

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL FAIR HOUSING ALLIANCE,

Plaintiff,

v.

EVOLVE, LLC, *et al.*,

Defendants.

Case No. 1:19-cv-1147 (TNM)

**CONSENT AGREEMENT AND INJUNCTION**

This Consent Agreement and Injunction (“Agreement”) is entered into by and among the National Fair Housing Alliance (“NFHA” or “Plaintiff”) and Evolve, LLC, Evolve Liberty Hall, LLC, The Fred, LLC, Evolve Warehouse, LLC and Christopher Swanson (collectively “Defendants”) (Plaintiff and Defendants collectively, the “Parties,” or individually a “Party”), and made effective as of the Effective Date (as defined in Section A).

**RECITALS**

WHEREAS, on April 22, 2019, NFHA filed a complaint in the U.S. District Court for the District of Columbia, case no. 1:19-cv-1147-TNM (hereinafter “Court Case”), alleging that Defendants’ policy of refusing to accept Section 8 vouchers (1) has the effect of perpetuating racial segregation in violation of the Fair Housing Act, *see* 42 U.S.C. § 3601 *et seq.*, (2) unlawfully discriminates against Black residents because of the policy’s disparate impact in violation of the Fair Housing Act, *see id.*, (3) unlawfully discriminates against Hispanic residents because of the policy’s disparate impact in violation of the Fair Housing Act, *see id.*, (4) unlawfully discriminates against female-headed households with children because of the policy’s disparate impact in violation of the Fair Housing Act, *see id.*, and (5) constitutes source

of income discrimination in violation of the D.C. Human Rights Act, D.C. Code § 2-1402.21(a)(1).

WHEREAS, Defendants deny the allegations in the Complaint and any discriminatory intent by the Defendants.

WHEREAS, on February 24, 2020, Parties conducted settlement negotiations before Magistrate Judge Deborah A. Robinson but failed to reach an agreement.

WHEREAS, on March 20, 2020, NFHA filed the First Amended Complaint, which added Evolve Liberty Hall, LLC and The Fred Hotel, LLC as defendants in the Court Case.

WHEREAS, on April 8, 2020, NFHA filed the Second Amended Complaint, which added Evolve Warehouse, LLC as a defendant in the Court Case.

WHEREAS, NFHA and Defendants seek to resolve the Court Case amicably and to avoid any additional litigation expenses.

THEREFORE, in consideration of the mutual promises, covenants, agreements, and other undertakings set forth herein, and for other good and valuable consideration outlined herein, the receipt and sufficiency of which are acknowledged, the Parties mutually agree; and

It is hereby **ORDERED, ADJUDGED, AND DECREED** that:

**A. DEFINITIONS**

In addition to the terms that are defined elsewhere and herein, the following terms shall have the following meanings:

1. "FHA" means the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*;
2. "DCHRA" means the D.C. Human Rights Act of 1977, as amended, Section 2-1402.21 *et seq.*;

3. "Effective Date" means the date on which NFHA and Defendants execute the Agreement;
4. "NFHA Claims" mean all actual claims raised by or on behalf of NFHA in the Court Case against Defendants on or before the Effective Date as defined above, including any claim for attorney's fees and costs incurred in connection therewith.

**B. SCOPE AND APPLICABILITY**

This Agreement applies to the NFHA Claims arising on or before the Effective Date.

**C. INJUNCTION AND NON-DISCRIMINATION POLICY**

1. Compliance with Injunctive Agreement: Defendants shall abide by the terms of the Injunctive Agreement in the D.C. Attorney General's case against Evolve, LLC, 2018 CA 008262 B (D.C. Superior Court).
2. Non-Discrimination Policy: Defendants must adopt an affirmative non-discrimination policy stating that Defendants shall not discriminate against current or prospective tenants nor adopt a policy that has a discriminatory effect on any of the bases prohibited by the DCHRA, including discrimination on the basis of source of income. Source of income includes the use of any voucher as payment for all or a portion of rent or security deposit payments at any property managed or owned, in whole or in part, by Evolve, LLC or Christopher Swanson in the District of Columbia.
3. Dissemination of Non-Discrimination Policy: Within sixty (60) days of the Effective Date, Defendants shall certify to NFHA that Defendants have (i) distributed the non-discrimination policy to all employees and agents under their control in the District of

Columbia, and (ii) that each employee and agent under Defendants' control in the District of Columbia has reviewed and agreed to abide by the terms of the non-discrimination policy.

