

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,	)	08-04-0201-8
	)	08-04-0202-8
v.	)	
	)	
BBR, LLC, Equity Homes, Inc., Shane	)	
Hartung, d/b/a Hartung Design, Sertoma	)	
Condominium Association, a necessary	)	
party, and Martin H. McGee Trust, a	)	
necessary party,	)	
	)	
Respondents.	)	
	)	

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**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On or about July 6, 2004, Complainant Fair Housing of the Dakotas, filed complaints of discrimination with the United States Department of Housing and Urban Development ("HUD") alleging that BBR, LLC and Equity Homes, Inc. 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)(1), (f)(2), and (f)(3)(C). The amended complaint, filed on August 10, 2005, added the Sertoma Condominium Association and Shane Hartung, d/b/a Hartung Design as respondents. It also reflected Complainant's new name, *i.e.*, Fair Housing of the Dakotas. On July 18, 2008, the complaint was again amended to include Martin H. McGee Trust 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. 68440 (Nov. 18, 2008); 73 Fed. Reg. 68442 (Nov. 18, 2008).

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 handicap 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 complaints and Determination of Reasonable Cause, Respondents BBR, LLC, Equity Homes, Inc., and Shane Hartung, d/b/a Hartung Design ("Hartung") are charged with violating 42 U.S.C. § 3604(f) as described below. Respondents Sertoma Condominium Association and Martin H. McGee Trust are necessary parties to the litigation.

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 handicap of that buyer or renter, 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 buyer or 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 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; 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); 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. The Sertoma Hills Apartments is located at 7001/7003, 7007/7009, 7013/7015, 7019/7021, 7025 and 7029 W. 56th Street, Sioux Falls, South Dakota and consists of six buildings with 48 rental apartments in total. Sertoma Hills Apartments is a covered multifamily dwelling as defined by the Act, 42 U.S.C. § 3604(f)(7).
6. The Sertoma Hills Villas is located at 7035 and 7039 W. 56th Street, Sioux Falls, South Dakota and consists of two buildings with 16 condominiums in total. Most of the units in these two buildings are individually owned and the Sertoma Condominium Association governs these dwellings and owns the common areas. Sertoma Hills Condominiums is a covered multifamily dwelling as defined by the Act, 42 U.S.C. § 3604(f)(7).
7. The portions of the Sertoma Hills Apartments and Villas that are subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C) are:
  - (i) 24 ground floor units at the Sertoma Hills Apartments,
  - (ii) Eight ground floor units at the Sertoma Hills Villas, and
  - (iii) the public and common use areas of these properties.
8. The building permits for the Sertoma Hills Apartments and Villas (“the subject properties”) were issued on or about April 10, 2002 and May 19, 2003, respectively.
9. The Certificates of Occupancy for the subject properties were issued beginning on or about January 16, 2003, with the final certificate issued on or about January 24, 2004.
10. Complainant Fair Housing of the Dakotas is a nonprofit organization with offices located in Bismarck, 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).
11. Respondent BBR, LLC, with offices located at 4208 W. 38th Street, Sioux Falls, South Dakota, was the developer of the subject properties and owned them during construction.
12. Respondent Equity Homes, Inc., with offices located at 4208 West 38<sup>th</sup> St., Sioux Falls, South Dakota, was the developer and builder of the subject properties.
13. Respondent Hartung, with offices located at 3413 S. Florence Ave., Sioux Falls, South Dakota, designed the subject properties’ buildings and garages.
14. Respondent Sertoma Condominium Association owns the public and common use areas at Sertoma Hills Villas and is a necessary party for relief.
15. Respondent Martin H. McGee Trust, 5775 La Jolla Corona Drive, La Jolla, California, is the current owner of Sertoma Hills Apartments and is a necessary party for relief.

16. Respondents BBR, LLC, Equity Homes, Inc., and Hartung are jointly responsible for the design and construction of the subject properties.

17. In or about spring 2004, consistent with its mission, Complainant received and investigated information that certain covered multifamily dwellings in Sioux Falls, South Dakota, including the subject properties, failed to comply with the Act's design and construction requirements. Complainant's investigation revealed that several aspects of the subject properties 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.

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

a. The subject properties' 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 violations include, but may not be limited to, the following:

At Sertoma Hills Apartments, 1) the parallel sidewalks along the front, side, and rear of the buildings, and the connection to the unit entrance doors have noncompliant cross slopes, abrupt level changes, and gaps that are too wide; 2) ramps have noncompliant running slopes and cross slopes; 3) all eight building entrance doors in four buildings require excessive opening force; 4) the stairway to the upper floor in two entranceways is a protruding object; 5) the sidewalks that connect to the public sidewalk at 56<sup>th</sup> Street have noncompliant running slopes; 6) the paths of travel on two driveway crossings have noncompliant cross slopes; 7) there are no accessible garage parking spaces; 8) one set of mailboxes is located such that the clear floor space at the boxes is in the vehicular drive; 9) the top rows of mailboxes are too high; 10) the rent drop box is a protruding object and is too high; and 11) unit entrance doors have knob hardware.

