

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,	)
	)
Charging Party,	)
	)
v.	)
	)
Equity Homes, Inc. and	)
Shane Hartung, dba Hartung Design,	)
	)
Respondents.	)
	)

FHEO No. 08-04-0206-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about July 6, 2004, Fair Housing of the Dakotas ("FHD"), known at the time as the North Dakota Fair Housing Council, Inc., filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging that Equity Homes, Inc. ("Equity Homes"), and Equity Builders, Inc. discriminated on the basis of disability¹ in violation of subsection the Fair Housing Act ("Act"), 42 U.S.C. § 3601 *et seq.* by failing to design and construct Beverly Gardens Apartments, located at 421 & 423 S. Williams Avenue, Sioux Falls, SD 57104, in a manner consistent with the Act. FHD alleged that the most recent discriminatory act occurred on May 27, 2004, and was continuing. On or about August 10, 2005, FHD filed an amended complaint that narrowed its allegations to claim only one of the buildings at Beverly Gardens Apartments, located at 421 S. Williams Avenue ("the subject property"), had not been designed and constructed in compliance with the Act and named Equity Homes, Inc. as the only respondent. On or about October 8, 2008, FHD filed a second amended complaint adding Shane Hartung dba Hartung Design ("Shane Hartung") as a respondent.

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 that authority to the General Counsel, who has redelegated the authority to the

¹ "Disability" is used in place of "handicap" as defined by the Fair Housing Act, 42 U.S.C. § 3602(h).

Assistant General Counsel for Fair Housing Enforcement. 73 Fed. Reg. 68,441, 68,442 (Nov. 18, 2008).

HUD's Region VIII Director for Fair Housing and Equal Opportunity has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized 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 FHEO's Determination of Reasonable Cause, Respondents Equity Homes, Inc. and Shane Hartung are charged with violating 42 U.S.C. § 3604(f) as follows:

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); *see also* 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 a dwelling, 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)(2), *see also* 24 C.F.R. § 100.202(b).
3. Discrimination is defined for purposes of 42 U.S.C. § 3604(f) to include the failure to design and construct in accord with the provisions of the Act multifamily dwellings for first occupancy after March 13, 1991. 42 U.S.C. § 3604(f)(3)(C).
4. The design and construction provisions of the Act require that (a) the public use and common use portions of a covered dwelling are readily accessible to and usable by disabled persons; (b) all the 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).
5. Complainant FHD is a non-profit fair housing organization with offices in Bismarek, North Dakota.

6. Respondent Equity Homes is a home builder with offices in Sioux Falls, South Dakota and built the subject property.
7. Respondent Shane Hartung, at all times relevant to this complaint, did business as Hartung Design, and drafted the design plan for the subject property.
8. The subject property is a dwelling as defined by 42 U.S.C. § 3602(b).
9. The subject property is a covered multifamily dwelling constructed for first occupancy after March 13, 1991, as defined by 42 U.S.C. § 3604(f)(7)(B), and is not otherwise exempt from the relevant provisions of the Act. The two first-floor units ("Unit 1" located on the east side of the building and "Unit 2" located to the west side of the building) and the public and common areas of the subject property are covered by the design and constructions provisions of the Act, because there is no elevator to the two second-floor units of the building. *See* 42 U.S.C. § 3604(f)(7)(B).
10. The subject property does not have a building entrance on an accessible route as required by 42 U.S.C. § 3604(f)(3)(C)(i) and 24 C.F.R. § 100.205(a). For example, (i) the ramp to the building entrance, near the bottom, has a 3.3% cross slope, contrary to ANSI 4.3.7; (ii) the threshold to the building entrance door contains a ¾" level change from the stoop to the door and a 3/8" level change to the top of the threshold, contrary to ANSI 4.3.8; and (iii) there is no pedestrian route from the building entrance to the public sidewalk on Williams Avenue or to the designed accessible uncovered parking space in front of 423 Williams Avenue, contrary to ANSI 4.3.2.1.
11. The subject property's public and common use areas are not accessible to and usable by disabled persons as required by 42 U.S.C. § 3604(f)(3)(C)(i) and 24 C.F.R. § 100.205(c)(1). For example, (i) the door to the common use laundry room has a pull side latch clearance of only 3½", contrary to ANSI 4.13.6 and Fig. B4.13.6(a); (ii) the carpet transition strip in the common laundry room is ½" high and is not beveled, contrary to ANSI 4.3.8; (iii) the designated accessible uncovered parking space has no marked access aisle, contrary to ANSI 4.6.2; and (iv) there are no accessible covered parking spaces in the residents' garages, contrary to ANSI 4.6.
12. The subject property does not provide an accessible route into and through the dwelling as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I) and 24 C.F.R. § 100.205(c)(3)(i). For example, (i) the threshold to the sliding patio door in Unit 1 is 1¼" high and not properly beveled, contrary to Guidelines Requirement 4(4); and (ii) the carpet transition strips in Units 1 and 2 are ½" and not properly beveled, contrary to Guidelines Requirement 4(2).
13. The subject property's electrical outlets are not 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). For

example, (i) kitchen electrical outlets in Units 1 and 2 require a side reach over an obstruction 46½" above the floor, contrary to Guidelines Requirement 5; and (ii) the outlet next to the range in Unit 2 is 19" from the edge of the countertop, contrary to Guidelines Requirement 5.

14. The bathrooms in the subject property are not usable for disabled persons as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(IV) and 24 C.F.R. § 100.205(c)(3)(iv). For example, (i) the bathrooms do not provide 30" x 48" clearance beyond the in-swinging door, contrary to Guidelines Requirement 2(a)(i) and Figs. 6, 7, and 8; (ii) the centerline of the lavatory is less than 24" from the sidewall, which leaves insufficient clear floor space for a parallel approach, contrary to Guidelines Requirement 2(a)(ii) and Fig. 7(c); and (iii) the toilet centerline in Units 1 and 2 is less than 18" from the tub, contrary to Guidelines Requirement 2(a)(ii).
15. Respondents' actions have injured Complainant by frustrating FHD's mission to support and assist those seeking equal access to housing in North Dakota and South Dakota and by causing FHD to divert resources in response to the actions of Respondents. Complainant devoted funds and staff resources to this matter which it could have invested elsewhere, and it conducted additional outreach and sponsored more educational programs as a result of Respondents' actions.

III. CONCLUSION

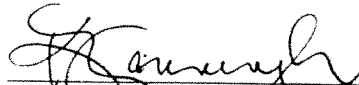
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Equity Homes and Shane Hartung with discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(1), (2), and (3)(C) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents Equity Homes and Shane Hartung set forth above violate the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (2), and (3)(C);
2. Enjoins Respondents Equity Homes and Shane Hartung, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of disability in any aspect of the rental or sale of a dwelling;
3. Requires Respondents Equity Homes and Shane Hartung to bring the subject property into compliance with 42 U.S.C. § 3604(f)(3)(C);
4. Awards such damages as will fully compensate Complainant FHD, an aggrieved person, for its economic loss and frustration of mission caused by Respondents Equity Homes and Shane Hartung's discriminatory conduct in violation of the Act; and

5. Assesses civil penalties pursuant to 24 C.F.R. § 180.671(a)(1) against Respondents Equity Homes and Shane Hartung of sixteen thousand dollars (\$16,000) each for each violation of the Act for which they are liable.

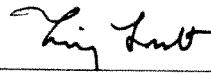
The Secretary of HUD further prays for any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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