4. Signage: Within sixty (60) days of the Effective Date, Defendants must create and display signage in (i) all rental properties managed or owned, in whole or in part, by Defendants in the District of Columbia, and (ii) any of Defendants' corporate offices in the District of Columbia, bearing the following statement in English and Spanish:

"The Barbara and all other properties owned by Evolve, LLC accept short-term or temporary subsidies and vouchers (including vouchers formerly known as Section 8 vouchers) as payment for all or a portion of rent or security deposit payments. Under the District of Columbia Human Rights Act, it is illegal to discriminate against a tenant or prospective tenant based on that individual's source of income, including the use of any short-term or temporary subsidy or voucher as payment for all or a portion of rent or security deposit payments.

La Barbara y todas las demás propiedades de Evolve, LLC aceptan subvenciones a corto plazo o temporales y cupones para vivienda (incluyendo cupones anteriormente conocido como cupón de Sección 8) como pagos de renta completos o parciales o como pagos hacia el depósito de seguridad. Bajo el Acto de Derechos Humanos del Distrito de Columbia, es ilegal discriminar contra un inquilino o un inquilino prospectivo basado en la fuente de ingresos de esa persona, incluyendo el uso de subvenciones a corto plazo o temporales y cupón para vivienda como pagos de renta completos o parciales y como pagos hacia el depósito de seguridad."

5. Affirmative Advertising: Within sixty (60) days of the Effective Date:
- a. Defendants must affirmatively state on all advertising for their rental properties in the District of Columbia that they "accept voucher holders," including advertising on any website, third-party platforms, print media, and any other advertising; and
  - b. Every time Defendants have a vacant unit, they must proactively advertise by the following means:



- i. Contact the D.C. Housing Authority to notify it of the vacant unit;
  - ii. Advertise the vacant unit in the D.C. Housing Authority's Housing Choice Program's vacancy listserv (or equivalent listing through the D.C. Housing Authority);
  - iii. Notify the following nonprofits of the vacant unit:
    1. Latino Economic Development Center;
    2. D.C. Urban League;
    3. ONE DC;
    4. Empower DC;
    5. Housing Counseling Services;
    6. Community of Hope; and
    7. Washington Legal Clinic for the Homeless.
6. Institutional Training: Within sixty (60) days of the Effective Date, all owners and employees of Evolve, LLC must attend fair housing training by the Equal Rights Center or D.C. Office of Human Rights. The training should cover federal and D.C. law, including the Housing Choice Voucher program and should be a minimum of three (3) hours of training. The Parties acknowledge that the COVID-19 crisis may preclude in-person training in the near-term. If it appears that an in-person training is not practical within the term of this agreement, Defendants may attend an online or telephonic training in lieu of in-person training.
7. Reporting: For at least one (1) year from the Effective Date, Defendants must submit to NFHA annual report(s) documenting:
  - a. Institutional Training: Evidence of attendance of the fair housing training requirement by this Agreement;
  - b. Advertisements: Copies of advertisements and the media through which those advertisements were disseminated;

- c. Application data: Number of applications received, number of those applications which were from voucher recipients, and outcome of the applications from voucher holders;
- d. Services: Documentation of any property management or tenant-led generator services used by Defendants for seeking tenants; and
- e. Third-Party Screening Services: The name of any third-party screening vendor used and a description of what services used.

Annual report(s) should be submitted on May 1 of each year beginning May 1, 2021.

Regardless of when payments are complete (see Section E on Monetary Payments),

Defendants shall make at least one report to Plaintiff.

