

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)	
Fair Housing of the Dakotas,)	
)	FHEO Case Numbers:
Charging Party,)	08-04-0207-8
)	08-04-0208-8
v.)	
)	
Equity Homes, Inc., PBR, LLC,)	
JSA Consulting and Engineering, and)	
Jade, Inc., a necessary party,)	
)	
Respondents.)	
_____)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about July 6, 2004, Complainant Fair Housing of the Dakotas (then known as North Dakota Fair Housing Council, Inc.) filed complaints of discrimination with the United States Department of Housing and Urban Development ("HUD") alleging that Respondents Equity Homes, Inc., and PBR, LLC, violated the Fair Housing Act ("Act"), 42 U.S.C. §§ 3601-19, by discriminating based on handicap 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 August 10, 2005, Complainant amended the complaint to reflect Complainant's new name, i.e., Fair Housing of the Dakotas, to add JSA Consulting and Engineering as a Respondent and to clarify allegations. On or about July 18, 2008, the complaint was again amended to add Jade, Inc. as a Respondent.

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, who has redelegated to the Assistant General Counsel for Fair Housing Enforcement, 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. 67 Fed. Reg. 44234 (July 1, 2002); 54 Fed. Reg. 13121 (Mar. 30, 1991).

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.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents Equity Homes, Inc., PBR, LLC, and JSA Consulting and Engineering, are charged with violating 42 U.S.C. § 3604(f) as described below. Respondent Jade, Inc. is named as a necessary party to this litigation.

1. It is unlawful to discriminate in the rental of, or to otherwise make unavailable or deny, a dwelling to any renter because of a disability of that renter, a person residing in or intending to reside in that dwelling after it is rented or made unavailable, or any person associated with that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

2. It is unlawful to 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 a handicap of that person, a person residing in or intending to reside in that dwelling after it is so rented or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

3. For purposes of 42 U.S.C. §§ 3604(f)(1) and (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:

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) 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

(iii) 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); 24 C.F.R. § 100.205.

4. As used in 42 U.S.C. § 3604(f)(3)(C), “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).
5. East Briar Estates (“the subject property”) is located at 4700, 4704, 4708 and 4712 E. 15th St. and 4701, 4705, 4709 and 4711 E. Clark St., Sioux Falls, South Dakota. It consists of four two-story, non-elevator buildings containing a total of 32 rental apartments. The subject property is a covered multifamily dwelling as defined by the Act, 42 U.S.C. § 3604(f)(7).
6. The building permits for the subject property were issued after March 13, 1991, and the certificates of occupancy were issued on or about June 25, 1996.
7. Complainant Fair Housing of the Dakotas is a nonprofit organization, with offices located in Bismark, North Dakota. Complainant’s purpose and mission is to prevent and eliminate illegal housing discrimination in North Dakota and South Dakota. Complainant is an aggrieved person as defined by 42 U.S.C. § 3602(i).
8. Respondent Equity Homes, Inc., with offices located at 4208 West 38th St., Sioux Falls, South Dakota, built the subject property.
9. Respondent PBR, LLC, with offices at 2520 E. Orchard Trail, Sioux Falls, South Dakota, developed the subject property and owned it during its construction.
10. Respondent JSA Consulting and Engineering, with offices at 3700 South West Avenue, Sioux Falls, South Dakota, designed the site plans for the subject property.
11. Respondents Equity Homes, Inc., PBR, LLC, and JSA Consulting and Engineering are jointly responsible for the design and construction of the subject property.
12. Respondent Jade, Inc., with offices located at 18408 Beals Chapel Rd., Lenoir City, Tennessee, is the current owner of the subject property and is a necessary party to obtain relief.
13. In or about 2004, consistent with its mission, Complainant received and investigated information that certain covered multifamily dwellings in Sioux Falls, South Dakota, including the subject property, failed to comply with the Act’s design and construction requirements. Complainant’s investigation revealed that several aspects of the subject property were inaccessible to persons with disabilities. Complainant has expended funds and staff time on this matter that could have been spent working in other areas such as educational activities, counseling, referral services, and enforcement activities.

