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 Complainant Metropolitan St. Louis Equal Housing Opportunity Council,	)	
Charging Party,	)	
v.	)	FHEO No.: 07-11-0533-8
H & H Development Group, Inc.; Larry D. Nelson; McBride & Son, Contracting Co., Inc., d/b/a Builder's Bloc; Fribis Engineering, Inc; and Pine Creek Engineering, Inc.	)	
Respondents.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about April 18, 2011, Complainant Metropolitan St. Louis Equal Housing Opportunity Council ("EHOC"), timely filed a complaint with the U.S. Department of Housing and Urban Development ("HUD"). The complaint was amended on August 19, 2011, and August 3, 2012, to add and remove Respondents and clarify the allegations. The amended complaint alleges Respondents H & H Development Group, Inc. ("H & H"); Larry D. Nelson ("Nelson"); McBride & Son Contracting Co., Inc., d/b/a Builder's Bloc ("McBride"); Fribis Engineering, Inc. ("Fribis"); Trumpet Land Services, LLC; and Pine Creek Engineering, Inc. ("Pine Creek"), violated the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq*. (2012) (the "Act"), based on disability[1] by failing to design and construct multifamily dwellings for first occupancy after March 13, 1991, in compliance with 42 U.S.C. § 3604(f)(3)(C).

The Act authorizes the Secretary of HUD to issue 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.

[1] The Charge of Discrimination will use "disability" in the place of "handicap," the term which appears in the Fair Housing Act. The terms have the same legal meaning.

§ 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has redelegated the authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

On behalf of the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO"), the FHEO Regional Director of Region VII determined on September 27, 2012, that reasonable cause exists to believe a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause[2], Respondents H & H, Nelson, McBride, Fribis and Pine Creek are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, or 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)(A); 24 C.F.R. § 100.202(b).

2. For purposes of 42 U.S.C. § 3604(f)(2)(A), it is unlawful to fail 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 disabled persons;

   b) all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled 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); 24 C.F.R. § 100.205.

3. Pursuant to 42 U.S.C. § 3604(f)(3)(C), "covered multifamily dwellings" are: a) buildings consisting of 4 or more units if such buildings have one or more elevators; and b) ground floor units in other buildings consisting of 4 or more units. 42 U.S.C. § 3604(f)(7); 24 C.F.R. § 100.201.

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[2] In the Determination, HUD concluded there was no reasonable cause to believe that Trumpet Land Services, LLC, contributed to the violations of the Act and the entity is not a party to this Charge.

B. Parties and Subject Property

4. The subject property, Valle Creek Condominiums, is located in Pevely, Missouri with a mailing address of: 8011 Valle Creek Parkway, Barnhart, Missouri 63012.[3] The subject property consists of one (1) three (3) story building containing a total of thirty-six (36) units with no elevators. There are twelve (12) units on each floor and three (3) breezeways with stairwells providing access to the units. The ground floor units are designated as units 100 through 111. At the time of the investigation, seven (7) of the twelve (12) ground floor units were owner-occupied. The remaining unoccupied ground floor units are owned by Respondent H & H.

5. The subject property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20. The 12 ground floor units are "covered multifamily dwellings" as defined by the Act. 42 U.S.C. § 3604(f)(7); 24 C.F.R. § 100.201.

6. The public and common use areas at the subject property include building entrances, sidewalks, parking areas, curb ramps, trash dumpsters, mailbox units, a clubhouse and a swimming pool.

7. The building permits for the subject property were issued by the city of Pevely, Missouri ("City") between March 6, 2007 and August 23, 2007. The first Certificate of Occupancy Inspection was issued by the City on February 27, 2008. The last Certificate of Occupancy Inspection was issued by the City on June 22, 2010.

8. Complainant EHOC is a private, not-for-profit fair housing enforcement agency located in St. Louis, Missouri. Complainant EHOC's mission is to ensure equal access to housing and places of public accommodation for all people. Complainant EHOC seeks to further its mission through education, counseling, investigation and enforcement activities.

