

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
Montana Fair Housing, Inc.,)	
)	FHEO Case Numbers:
Charging Party,)	08-04-0056-8
)	08-04-0126-8
v.)	
)	
Brent Nelson; Bernard Nelson; BWN, LLC;)	
Ron Moat; and Donald E. Neraas, a sole)	
proprietorship,)	
)	
Respondents)	
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CHARGE OF DISCRIMINATION

JURISDICTION

On or about January 12, 2004, and April 14, 2004, Complainant Montana Fair Housing, Inc., filed complaints of discrimination with the United States Department of Housing and Urban Development (HUD) alleging that Brent Nelson, Bernard Nelson, and Ron Moat violated the Fair Housing Act (the Act) 42 U.S.C. §§ 3601, *et seq.*, by discriminating based on disability by failing to design and construct multifamily dwellings for first occupancy after March 13, 1991, in a manner required by the Act, 42 U.S.C. § 3604(f)(3)(C). On or about January 19, 2004, Complainant Montana Fair Housing, Inc., amended its complaint against Brent and Bernard Nelson to properly name the Respondents and to clarify the allegations of discrimination. On or about August 2, 2004, the Complainant amended its complaint to add Respondent Don Neraas Architecture and to clarify the allegations of discrimination. On or about March 22, 2005, the Complainant amended its complaint to add Respondent BWN, LLC. On or about August 19, 2005, Complainant amended its complaint to properly name Respondent Donald E. Neraas, a sole proprietorship.

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed.Reg. 13121), who has redelegate to the Assistant General Counsel for Fair Housing Enforcement (67 Fed.Reg 44234), the authority to issue such a Charge, following a

determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

By determination of reasonable cause of September 29, 2005, the Director of the Office of Fair Housing and Equal Opportunity for the Rocky Mountains, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on disability and has authorized and directed the issuance of this Charge of Discrimination.

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the aforementioned Determination of Reasonable Cause, Respondents Brent Nelson, Bernard Nelson, BWN, LLC, Ron Moat, and Donald E. Neraas, a sole proprietorship ("Respondent Neraas") are charged with violating 42 U.S.C. § 3604(f) as follows:

APPLICABLE LAW

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person.
42 U.S.C. § 3604(f)(2);
2. For purposes of 42 U.S.C. § 3604(f)(2), discrimination includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
 - a) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
 - b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
 - c) all premises within such dwellings contain the following features of adaptive design: i) an accessible route into and through the dwelling; ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; iii) reinforcements in bathroom walls to allow later installation of grab bars; and iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

42 U.S.C. § 3604(f)(3)(C).

3. As used in 42 U.S.C. § 3604(f)(3)(C) of the Act, “covered multifamily dwellings” are: a) buildings consisting of four or more units if such buildings have one or more elevators, and b) ground floor units in other buildings consisting of four or more units. 42 U.S.C. § 3604(f)(7).

SUBJECT PROPERTY/PARTIES

4. The subject property is located at 640 Lake Elmo Drive, Billings, Montana, and consists of one non-elevator building containing a total of 12 units.
5. The portions of the subject property covered by the Act are as follows:
 - a) 4 ground floor units (3 two-bedroom units and 1 three-bedroom unit), and
 - b) the public and common use areas of the subject property.
6. The building permits for the subject property were issued on or about July 3, 2002.
7. A building permit was issued for a 12-car garage on or about September 12, 2002.
8. A temporary certificate of occupancy was issued on April 4, 2003, to expire July 31, 2003.
9. Complainant Montana Fair Housing, Inc., is a nonprofit organization located in Missoula, Montana. The fair housing organization’s purpose and mission is to promote fair housing, eliminate discriminatory housing practices, and increase housing opportunities on a non-discriminatory basis.
10. According to the building permits, Respondents Brent Nelson and Bernard Nelson are the owners and contractors of the subject property. According to the county recorder, Brent Nelson recorded a warranty deed granting the property to BWN, LLC, on September 5, 2003. BWN, LLC, is a limited liability corporation incorporated under the laws of the state of Montana. Brent Nelson is the Registered Agent of BWN, LLC.
11. Respondent Neraas is an architect and was involved in the design of the subject property. Respondent Ron Moat has been employed by Respondent Neraas for approximately 20 years. Respondent Moat produced initial blueprint drawings for the subject property.

