

DISTRICT COURT
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

United States,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-CV-714, NAM/RFT
)	
Tanski et al.,)	
)	
Defendants.)	
_____)	

ORDER ON CONSENT BETWEEN PLAINTIFF
AND DEFENDANT JACOBSON

I. INTRODUCTION

A. Background

1. This Consent Order is entered between the United States of America and Defendant Howard Jacobson (referred to herein as "Defendant").
2. This action is brought by the United States, on behalf of Gloria Minet ("the Aggrieved Party") pursuant to the Fair Housing Act ("FHA" or "the Act"), 42 U.S.C. § 3612(o), and under the provisions of 42 U.S.C. § 3614(a), which authorize the Attorney General to initiate litigation under the Act when he has reasonable cause to believe that persons have engaged in a pattern or

practice of discrimination or they have denied rights under the Act to a group of persons raising an issue of general public importance. Specifically, the United States' Complaint, as amended, alleges that disability discrimination occurred in this case through the following actions: failing to design and construct the McGregor Village Apartments ("McGregor Village") and other apartment complexes with the features of accessible and adaptable design and construction required by 42 U.S.C. § 3604(f)(3)(C).

3. The United States and Defendant (hereinafter, "the Parties") agree that McGregor Village is subject to the accessible design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

B. Defendant

4. Defendant Jacobson is a licensed professional engineer and a resident of New York. Defendant provided engineering services on the McGregor Village project only.

C. Relevant Requirements of the Fair Housing Act

5. The Fair Housing Act provides that, for non-elevator residential buildings with four or more dwelling units, all ground floor units that are designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings" and must include certain basic features of accessible and adaptable design to make such units accessible to or adaptable for use by a person who has or who develops a disability. See 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(B).

6. The accessible and adaptable design provisions of the Fair Housing Act require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage

by persons with a disability using 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 using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C). These features are referenced in this document as the "Accessible Design Requirements."

D. Violations at McGregor Village

7. The McGregor Village Apartments are located on Mountain Ledge Drive, Wilton, New York, and comprise 27 buildings with a total of 106 ground-floor units. All of the ground-floor units at McGregor Village were designed and constructed for first occupancy after March 13, 1991, and are located in non-elevator buildings containing four or more units. Thus, these ground floor units are "covered multifamily dwellings" within the meaning of the Fair Housing Act. In addition, the public and common use areas at McGregor Village must comply with the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

8. The United States surveyed the McGregor Village Apartments in May 2005 and identified failures to meet the Accessible Design Requirements, including, among other things, a failure to design and construct the public and common use areas so as to be readily accessible to and usable by a person with a disability because exterior routes have excessively steep running and cross slopes.

E. Consent of the Parties to Entry of this Order

9. The Parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3614(a). The Parties further agree that the controversy should be resolved without further proceedings and without an evidentiary hearing.

10. As indicated by the signatures appearing below, the parties agree to entry of this Consent Order.

It is hereby ADJUDGED, ORDERED and DECREED:

II. GENERAL INJUNCTION

11. Defendant and all other persons in active concert or participation with him, are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f)(1) - (3).

III. RETROFIT OF GROUND FLOOR UNITS AND PUBLIC AND COMMON USE AREAS AT MCGREGOR VILLAGE

12. The Parties to this Order recognize that certain features of the ground-floor apartments and public and common use areas of McGregor Village do not meet the design and construction requirements of the Fair Housing Act and the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) ("Guidelines"). To address these violations, Defendant shall deposit, within 10 days of the entry of this Order, in an interest-bearing escrow account to be maintained by Defendant's attorney, the sum of \$12,000.00 towards a fund for the retrofit of the non-compliant features at McGregor Village. The \$12,000.00 and any interest accruing on the same, will be

contributed to retrofits to be made at McGregor Village by the defendants remaining in this action.

IV. NON-DISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

13. During the term of this Consent Order, Defendant shall maintain and provide to the United States the following information and statements regarding any covered, multifamily dwellings intended to be purchased, developed, built, designed, and/or engineered in whole or in part, by him or by any entities in which he or its successors in interest have a position of control as an officer, director, member, manager, or have a ten percent (10%) or larger ownership share:

- (1) the name and address of the project;
- (2) a description of the project and the individual units; and
- (3) a statement certifying that Defendant has reviewed the engineering documents for the project and that the design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines.

Defendant shall provide such information to the United States ninety (90) days after entry of this Decree, on the first and second anniversaries of the entry of this Decree, and ninety (90) days before the expiration of this Decree. If the engineering documents or architectural plans are revised, and the revisions could have any impact on the accessibility of the dwellings or complex, Defendant shall obtain and maintain, and provide to the United States upon request, a statement from the site engineer(s) and/or architect(s), as applicable, that all specifications in the revised engineering documents or architectural plans, as pertinent, comply with the requirements of the Fair Housing Act and the Guidelines.