#### **D. RELIEF FOR VOUCHER HOLDERS:**

1. Voucher Holder Priority: Defendants will give a preference to any voucher holder who is deemed "qualified" after third-party screening, subject to approval by the Office of Human Rights for the District of Columbia. *See* D.C. Code § 2-1402.53.<sup>1</sup> Being deemed "qualified" is a threshold matter. Providing a preference to voucher holders does not mean that Defendants will engage in a side-by-side comparison of each qualification factor and then only give a preference to voucher holders who are equal or superior in all qualifications. Rather, Defendants will give preference to any

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<sup>1</sup> In light of the procedures in place at the D.C. Office of Human Rights for approval of an affirmative action plan, the Parties enter into this Agreement before the Office of Human Rights has formally approved the terms of this Agreement as an affirmative action plan. By signing this Agreement, Defendants agree to work in good faith with Plaintiffs to formally submit the terms of this Agreement to the Office of Human Rights as an affirmative action plan. To the extent that the Office of Human Rights cannot approve a term of this Agreement as a part of the plan, Defendants will in work in good faith to adopt, as a substitute for that term, a substantially similar term intended to have the same effect on voucher holders.

qualified voucher holder when compared to any qualified non-voucher holder. NFHA may take steps to monitor Defendants' compliance with the Agreement, including but not limited to conducting fair housing tests of Defendants' practices at the Barbara and all other properties owned by Defendants in the District of Columbia.

2. Third-Party Screening Services: Defendants have disclosed the third-party screening services they use to screen tenants. If Defendants work with another third-party screening service, Defendants are required to disclose to Plaintiff the name of any additional screening services. NFHA may work independently with the screening service(s) used by Defendants to ensure it follows basic requirements under state and federal fair housing law. Defendants cannot use, or rely on a third-party vendor that uses, screening procedures or criteria that discriminate against protected classes, including any procedures or criteria that have a discriminatory effect on protected classes, including source of income. Under this Agreement, Defendants are on notice that many screening services use unlawful criteria, including but not limited to minimum income requirements and criminal history screenings that have an unlawful disparate impact or otherwise violate state and/or federal law. Defendants have the right to ask the third-party vendors they use to disclose the screening procedures and criteria used by those third-party vendors. Moreover, Defendants have the option of registering for services that allow Defendants to customize the procedures and criteria used by third-party vendors to avoid any unlawful practices, such as minimum income requirements or other requirements that have a disparate impact on voucher holders. To the extent that Defendants customize their screening criteria, NFHA

strongly recommends that Defendants expand the parameters of who is a “qualified” tenant to the broadest extent possible.

**E. MONETARY PAYMENT**

1. Monetary Payment: Defendants shall provide NFHA a monetary payment in the amount of \$120,000.00 (One Hundred Twenty Thousand U.S. Dollars) (“Settlement Proceeds”) to satisfy all monetary obligations arising from the Court Case.
2. Payment Increments:
  - a. Defendants will jointly make the initial \$10,000 payment to Plaintiff at the time of execution of this Agreement.
  - b. Defendants shall make the remaining \$110,000 payment to NFHA in monthly payments starting on the 15th day of the following month after the government of the District of Columbia lifts the existing eviction moratorium for rental units. Each payment shall be in the amount of \$10,000 each until the balance is paid.
  - c. Defendants shall make the payment by check, payable to the National Fair Housing Alliance, and shall send the check to the address: 1331 Pennsylvania Avenue NW, Suite 650, Washington, DC 20004.
  - d. NFHA agrees to complete and remit a W-9 to Defendants’ counsel, David H. Dickieson Esq. of Schertler & Onorato, LLP as a condition for payment of the Judgment Proceeds within 60 days of the Effective Date of the mutually acceptable Consent Agreement.