12. The plans that Respondents Neraas and Moat supplied to Respondents Brent and Bernard Nelson did not comply with the design and construction requirements set forth in the Act. 42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205(c).
13. The Respondents are jointly responsible for the design and construction of the subject property.

SUMMARY OF ALLEGATIONS

14. In June 2003, a representative of Complainant Montana Fair Housing, Inc., identified design and construction violations at the subject property during the course of conducting outreach and education in Billings. On or around June 3, 2003, after performing property and business searches and obtaining copies of building permits and certificates of occupancy, the Complainant went back to the subject property to assess its compliance with the Fair Housing Act.
15. On or around June 12, 2003, Complainant Montana Fair Housing, Inc., wrote a letter to Respondent Brent Nelson indicating potential deficiencies with the subject property, and provided copies of the federal and state fair housing laws and HUD's Accessibility Guidelines. Complainant Montana Fair Housing, Inc., completed two additional trips to view the subject property, during which it documented exterior violations.
16. In response to Complainant's filing of a Fair Housing Act complaint, HUD inspected the subject property on March 3-4, 2004, and found the following violations of 42 U.S.C. § 3604(f)(3)(C):
 - a) The public use and common use portions of the covered ground floor units were designed and constructed such that they are not readily accessible to, and usable by, handicapped persons, in violation of 42 U.S.C. § 3604(f)(3)(C)(i) of the Act. Specifically, the list of violations includes, but may not be limited to, the following: 1) due to split-level design of the subject property, and stairs leading down to the covered ground floor units, there are no accessible entrances to the covered units on an accessible route, and 2) the parking lot does not contain parking spaces designated as accessible.
 - b) The covered ground floor units at the subject property were designed and constructed such that not all doors allow passage into and within the unit by a person with a disability, in violation of 42 U.S.C. § 3604(f)(3)(C)(ii) of the Act. Specifically, the list of violations includes, but may not be limited to the following: 1) the patio doors are not sufficiently wide to allow passage by a person in a wheelchair; 2) the doors to the master

bathrooms are not sufficiently wide to allow passage by a person in a wheelchair; and 3) the front doors and all doors within the units (except the patio doors) use knob hardware.

- c) The covered ground floor units at the subject property were designed and constructed such that certain features of adaptive design violate 42 U.S.C. § 3604(f)(3)(C)(iii) of the Act. Specifically, the list of violations includes, but may not be limited to the following: 1) entrances to the kitchens in the two-bedroom units are not sufficiently wide for passage by a person in a wheelchair, and 2) the bathrooms in certain units do not provide enough clear floor space to be accessible to, or usable by, persons in wheelchairs.

17. By failing to design and construct the subject property in accordance with 42 U.S.C. § 3604(f)(3)(C) of the Act, the Respondents discriminated against the Complainant in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability. 42 U.S.C. § 3604(f)(2).

18. Because of the Respondents' discriminatory conduct, Complainant Montana Fair Housing, Inc., has suffered damages including diversion of resources and frustration of mission. Complainant has diverted organizational resources to investigate the alleged violation, to notify Respondents of the potential violation, to provide information to Respondent concerning design and construction accessibility requirements, to prepare and file the subject complaint, and to make two presentations to raise awareness of the design and construction requirements of the Act in the surrounding community, one to Billings area housing providers and the other to persons with disabilities. In addition, Complainant expended resources when making three trips to the property, which is 350 miles away from the organization's office, to assess exterior violations.

II. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents Brent Nelson, Bernard Nelson, BWN, LLC, Ron Moat, and Donald Neraas with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(2) and 42 U.S.C. § 3604(f)(3)(C) of the Act, and prays that an Order be issued that:

1. Declares that the discriminatory housing practices of the Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*, and that the Respondents are jointly and severally liable;

5. Awards such damages as will fully compensate Complainant Montana Fair Housing, Inc., for its damages, including diversion of resources and frustration of mission, pursuant to 42 U.S.C. § 3612(g)(3); and
6. Assesses a civil penalty against each of the Respondents for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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Date: **SEPTEMBER 29, 2005**