

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.)	
Charging Party,)	HUD ALJ No.
)	FHEO No. 08-12-0122-8
v.)	
)	
Anthony Boote, Red Dog Construction, LLC,)	
and Charles J. Chandler)	
Respondent.)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about March 21, 2012, the complainant, Montana Fair Housing, Inc. (“Complainant” or “Complainant MFH”), filed a verified complaint with the United States Department of Housing and Urban Development (“HUD Complaint”), alleging that Respondents Anthony Boote (“Respondent Boote”), Red Dog Construction, LLC (“Respondent Red Dog”), and Respondent Charles J. Chandler (“Respondent Chandler”) violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the “Act”), based on disability,¹ by failing to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in a manner required by the Act.

The Act authorizes the issuance of a charge of discrimination 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 re-delegated to the Regional Counsel, 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. 24 C.F.R. §§ 103.400, 103.405; 76 Fed. Reg. 42463, 42465 (July 18, 2011).

¹ This charge uses “disability” in place of “handicap,” the term which appears in the Fair Housing Act. The terms have the same legal meaning.

The Office of Fair Housing and Equal Opportunity Region VIII Director, 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 THIS CHARGE

Based on HUD's investigation of the allegations contained in the HUD Complaint and Determination of Reasonable Cause, Respondents Anthony Boote, Red Dog Construction, LLC, and Charles J. Chandler (collectively "Respondents") are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter; a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1).
2. 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 disability of that person; a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(2).
3. It is unlawful discrimination under 42 U.S.C. Sections 3604(f)(1) and (2) 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 persons with disabilities;
 - b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities who use 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).

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

B. Subject Property and Parties

5. The subject property is a five-unit multifamily building consisting of three two-story townhomes (Units A, B, and C), a single-story, below-grade, one-bedroom unit (Unit D), and a single-story, below-grade studio unit (Unit E), located at 215 Inez Street, Missoula, Montana 59801.
6. The subject property’s two single-story, below-grade units, Unit D and Unit E, constitute ground floor units, or “covered multifamily dwelling[s]” under the Act. They are also “dwellings” as defined by the Act. 42 U.S.C. § 3602(b). As covered multifamily dwelling units they must meet the accessibility requirements of the Act.
7. The building permit for the subject property was issued on August 2, 2011. A certificate of occupancy for Units A-D was issued by the City of Missoula on February 8, 2012.
8. Complainant MFH is a Montana non-profit corporation, whose organizational purposes are to promote equal housing opportunities and eliminate illegal housing discrimination throughout the State of Montana. In furtherance of its mission, Complainant MFH provides fair housing services including, but not limited to, education, outreach, and investigation of compliance with applicable laws. Complainant MFH maintains a list of accessible dwellings available for persons with disabilities throughout Montana.
9. Complainant MFH is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).
10. Respondent Boote is the owner of record of the subject property.
11. Respondent Red Dog, a Montana limited liability company, was the general contractor responsible for the design and construction of the subject property.
12. Respondent Chandler designed the subject property as part of his duties for Respondent Red Dog.

C. Factual Allegations

13. On or about September 5, 2011, Complainant MFH received information that multifamily units were being constructed at 215 Inez Street in Missoula, Montana. Thereafter, Complainant MFH reviewed the building permit for the subject property.
14. On or about September 6, 2011, Complainant MFH mailed information to Respondent Red Dog and Respondent Boote, advising both parties of the design and construction accessibility requirements contained in the Act.
15. On or about January 11, 2012, Complainant MFH conducted an initial review of the subject property. Complainant MFH noted that the subject property had several possible deficiencies in compliance with accessibility requirements; specifically, Complainant MFH noted that the only means of accessing the basement units was via a staircase, and that the exterior door hardware consisted of "twist door knobs." Based on these observations, Complainant MFH initiated an investigation into the design and construction of the subject property.
16. On or about February 17, 2012, Complainant MFH conducted a follow-up site review of the subject property. Complainant MFH took pictures to document the possible violations that it had observed during the January 2012 site review: the staircase to the basement units and the exterior twist door knobs. Complainant MFH also went to the City of Missoula to try to obtain the design documents for the subject property.
17. After the filing of the Complaint on or about March 21, 2012, the Department reviewed site plans for the subject property submitted by Respondents. The site plans showed the subject property was originally designed to consist of four units with no elevators. The four units consisted of three two-story townhome units ("Unit A", "Unit B", and "Unit C") and one single-story, below-grade, one-bedroom unit ("Unit D").
18. On June 12, 2012, HUD investigators conducted a site inspection of the subject property. The site inspection revealed that the Respondents had created an additional one-story, below-grade unit ("Unit E") that was not part of, or identified on, the site plan for the subject property. At the time of the HUD on-site visit, the subject property consisted of five units with no elevators. There were three two-story townhome units and two below-grade, single-story units.
19. The only way to access the single-story, below-grade units (Units D and E), is down a fourteen-step staircase. There is also an additional step up from the sidewalk to the staircase.
20. The door hardware on the exterior side of the entry doors to both Unit D and E is twist-knob.