**F. RELEASES**

1. In consideration of this Consent Agreement, and except as otherwise provided herein, NFHA agrees to release Defendants, its insurer(s), and their predecessors or successors in interest, and all of their past and current directors, officers, employees, attorneys, agents, and assigns from the NFHA Claims, provided however, that this release shall not apply to the enforcement of this Agreement.
2. Upon the Court's approval of the mutually acceptable Consent Agreement on the public docket, Defendants will be authorized to file a Stipulation of Dismissal with Prejudice in Case No. 1:19-cv-1147-TNM before the U.S. District Court for the District of Columbia.
3. In consideration of this Consent Agreement, Defendants on behalf of themselves and their employees agree to release NFHA and all of its past and current directors, officers, employees, agents, attorneys, and assigns, from any and all claims which could have been brought on or before the Effective Date of this Agreement—including claims for damages, costs, attorney's fees, and injunctive relief—relating to the NFHA Claims, provided however, that this release shall not apply to the enforcement of this Consent Agreement.
4. NFHA provides advocacy and counseling to complainants who suspect they have experienced illegal housing discrimination, and nothing in this Agreement shall impair the rights of NFHA to provide such information, advocacy, and counseling to complainants.
5. Nothing in this Agreement releases Defendants from any liability for, after the Effective Date of this Agreement, using, or relying on a third-party vendor that uses,

screening procedures or criteria that have an unlawful discriminatory effect on protected classes, including voucher holders. This may include screening criteria such as the use of a minimum monthly income for voucher holders to rent or requiring a co-signer for voucher holders to rent.

**G. PUBLIC DOCUMENT**

The Agreement shall be a public document and shall not be subject to confidentiality restrictions.

**H. ENFORCEMENT AND DISPUTE RESOLUTION**

The Court shall retain jurisdiction over this matter until Defendants have satisfied the terms of this Agreement in full. If either Party believes that the other Party has failed to comply with a material provision of this Agreement, including the Injunction and Non-Discrimination Policy in Section C above, the complaining Party will make a good faith effort to resolve the dispute prior to resorting to Court action to enforce the Consent Agreement. However, in the event of an alleged failure by either Party to perform in a timely manner any material act required by this Agreement, or otherwise to act in accordance with any provision hereof, the other Party may seek to enforce this Agreement and Injunction and ask the 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. The prevailing Party shall be entitled to costs and reasonable attorney's fees.

## **I. OTHER PROVISIONS**

1. Entire Agreement: This Consent Agreement constitutes the entire agreement between the Parties on the matters addressed herein, and the Parties expressly agree that it supersedes and controls any and all prior communications, whether oral or written, between the Parties regarding the matters addressed herein.
2. Modification: This Agreement may be modified only by writing signed by the Parties.
3. Communication Among the Parties: All notices, demands, and other communications to be provided pursuant to this Agreement shall be in writing and sent by regular mail, postage prepaid or by Federal Express to the following persons and addresses (or other such persons or addresses as the Parties may designate from time to time in writing):
  - a. For NFHA:  
  
Morgan Williams, General Counsel  
National Fair Housing Alliance  
1331 Pennsylvania Avenue NW, Suite 650  
Washington, DC 20004
  - b. For Defendants:  
  
David H. Dickieson  
Schertler & Onorato, LLP  
901 New York Avenue NW, Suite 500W  
Washington, DC 20001
4. Waiver: Failure of any Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in performance or compliance with any terms of this Agreement.

5. Authority: Each signatory warrants that he or she is competent and possesses the full and complete authority to covenant to this Agreement on behalf of the Party that he or she represents.
6. Counterparts: This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]



Each Party has executed this Agreement as of the date set forth below.

Date: \_\_\_\_\_

National Fair Housing Alliance

By: \_\_\_\_\_

Name: Lisa Rice

Title: President & CEO

Date: 5.19.20

Evolve, LLC

By: 

Name: CHRISTOPHER SWANSON

TITLE: OWNER

Title: OWNER

Date: 5.19.20

Evolve Liberty Hall, LLC

By: 

Name: CHRISTOPHER SWANSON

Title: OWNER

Date: 5.19.20

The Fred Hotel, LLC

By: 

Name: CHRISTOPHER SWANSON

Title: OWNER

Date: 5.19.20

Evolve Warehouse, LLC


By: 

Name: CHRISTOPHER SWANSON

Title: OWNER

Date: 5.19.20

Christopher Swanson

By: 

Name: CHRISTOPHER SWANSON

Title: OWNER