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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

-----X		
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. CV 13-_____
	:	
v.	:	
	:	COMPLAINT
GABRIEL NISTLER, SOMMER	:	
NISTLER, NISTLER ELECTRIC, LLC,	:	
DEREK BROWN, AND DEREK	:	
BROWN CONSULTING, INC.	:	
	:	
Defendants.	:	
-----X		

The United States of America alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the "Act"), 42 U.S.C. §§ 3601-3619. It is brought on behalf of Montana Fair Housing, Inc. pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o), and pursuant to Section 814(a) of the Fair Housing Act, 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345 and 42 U.S.C. § 3612(o) and 3614(a).

3. Venue is proper in this jurisdiction, pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o), because the acts and omissions giving rise to the United State's claims occurred in this judicial district and all Defendants reside therein.

SUBJECT PROPERTY

4. The subject property is a single parcel of land consisting of two buildings, one located at 175 and the other at 195 Silsbee Avenue in Helena, Montana 59601 (the "Silsbee Avenue Property"). Each of the buildings at the Silsbee Avenue Property contains two single-story ground floor units (Apartments 1 and 2) and two single-story upper floor units (Apartments 3 and 4) for a total of eight rental units. The Silsbee Avenue Property contains public and common use areas that include garages, parking, trash bins and mail boxes. The garages consist of two detached garage structures, one in front of each building, each with four garage units.

5. The eight rental units at the Silsbee Avenue Property are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

6. The rental units at the Silsbee Avenue Property were designed and constructed for first occupancy after March 13, 1991. The ground-floor units (Apartments 1 and 2 at each property) are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B). The Silsbee Avenue Property is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

DEFENDANTS

7. Defendant Gabriel Nistler (“Nistler”), a resident of Helena, Montana, owned the Silsbee Avenue Property at the time of its design and construction. Nistler was the developer, general contractor and builder for the Silsbee Avenue Property and thereby participated in the design and construction of the Property. Sommer Nistler, a resident of Helena, Montana owned the Silsbee Avenue Property at the time of its design and construction.

8. Defendants Gabriel and Sommer Nistler continue to own the Silsbee Avenue Property.

9. Defendant Nistler Electric, LLC (“Nistler Electric”) is a Montana limited liability company, and has its principal place of business in Helena, Montana. Defendant Nistler is the owner and registered agent for Nistler Electric. Defendant Nistler Electric was the developer, general contractor and/or builder for the Silsbee Avenue Property and thereby participated in the design and construction of the Property.

10. Defendant Derek Brown (“Brown”), a resident of Helena, Montana is a licensed engineer in the state of Montana. Defendant Brown was responsible for and prepared the architectural design, site engineering plans, and construction documents for the Silsbee Avenue Property and thereby participated in the design and construction of the Property.

11. Defendant Derek Brown Consulting, Inc. (“Brown Consulting”), is a Montana corporation, and has its principal place of business in Helena, Montana. Defendant Brown is the owner and registered agent for Brown Consulting. Defendant Brown Consulting was responsible for and prepared the architectural design, site engineering plans, and construction documents for the Silsbee Avenue

Property, and thereby participated in the design and construction of the Property.

FACTUAL ALLEGATIONS

12. Montana Fair Housing (“MFH”) is a Montana nonprofit corporation, whose organizational purposes are to promote equal housing opportunities and eliminate illegal housing discrimination in the State of Montana.

13. On or about July 30, 2012, MFH sent a letter to Nistler stating that MFH was aware that Nistler was constructing multi-family complexes at the Silsbee Avenue Property. The MFH letter explained the importance of complying with the federal and state design and construction accessibility requirements and provided a number of resources to assist in learning about and complying with the law. MFH never received a response to its letter.

14. On or about September 17, 2012, an employee of MFH visited the Silsbee Avenue Property to conduct an investigation of its potential noncompliance with accessibility requirements. The MFH employee observed barriers to accessibility of some of the public and common use areas of the property. The MFH employee conducted

further investigation to identify the developer, builder and engineer of the Silsbee Avenue Property, obtained copies of building permits and other public documents, and met with City of Helena officials.

15. On or about October 4, 2012, MFH sent a tester to the Silsbee Avenue Property posing as a potential renter to gather further information about the accessibility of the interior and exterior areas of the property. The MFH tester met with Nistler at the property. The MFH tester was able to observe barriers to the accessibility of the public and common areas but did not view the interiors of the ground-floor units because they were occupied by tenants and not for rent.

