

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,	)	FHEO Case Numbers:
	)	08-04-0203-8
	)	08-04-0204-8
v.	)	
	)	
Equity Homes, Inc., PBR, LLC,	)	
JSA Consulting and Engineering, and	)	
Myron R. VanBuskirk, 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 Equity Homes, Inc. and PBR, LLC violated the Fair Housing Act ("Act"), 42 U.S.C. §§ 3601-19, 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, the complaint was amended to reflect Complainant's new name, i.e., Fair Housing of the Dakotas, to add Respondents previously not named, including JSA Consulting and Engineering, and to clarify allegations. On or about September 30, 2008, the complaint was again amended to add Respondent Myron R. VanBuskirk, a necessary party.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons 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 Assistant General Counsel for Fair Housing Enforcement. 73 Fed. Reg. 68441, 68442 (Nov. 18, 2008).

The Director of the Office of Fair Housing and Equal Opportunity for Region VIII, 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 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 Myron R. VanBuskirk 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 the 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) of the Act, "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. West Briar Estates (“the subject property”) is located at 7112, 7116, 7120, and 7124 West 26th Street, Sioux Falls, South Dakota. It consists of four two-story, non-elevator buildings containing a total of 32 dwelling units. The 16 ground floor units, including the public and common use areas of the complex, are covered multifamily dwellings, 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 August 22, 2000.

7. 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).

8. Respondent Equity Homes, Inc., with offices located at 4208 West 38th St., Sioux Falls, South Dakota, is the developer and builder of the subject property.

9. Respondent PBR, LLC, owned the subject property during its design and construction.

10. Respondent JSA Consulting and Engineering, with offices located at 3700 South West Ave., Sioux Falls, South Dakota, designed the site plan 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 Myron R. VanBuskirk, P.O. Box 89634, Sioux Falls, South Dakota, 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.

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 building entrances and access routes, as well as its other public and common use facilities are not readily accessible to and usable by handicapped persons, as required by 42 U.S.C. § 3604(f)(3)(C)(i). The sidewalks at all four buildings

have some, if not all, of the following deficiencies: noncompliant running slopes at building entrances, abrupt level changes, noncompliant gaps, and noncompliant cross slopes. See ANSI A117.1-1986 ("ANSI") 4.13.6, 4.3.8, 4.5.4, and 4.3.7. Additionally, the driveway crossing between Buildings 7124 and 7116 has cross slopes exceeding 2% in the parking access aisles and gaps. See ANSI 4.3.7 and 4.5.4. The driveway crossing between the parallel sidewalks at Buildings 7116 and 7112 also has excessive cross slopes. See ANSI 4.3.7. There is no continuous, accessible pedestrian route from within the complex to the public sidewalk and street; the only path to reach the public sidewalk requires traveling on the vehicular entrance drive. See ANSI 4.3.2(I). In addition, seven of the eight building entrance doors do not have a compliant opening force. See ANSI 4.13.11. There is garage parking in the complex but none of the garages are accessible, and there are no accessible guest parking spaces. Guidelines Req. 2. There is insufficient clear floor space at the mailboxes to allow a person using a wheelchair to retrieve his or her mail, and the outgoing mail slots are mounted too high to be reached by a person using a wheelchair. See ANSI 4.2.4. In addition, all dwelling units have entrance doors with knob hardware, rather than accessible lever hardware. See ANSI 4.13.9.

b. Doors within 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). The walk-in hall closet door is only 30" wide. The clear width of the patio door opening is less than the required minimum clear width of 31 5/8".

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). The route into the covered dwellings is not accessible as there is an abrupt level change on both sides of the threshold at the entrance door to the covered units, at the patio door threshold and at the carpet transition strips.

(ii) electrical outlets and thermostats in accessible locations, 42 U.S.C. § 3604(f)(3)(C)(iii)(II). Some wall outlets are too low at 14" from the floor. Some kitchen outlets are too close to the countertop corner. Additionally, the operable parts of thermostats are mounted too high above the floor at 56".

(iii) reinforcements in bathroom walls so as to allow for later installation of grab bars, 42 U.S.C. § 3604(f)(3)(C)(iii)(III).

(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). The bathrooms lack a minimum 30" by 48" clear floor space beyond the door swing. In addition, the centerline of the lavatory is too close to the side wall, at 15 1/2" from that wall, for a parallel approach. The toilet is also noncompliant as its centerline is 17" from the bathtub, rather than 18".

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 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 the 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. § 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 and has expended resources to that end. Specifically, 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. 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:

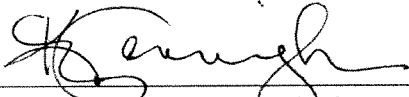
1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(c), and that Respondents are jointly and severally liable;
2. Enjoins Respondents, their agents, employees, and successors, and 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 tenants of the subject property for inconvenience caused by, and other expenses related to, such retrofitting;

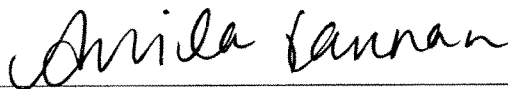
4. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account 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 10th day of March, 2009



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