9. Complainant is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

10. Respondent H & H is the owner, developer and general contractor for the subject property. Roy Holley and Don Houska are the officers and directors of Respondent H & H. Respondent H & H was incorporated in the state of Missouri, but was administratively dissolved by the Secretary of State on October 17, 2011, for failing to maintain a registered agent.

11. Respondent Larry D. Nelson was the architect who designed the plans of the 36-unit building and a never built, 24-unit building of the subject property. Respondent Nelson was also the architect of record for the clubhouse at the subject property although he did not prepare plans for the clubhouse.

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[3] While the subject property has a Barnhart mailing address, the property is legally located in the city of Pevely, Missouri.

12. Respondent McBride provided trade subcontracting services and participated substantially in the construction of the subject property which involved performing concrete and foundation work including the breezeways and patios, flat work and carpentry work using the architectural plan and/or field modifications provided by Respondent H & H. Respondent McBride is incorporated in the state of Missouri.

13. Respondent Fribis is the civil engineer that provided the site plans and design details for the subject property. Respondent Fribis is incorporated in the state of Missouri.

14. Respondent Pine Creek was the mechanical and electrical engineer that provided the design plans for the electrical, plumbing, heating, ventilation and air conditioning systems for the subject property. Respondent Pine Creek was incorporated in the state of Missouri but was administratively dissolved by the Missouri Secretary of State on July 18, 2007, for failing to file an annual report.

C. Factual Allegations

15. Complainant EHOC conducted an accessibility survey of the Valle Creek Condominiums after learning of the multifamily housing development during a review of an Analysis of Impediments for Jefferson County, Missouri. The survey was not in response to a complaint or an audit conducted in the normal course of business.

16. On or about September 28, 2010, Complainant EHOC's tester traveled to the subject property, which is 30 miles away from the organization's office, to conduct the accessibility survey. Upon arriving at the subject property, the tester spoke with the builder's representative who was working in the clubhouse/office and requested to view a unit. During the tour of the subject property, the tester observed barriers to accessibility in two of the ground floor units, Units 108 and 109. The tester also found accessibility barriers in the public and common use areas (clubhouse, mailbox units, parking areas) of the subject property. The tester took measurements and photographs of the affected areas.

17. After conducting additional research, Complainant EHOC filed a housing discrimination complaint with HUD on April 18, 2011, alleging the subject property did not comply with the design and construction requirements of the Act.

18. On or about July 21, 2011, HUD conducted an on-site accessibility review at the subject property that revealed noncompliance with the Act's requirements.

19. On April 13, 2012, HUD contracted with an architect to conduct an on-site visit of the subject property and to review the architectural and site plans for the subject property for the purpose of assessing compliance with the Act's design and construction requirements.

20. On May 15, 2012, the architect conducted an accessibility review at the subject property inspecting the display unit, Unit 108, a vacant unit, Unit 110, and the public and common use areas including the building entrances, sidewalks, parking areas, curb ramps, trash dumpsters,

mailbox units, the exterior of the clubhouse[4] and the swimming pool. The architect also reviewed Respondent Nelson's architectural plans, Pine Creek's mechanical and engineering plans, and Fribis' site plans.

21. The architect's report dated August 7, 2012, concluded the subject property does not comply with the Act's design and construction requirements.[5] The architect further concluded the architectural, engineering and site plans did not fully reflect the accessibility requirements of the Act and in some instances the construction did not match the plans.

