. any residential apartment property that has any affordability covenants through the Low-Income Housing Tax Credit Program (LIHTC), the Department of Housing and Urban Development (HUD), or District of Columbia Department of Housing and Community Development (DHCD);
- b. any residential apartment property operated in the District of Columbia that has more than 10% of its tenants receiving a subsidy from the District of Columbia Housing Authority (DCHA), the District of Columbia Housing Finance Agency (DCHFA), DHCD or HUD; and
- c. any residential apartment property that participates in the District's Rapid Rehousing Voucher Program.

31. To the extent Defendants acquire any ownership interest(s) in any of the categories of residential apartment properties identified in paragraph 30 above after the seven (7) year period referenced in paragraph 30 above, Defendants shall provide the Office of Attorney General notice within fourteen (14) days of acquiring any such ownership interest(s). This notice shall be submitted to the Office of the Attorney General as a sworn statement identifying the property acquired and describing Defendants' ownership interest(s).

VII. ADDITIONAL TERMS

32. The District is entering this Consent Order based on the representation made by Defendants in paragraph 19 above. If the District uncovers evidence that Defendants' representation is materially false, Defendants agree that the District may seek to modify or rescind the terms of this Consent Order and/or take additional legal action against Defendants for injunctive relief.

33. Defendants shall not cause or encourage third parties, or knowingly permit third parties acting on its behalf, to engage in practices from which Defendants are prohibited by this Consent Order.

34. In entering into this Consent Order, the Parties are neither extinguishing any rights otherwise available to consumers, nor creating any right not otherwise available under the laws of the District of Columbia.

35. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate.

36. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

37. All notices under this Consent Order shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District:

Benjamin M. Wiseman
Assistant Attorney General
441 4th Street, N.W., Suite 600 South
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(202) 741-5226
Benjamin.Wiseman@dc.gov

For the Defendants:

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Abby A. Franke
Eccleston & Wolf, PC
1629 K Street, NW, Suite 260
Washington, DC 20006
(202) 857-1696
flint@ewdc.com
franke@ewdc.com

38. Any breach of the injunctive terms contained in this Consent Order shall be considered an unlawful trade practice that violates the CPPA.

39. Any failure by any party to this Consent Order to insist upon the strict performance by any other party of any of the provisions of this Consent Order shall not be deemed a waiver of any of the provisions of this Consent Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Consent Order.

40. If any clause, provision or section of this Consent Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

41. Nothing in this Consent Order shall be construed as relieving Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

42. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Consent Order or for any other purpose that would otherwise circumvent any part of this Consent Order or the spirit or purposes of this Consent Order.

43. The Parties may apply to the Court to modify this Consent Order by agreement at any time. Any party may apply to the Court, without the other party's agreement, to modify this Consent Order for good cause shown based on a substantial change in law or fact occurring after the date this Consent Order is entered.

CONSENTED TO FOR THE DISTRICT OF COLUMBIA:

KARL A. RACINE
Attorney General for the District of Columbia

JRA
Jimmy Rock
Assistant Deputy Attorney General
Public Advocacy Division

Ben Wiseman
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benjamin.wiseman@dc.gov

Dated: 4-26-18

CONSENTED TO INDIVIDUALLY AND FOR TERRACE MANOR LLC,
SANFORD CAPITAL LLC, OAKMONT MANAGEMENT GROUP LLC and
AUBREY CARTER NOWELL

A. Carter Nowell, signed by Abby Franke with authorization
Terrace Manor, LLC

A. Carter Nowell, signed by Abby Franke with authorization.
Sanford Capital, LLC

A. Carter Nowell, signed by Abby Franke with authorization
Oakmont Management Group, LLC

A. Carter Nowell, signed by Abby Franke with authorization
Aubrey Carter Nowell

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Dated: April 24, 2018

SO ORDERED AND ADJUDGED.

Judge John M. Mott
Superior Court Judge

Date: _____