At Sertoma Hills Villas, 1) the parallel sidewalk along the front of the buildings, and the connection to the unit entrance doors have noncompliant cross slopes, noncompliant running slopes, and abrupt level changes; 2) the stairway to the upper floor in two of the four entranceways is a protruding object; 3) the sidewalk that connects to the public sidewalk at 56<sup>th</sup> Street has a noncompliant running slope; 4) the sidewalk through the garage breezeway has a noncompliant gap and an abrupt level change; 5) there are no accessible garage parking spaces; 6) the mailbox fixture is a protruding object; 7) the top row of mailboxes is too high; 8) the condominium association drop box is too high; and 9) all unit entrance doors have knob 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 violations include, but may not be limited to, the following:

At Sertoma Hills Apartments, the master bedroom closet door is too narrow, and the hall closet door in one unit type is too narrow.

At Sertoma Hills Villas, the master bedroom closet door is too narrow.

c. The subject properties lack 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 violations include, but may not be limited to, the following in the subject properties: 1) unit entrance doors have an abrupt level change; 2) the threshold at the patio doors is too high and not beveled; and 3) the carpet transition strips at the bathroom doors and the kitchens are not properly beveled.

(ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, 42 U.S.C. § 3604(f)(3)(C)(iii)(II). Specifically, the violations include, but may not be limited to, the following:

At the subject properties, the wall outlets and some of the kitchen outlets are not in accessible locations. At Sertoma Hills Apartments, the thermostats are too high in one unit type.

(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 kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, 42 U.S.C. § 3604(f)(3)(C)(iii)(IV). Specifically, the violations include, but may not be limited to, the following:

At Sertoma Hills Apartments, 1) there is insufficient clearance at the bathroom lavatory in one unit type; 2) the toilet is located in too narrow a space between the vanity and the bathtub in one unit type; and 3) the toilet is too close to the sidewall in one unit type.

At Sertoma Hills Villas, 1) there is no turning space in the U-shaped kitchen; 2) there is insufficient clearance at the kitchen sink; 3) there is insufficient clearance beyond the swing of the bathroom door; 4) there is insufficient clearance at the bathroom lavatory; and 5) there is insufficient clearance at the toilet.

19. By failing to design and construct the subject properties in accordance with 42 U.S.C. § 3604(f)(3)(C), Respondents BBR, LLC, Equity Homes, Inc., and Hartung discriminated in the sale or rental, or otherwise made unavailable or denied, dwellings to buyers or renters because of a handicap of that buyer or renter, 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 buyer or renter, in violation of 42 U.S.C. § 3604(f)(1).

20. By failing to design and construct the subject properties in accordance with 42 U.S.C. § 3604(f)(3)(C), Respondents BBR, LLC, Equity Homes, Inc., and Hartung discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such dwellings, because of handicap, in violation of 42 U.S.C. § 3604(f)(2).

21. 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 violations.

### **III. CONCLUSION**

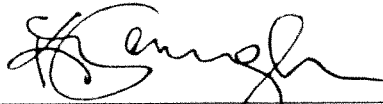
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents BBR, LLC, Equity Homes, Inc., and Hartung with engaging in discriminatory housing practices in violation 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 BBR, LLC, Equity Homes, Inc., and Hartung as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3), and that these Respondents are jointly and severally liable;
2. Enjoins Respondents BBR, LLC, Equity Homes, Inc., and Hartung, 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 BBR, LLC, Equity Homes, Inc., and Hartung, 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 as well as the public use and common use areas at the subject properties into compliance with 42 U.S.C. § 3604(f)(3)(C), including providing reasonable compensation to the owners and tenants of the subject properties for inconvenience caused by, and other expenses related to, such retrofitting;
4. Enjoins Respondents BBR, LLC, Equity Homes, Inc., and Hartung, 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 Fair Housing of the Dakotas 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 Respondents BBR, LLC, Equity Homes, Inc., and Hartung for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671.

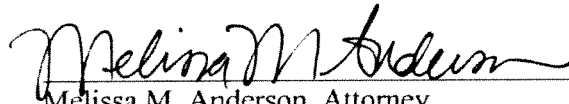
The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 10<sup>th</sup> day of March, 2009.



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Kathleen M. Pennington, Assistant General Counsel  
for Fair Housing Enforcement



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