

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

MARA B. KNIAZ, et al. *

Plaintiffs *

v. *

Civil Action No. 19-CV-01343-LO-IDD

KAY MANAGEMENT COMPANY, et al. *

Defendants *

* * * * *

PARTIAL JUDGMENT AGAINST DEFENDANTS BY CONSENT

Upon consideration of the Defendants Kay Management Company; Indian River Associates, LLC; Malibu Circle Associates Limited Partnership; Kay Jack et al.; Paxton Duke Associates Limited Partnership; and North Beauregard Associates Limited Partnership (“Defendants”) Motion for Partial Judgement by Consent, it is this 9th day of June, 2020 hereby ORDERED:

1. It is declared that the Defendants’ former policy of automatically rejecting all applicants with criminal convictions was inconsistent with the Virginia Fair Housing Law, VA Code Ann. § 36-96.3 and the Fair Housing Act, 42 U.S.C. § 3604, as interpreted in the 2016 statement from the Department of Housing and Urban Development: *Office of General Counsel Guidance on Application of FHA Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (the “HUD Guidance”).
2. Defendants and their officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with any of

them, shall not discriminate or retaliate against any person based on race, color, religion, national origin, disability, familial status, sex, or because a person has exercised rights protected by the Fair Housing Act, 42 U.S.C § 3601 *et seq.* or the Virginia Fair Housing Law, VA. CODE ANN. §§ 36–96 *et seq.*

3. Defendants are permanently enjoined as follows:
 - a. Defendants and their directors, officers, agents, and employees shall not publish, implement, or enforce their former Criminal Records Policy;
 - b. Defendants and their directors, officers, agents, and employees shall discontinue and revise their former Criminal Records Policy to reduce the adverse and disproportionate effect it causes on the basis of race and make it consistent with HUD Guidance;
 - c. Defendants and their directors, officers, agents, and employees shall take affirmative steps necessary to remedy the effects of any prior discriminatory conduct and to prevent additional instances of such conduct or similar conduct from occurring in the future, as proposed herein.
4. Effective March 1, 2020, and continuing without end date, Defendants shall implement the following policies and procedures regarding accepting or rejecting prospective tenants with a history of criminal convictions for all properties managed by Kay Management in all states.
 - a. Defendants will seek information¹ regarding applicants' criminal convictions solely for the following offenses:

¹ Defendants use a commercial product known as the CoreLogic CrimSafe software application to perform criminal background checks. Defendants must supply to CoreLogic the categories of

- i. Homicide related offenses – All categories of convictions in the past 12 years;
 - ii. Sex related offenses – Forcible
 - 1. Felony convictions in the past 12 years;
 - 2. Misdemeanor convictions in the past 5 years;
 - iii. Sex related offenses – Non-forcible (i.e., prostitution)
 - 1. Felony convictions in the past 5 years;
 - iv. Property Offenses - Destruction/Damage/Vandalism/Arson
 - 1. Felony convictions in the past 5 years;
 - v. Sex offender registrant - All categories of convictions in the past 25 years;
 - vi. Drug/Narcotics related offenses involving sale, distribution, or manufacturing
 - 1. Felony convictions in the past 10 years;
 - 2. Misdemeanor convictions in the past 5 years.
- b. If the background check reveals that a prospective tenant applicant has a conviction within the designated categories during the designated timeframe, the application will be passed to one of the Defendants’ five Regional Managers for review and decision. The Regional Manager will review the application pursuant to the HUD Guidance, focusing most heavily on felony convictions within the prior five -year period and making an individualized assessment of relevant mitigating information, including “the facts or

offenses sought and the software then returns information only if an applicant has a conviction in the specifically designated category and time period.

circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts.” The evaluation will be recorded in writing as to the information considered and basis for the final determination.

5. Effective March 1, 2020, and continuing without end date, Defendants shall take the following steps to notify the public of their Nondiscrimination Policy:
 - a. Prominently post at the rental offices a fair housing sign no smaller than ten (10) inches by fourteen (14) inches that indicates that all apartments are available for rent on a nondiscriminatory basis.
 - b. Include the words "Equal Housing Opportunity" and/or the fair housing logo in all rental advertising in newspapers, flyers, handouts, telephone directories, websites hosted, and other written materials; on radio, television, online, or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature, provided that this requirement does not compel Defendants to advertise in any of these media, but does require compliance with this provision whenever Defendants do so advertise. The words and/or logo shall be located on the first page or cover of any written advertising materials, and shall be easily readable.
 - c. Include at least the following phrase in the standard rental application and the standard rental agreement in boldface type, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status.

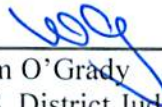
- d. Include on their rental application the following language:

Have you ever been convicted of a felony? A felony conviction will not automatically disqualify you from living here. Felony convictions will be evaluated on an individual basis considering the nature and severity of the conviction, and any other mitigating circumstances. If you have been convicted of a felony, we invite you to provide, as soon as possible, information concerning the facts and circumstances of the offense, including your age at the time, your history since the offense, rehabilitation efforts, and any other information you wish to provide. All decisions regarding criminal background are at the sole discretion of management in compliance with our established policies, and are made in accordance with all applicable fair housing laws. If you have questions, please ask us.

6. Effective March 1, 2020, and continuing without end date, Defendants shall ensure that all of their employees have received in-person training on Fair Housing law, using programs developed by Grace Hill, or other comparable reputable vendors, regarding Fair Housing law. The training will include the new Criminal Background Policy provided for under this Order. Defendants shall keep written records of the dates of the training and the names of all employees who have attended the training. Training for new and existing Regional Managers shall additionally include best practices for conducting individualized assessments.
7. Effective March 1, 2020, and continuing without end date, Defendants shall continue its existing program of training of new hires on Fair Housing law requirements and, to the extent the new hire is involved in the showing, renting, or managing of any dwelling unit, the Criminal Background Policy, as part of Defendants' regular onboarding and training process.
8. Effective March 1, 2020, and continuing without end date, Defendants shall maintain

records required herein for a period of three (3) years, including but not limited to documents relating to the application of its criminal background policy ordered here.

9. Effective immediately, the parties shall additionally comply with the terms set forth in a Settlement Agreement that the parties will enter.
10. This order hereby resolves the remainder of Civil Action No. 19-CV-01343-LO-IDD, and the case will be dismissed.
11. The Court will retain jurisdiction of this Consent Order to enforce the terms of this order for a two-year period from the date of entry of this Order.



Liam O'Grady
U. S. District Judge