21. The openings of several interior doors in Unit D measure less than the required 32-inch nominal clear width when the door is open 90 degrees. The bathroom, bedroom, and kitchen pantry door openings measure approximately 29 inches, 29 inches, and 26 inches, respectively. The bathroom door opening in Unit E measures approximately 29 inches—less than the 32-inch nominal clear width when the door is open 90 degrees.
22. The thermostats in both Unit D and E are located approximately 58 inches above the floor.
23. The bathrooms in both Unit D and E do not have reinforcement in the walls to permit the later installation of grab bars.
24. The bathroom in Unit E also does not have a 30 inch by 48 inch clear space adjacent to the shower stall or toilet. The front of the toilet, which is directly adjacent to the shower stall, is approximately 27 ½ inches from the wall.
25. As a result of Respondents' discriminatory conduct, Complainant has suffered actual damages, including the frustration of its mission to achieve equal housing opportunities and diversion of its resources. Respondents' discriminatory conduct denied rental-housing opportunities to individuals with disabilities. Further, Complainant expended time and resources to counteract and investigate Respondent's discriminatory conduct.

D. Fair Housing Act Violations

26. By failing to design and construct multifamily dwellings in accordance with Section 804(f)(3)(C) of the Act, Respondents made housing unavailable because of disability in violation of Section 804(f)(1) of the Act. 42 U.S.C. § 3604(f)(1).
27. Respondents violated Section 804(f)(2) of the Act by discriminating in the terms, conditions, or privileges of the sale or rental of the subject property when they failed to design and construct covered multifamily dwellings at the subject property in accordance with Section 804(f)(3)(C) of the Act. 42 U.S.C. § 3604(f)(2).
28. Respondents failed to design and construct the covered ground floor units at the subject property in accordance with 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(c). Specifically, the violations include, but are not necessarily limited to, the following:
 - a. The public and common use portions of the subject property are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i) and 24 C.F.R. § 100.205(c)(1). Both Unit D and E lack an accessible route, as the only access to both units is via 15 stairs.

- b. The door hardware on the exterior side of the primary entry doors to Unit D and E are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i) and 24 C.F.R. § 100.205(c)(1).
- c. The interior doors of both Unit D and E are not sufficiently wide to allow passage within the premises by an individual in a wheelchair, as required by 42 U.S.C. § 3604(f)(3)(C)(ii) and 24 C.F.R. § 100.205(c)(2).
- d. The thermostats in both Unit D and E are not located in accessible locations, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(II) and 24 C.F.R. § 100.205(c)(3)(ii).
- e. The bathrooms of both units lack the reinforcement necessary to allow later installation of grab bars, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(III) and 24 C.F.R. § 100.205(c)(3)(iii).
- f. Unit D and E lack a usable bathroom 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) and 24 C.F.R. § 100.205(c)(3)(iv).

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of Regional Counsel, Region VIII, 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 the Act 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. § 3601, *et seq.*;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them from further violations of the Act;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them to make the covered ground floor units accessible through retrofitting, in compliance with 42 U.S.C. § 3604(f)(3)(C).
4. Awards such damages as will fully compensate Complainant for its damages 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 each Respondent has committed, pursuant to 42 U.S.C. § 3612(g)(3), 24 C.F.R. § 180.671.
6. Awards additional relief as may be appropriate. 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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