16. The design and construction of the four ground-floor units (Apartments 1 and 2 at each building or "the covered units") do not meet the accessibility requirements of the Act, including the following violations:

- a. The existence of four steps leading up to the front, primary entrances to the covered units;
- b. An abrupt change in level of 6 ¼ inches from the exterior landings at the primary entrances to the floors of the covered units;

- c. No accessible route connecting sidewalks at the Silsbee Avenue property to the public street;
- d. No accessible routes connecting the entrances of the covered units with site facilities and amenities such as trash bins and mailboxes;
- e. No handicap parking space and no accessible garage;
- f. The thermostats in the covered units are located approximately 58 inches above the finished floor;
- g. A majority of the electrical outlets in the covered units are 13 ¾ inches above the finished floor; and
- h. The kitchens in the covered units do not have the requisite clear space in front of the dishwashers for proper accessibility.

HUD ADMINISTRATIVE PROCESS

17. On or about November 30, 2012, MFH filed an administrative complaint with the United States Department of Housing and Urban Development (“HUD”) pursuant to 42 U.S.C. § 3610(a) alleging that Defendants Gabriel and Sommer Nistler, Nistler Electric, and Derek Brown discriminated against persons with

disabilities by failing to design and construct buildings that meet the accessibility guidelines required by the federal Fair Housing Act.

18. On or about March 21, 2013, MFH amended its administrative HUD complaint to add Defendant Derek Brown Consulting as a respondent.

19. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD (“the Secretary”) conducted and completed an investigation of the complaint filed by MFH, attempted conciliation without success, and prepared a final investigative report. Based on information gathered during the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices had occurred.

Accordingly, on or about June 26, 2013, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the Defendants with engaging in discriminatory housing practices in violation of the Act.

20. On or about July 14, 2013, MFH elected to have the Charge of Discrimination resolved in a civil action filed in federal district court, pursuant to 42 U.S.C. § 3612(a).

21. Following the Notice of Election, the Secretary authorized the Attorney General to commence this civil action, pursuant to 42 U.S.C. § 3612(o).

COUNT I

22. Plaintiff realleges and incorporates by reference herein the allegations described in paragraphs 1 - 21, above.

23. Defendants have failed to design or construct the covered units at the Silsbee Avenue Property in accordance with 42 U.S.C. § 3604(f)(3)(C). The violations include, but are not limited to, the following:

- a. There are no accessible building entrances on an accessible route;
- b. Public use and common use portions are not readily accessible to and usable by individuals with disabilities;
- c. The units do not contain the following features of adaptive design: (i) an accessible route into and through the dwelling; (ii) electrical outlets, thermostats and other environmental controls in accessible locations; and (iii)

usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

24. By failing to design and construct the dwellings in accordance with the Act, Defendants made housing unavailable because of disability in violation of section 804(f)(1) of the Act, 42 U.S.C. § 3604(f)(1).

25. By failing to design and construct the dwellings in accordance with the Act, Defendants discriminated in the terms, conditions, or privileges of the sale or rental of the Silsbee Avenue Property in violation of section 804(f)(2) of the Act, 42 U.S.C. § 3604(f)(2).

26. MFH is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendants’ conduct described above.

27. Defendants’ discriminatory actions and practices described above were intentional, willful, and taken in disregard for the rights of others.

COUNT II

28. Plaintiff realleges and incorporates by reference herein the allegations described in paragraphs 1 – 21 and 23 – 27, above.

29. The conduct of Defendants described above constitutes:

a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; or

b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance.

30. In addition to the MFH, there may be other victims of Defendants' discriminatory housing practices who are aggrieved person as defined in 42 U.S.C. §3602(i) and may have suffered injuries and damages as a result of Defendants' actions and practices described above.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court enter an ORDER that:

1. Declares that Defendants' policies and practices, as alleged herein, violate the Fair Housing Act;

2. Declares that Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act or have denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;

3. Enjoins Defendants, their officers, employees, agents, successors and all other persons in active concert or participation with any of them, from:

- a. Discriminating in the rental, or otherwise making unavailable or denying dwellings to renters, because of handicap in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminating 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 handicap in violation of 42 U.S.C. § 3604(f)(2);

- c. Failing or refusing to bring the ground-floor units and public and common use areas at the Silsbee Avenue Property into compliance with 42 U.S.C. § 3604(f)(3)(C);
- d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
- e. Failing or refusing to take such affirmative steps as may be necessary to prevent recurrence of any discriminatory conduct in the future, and to eliminate, to the extent practicable, the effects of their unlawful practices;
- f. Designing and/or constructing any covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C).

4. Awards monetary damages pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1) and 3614(d)(1)(B) to MFH and to any other person harmed by Defendants' discriminatory conduct and practices;

5. Assesses a civil penalty against Defendants in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) in order to vindicate the public interest; and

6. The United States further prays for such additional relief as the interests of justice may require.

Respectfully submitted this 12th day of September, 2013.

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Attorney General of the United States

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