22. The public and common use areas of Valle Creek Condominiums are not readily accessible to and usable by disabled persons, as required by 42 U.S.C. § 3604(f)(3)(C)(i). Specifically, the inaccessible features include but may not be limited to the following: (a) there are no accessible building entrances on an accessible route; (b) the parking areas are not marked or identified for accessible parking; (c) the route from the parking lot to the east entrances to the center and south stairwells for the building contains one step up from the sidewalk; (d) a concrete ramp to the north stairwell at the east side of the building has a slope of approximately 9%; (e) there are noncompliant curb ramps installed in the parking areas; (f) the stairwells from the first to the second floor on the route to the entrance of the covered units do not have guardrails or barriers; (g) there is a 5 inch step at each of the three entrances of the clubhouse; (h) the entrance to the swimming pool is not accessible due to a fence and gate system with a noncompliant latching device; (i) the trash dumpsters are not accessible or on an accessible route; and (j) the mailbox units do not contain the required wheelchair turning space, and a concrete curb restricts the unobstructed forward and side reach to the mailbox units.

23. All doors are not designed and constructed to allow passage into and within all premises within the covered multifamily dwellings of Valle Creek Condominiums by disabled persons in wheelchairs, as required by 42 U.S.C. § 3604(f)(3)(C)(ii). Specifically, the violations include but may not be limited to: (a) the primary entrance door of the covered units is noncompliant due to a non-beveled ¾ inch high threshold, a lack of required maneuvering clearance at the latch approach/push side, and knob style door hardware; and (b) the sliding glass patio doors (secondary exterior doors) of the covered units are noncompliant due to a 1 inch high threshold and a 30 inch wide door opening that does not meet the 32 inch minimum requirement.

24. The covered multifamily dwellings at Valle Creek Condominiums lack certain features of adaptive design required by 42 U.S.C. § 3604(f)(3)(C)(iii). Specifically, the violations include but may not be limited to:

    a. Valle Creek Condominiums lack an accessible route into and through the dwellings, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). The door thresholds are not beveled for the primary entrances; and an accessible route through the kitchen is not provided because the distance between the counter and wall is only 27½ inches.

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[4] Access to review the interior of the Clubhouse was not available.

[5] The architect also reviewed additional site plans of Respondent Fribis received by HUD on September 20, 2012.

b. The thermostats in the covered multifamily dwellings are not located in accessible locations, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(II). The thermostats are too high, at 66½ inches above the finished floor.

c. Valle Creek Condominiums lack usable kitchens such that an individual in a wheelchair can maneuver about the space, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(IV). A clear floor space of 30 inches by 48 inches centered on the sink in the kitchen is not provided. Also, the distance between the kitchen counter and the wall is less than the 40 inch minimum requirement.

D. Legal Allegations

25. By failing to design and construct Valle Creek Condominiums in accordance with 42 U.S.C. § 3604(f)(3)(C) of the Act, Respondents discriminated against Complainant EHOC in the terms, conditions, or privileges of the 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)(A) and (f)(3)(C); 24 C.F.R. §§ 100.202(b) and 100.205.

26. As a result of Respondents' actions, Complainant EHOC has suffered actual damages, including diversion of resources and frustration of mission. Complainant EHOC has diverted organizational resources to test, investigate, and research the subject property. Complainant EHOC also expended resources preparing and filing the complaint with HUD. The diverted organizational resources could have been used to maintain the activities of the agency's normal workload and mission that includes ensuring all people of equal access to housing through education, counseling, investigation and enforcement.

III. CONCLUSION

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

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate Sections 3604(f)(2)(A) and (f)(3)(C) of the Act, 42 U.S.C. §§ 3601 *et seq.*;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from discriminating because of disability against any person in any respect of the sale or rental of a dwelling;

3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them to bring the covered multifamily dwellings and the public and common use areas of Valle Creek Condominiums into compliance with 42 U.S.C. § 3604(f)(3)(C);

4. Awards such monetary damages as will fully compensate Complainant EHOC for its damages, including diversion of resources and frustration of mission, caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and

5. Assesses a civil penalty against each Respondent for each violation of the Act that they are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671.

6. Awards any additional relief as may be appropriate, pursuant 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this day _____ of _____, 2012.

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