14. In response to Complainant's filing of the above-referenced complaint, HUD inspected the subject property and found that it failed to meet the following requirements of 42 U.S.C. § 3604(f)(3)(C):

a. The subject property's public use and common use portions are not readily accessible to and usable by handicapped persons, as required by 42 U.S.C.

§ 3604(f)(3)(C)(i). Specifically, the sidewalks along the buildings, which serve as the route from parking to the building entrances, have cross slopes that exceed 2% and many abrupt level changes and gaps, including at the front stoops to the buildings; a curb ramp is excessively sloped; building entrance doors require a force greater than 8.5 pounds to open, ranging up to 19 pounds at one entryway. In addition, there is no continuous accessible pedestrian route from the covered units to the public sidewalk on 15th Street. There are garages but none are accessible. There is insufficient clear floor space at the mailboxes (which are located in the common vestibules) to allow a person using a wheelchair to retrieve his/her mail. The mailboxes are also too high to be reached by a person using a wheelchair (above 54"). Moreover, the door to the laundry room has a knob door handle, rather than accessible lever hardware.

b. All doors designed to allow passage into and within all premises in the dwellings are not sufficiently wide to allow passage by handicapped persons in wheelchairs, as required by 42 U.S.C. § 3604(f)(3)(C)(ii). Specifically, the walk-in closet in the hallway of the ground-floor units has a clear width opening of less than 30".

c. The subject property lacks the following features of adaptive design, as required by 42 U.S.C. § 3604(f)(3)(C)(iii):

(i) an accessible route into and through the dwelling, 42 U.S.C. § 3604(f)(3)(C)(iii)(I). Specifically, the unit entrance doors on the vestibule side have an abrupt level change of one inch; the patio door thresholds are too high and are not beveled; and the level change at the carpet transition strip at the bathrooms and kitchens is too high and unbeveled.

(ii) electrical outlets in accessible locations, 42 U.S.C. § 3604(f)(3)(C)(iii)(II). Specifically, the outlets in the living rooms and bedrooms are too low and outlets in the kitchen are located too close to the countertop corner to be accessible.

(iii) reinforcements in bathroom walls to allow later installation of grab bars, 42 U.S.C. § 3604(f)(3)(C)(iii)(III). The plans do not provide for such reinforcements.

(iv) usable bathrooms such that an individual in a wheelchair can maneuver about the space, 42 U.S.C. § 3604(f)(3)(C)(iii)(IV). There is insufficient maneuvering space at the bathroom sinks for use by a person in a wheelchair.

15. By failing to design and construct the subject property in accordance with 42 U.S.C. § 3604(f)(3)(C), Respondents discriminated in the rental of, or to otherwise made unavailable or denied, dwellings to renters because of the handicap of that renter, a person residing in or intending to reside in that dwelling after it is rented or made unavailable, or any person associated with that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).

16. By failing to design and construct the subject property in accordance with 42 U.S.C. § 3604(f)(3)(C), Respondents discriminated in the terms, conditions, or privileges of rental of dwellings, or in the provision of services or facilities in connection with such dwellings, because of handicap. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

17. Because of Respondents' discriminatory conduct, Complainant has suffered damages including diversion of resources and frustration of mission. Complainant has diverted organizational resources to investigate the alleged violation. Respondents' discrimination has frustrated Complainant's efforts to achieve equal housing for the residents of South Dakota.

III. 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), hereby charges Respondents Equity Homes, Inc., PBR, LLC, and JSA Consulting and Engineering with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(C) and prays that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(c), and that Respondents are jointly and severally liable;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of handicap against any person, in violation of the Fair Housing Act;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, to bring the covered ground floor units and public use and common use areas into compliance with 42 U.S.C. § 3604(f)(3)(C), including providing reasonable compensation to the owners and tenants of the subject property for inconvenience caused by, and other expenses related to, such retrofitting;

4. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act;
5. Awards such damages as will fully compensate Complainant 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 of \$16,000 against each Respondent for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671.

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

Respectfully submitted on this 30th day of September, 2008,



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