14. For the term of this Decree, if Defendant prepares any architectural or site plans, drawings or blueprints for covered multi-family housing, Defendant shall include on such plans drawings or blueprints a statement that such comply with the Fair Housing Act. For the term of this Decree, Defendant shall, upon request, provide to the United States a list of all such multi-family housing that he has designed or is designing during the term of the Decree.

V. COMPENSATION OF AGGRIEVED PERSONS

15. Within 10 days of the entry of this Order, Defendant shall pay the total sum of \$8,000 for the purpose of compensating persons whom the United States, upon the resolution of the United States' claims against the remaining defendants in this action, may identify as aggrieved persons within the meaning of the Act. Defendant shall pay this amount by depositing, in an interest-bearing escrow account to be maintained by Defendant's attorney, the sum of \$8,000.00. This money shall be referred to as "the Settlement Fund," and any interest accruing to this amount will become a part of the fund. No amount shall be distributed from this fund to any aggrieved person until he or she has executed and delivered to the United States the release attached as Appendix A.

VI. EDUCATIONAL PROGRAM

16. Within 30 days of the entry of this Order, Defendant shall provide a copy of this Order to all his agents and supervisory employees involved in the design or construction of covered multifamily dwellings and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Order, and has had an opportunity to

have questions about the Order answered. This statement shall be substantially in the form of Appendix B.

17. During the term of this Order, within 30 days after the date he or she commences an agency or employment with Defendant, each new agent or supervisory employee involved in the design, construction, rental, or sale of covered multifamily dwellings shall be given a copy of this Order and be required to sign the statement acknowledging that he or she has received and read the Order, and had an opportunity to have questions about the Order answered. This statement shall be substantially in the form of Appendix B.

18. Defendant shall also ensure that he and any other employees and agents who have supervisory authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, *A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act*, (August 1996, Rev. April 1998). Defendant and all employees and agents whose duties, in whole or in part, involve the management, sale and/or rental of multifamily dwellings at issue in this case shall be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations and reasonable modifications.

19. Within ninety (90) days of the date of entry of this Consent Decree, Defendant and all employees and agents whose duties, in whole or in part, involve supervisory authority over the development, design and/or construction of multifamily dwellings shall undergo training on the

design and construction requirements of the Fair Housing Act. The training shall be conducted by a qualified third-party, who is unconnected to Defendant or his employees, agents or counsel, and approved by the United States. All expenses associated with this training shall be borne by Defendant. Defendant shall provide to the United States, within thirty (30) days after the training, the name(s), addresses(es) and telephone number(s) of the trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by each Defendant and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix C.

VII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

20. Within ninety (90) days after the date of entry of this Consent Order, Defendant shall submit to the United States an initial report regarding the signed statements of Defendant and Defendant's employees and agents who have completed the training programs specified in Section VI of this Consent Order. Thereafter, Defendant shall, on the first and second anniversaries of the entry of this Decree, and ninety (90) days before the expiration of this Decree, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with Section VI of this Consent Order, they have received and read the Order, and had an opportunity to have questions about the Order answered.

21. For the term of this Consent Order, Defendant is required to preserve all records related to McGregor Village and to any other multifamily residential properties designed or constructed by him. Upon reasonable notice to Defendant, representatives of the United States shall be permitted to inspect and copy any records of Defendant at any and all reasonable times,

provided, however, that the United States shall endeavor to minimize any inconvenience to Defendant from such inspections.

22. This Consent Order shall remain in effect for three (3) years after the date of its entry. By consenting to entry of this Order, the United States and Defendant agree that in the event that the Defendant engages in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

23. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Order in the interests of justice.

24. The United States and Defendant shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendant to perform in a timely manner any act required by this Order or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

IX. TIME FOR PERFORMANCE

25. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the United States and Defendant.


X. COSTS OF LITIGATION

26. Each party to this litigation will bear its own costs and attorneys' fees associated with this litigation.

XI. COUNTERPARTS

27. This Consent Order may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute the same instrument.

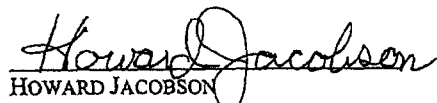
SO ORDERED this 28th day of February, 2006.



NORMAN MORDUE
UNITED STATES DISTRICT COURT JUDGE

The undersigned apply for and consent to the entry of this Order:

Defendant Howard Jacobson

For the United States:
WAN J. KIM
Assistant Attorney General


HOWARD JACOBSON


STEVEN H. ROSENBAUM, Chief
MICHAEL S. MAURER, Deputy Chief
SEAN R. KEVENY, Trial Attorney
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Civil Rights Division
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Housing and Civil Enforcement Section
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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)
 Tanski et al.,)
)
 Defendants.)
 _____)

APPENDIX A

FULL AND FINAL RELEASE OF CLAIMS

I, _____, on behalf of myself and family members, agents, heirs, executors, administrators, successors and assigns, pursuant to the terms, provisions, and conditions of the Consent Order approved by the United States District Court for the Northern District of New York on _____, 2005 in the case of United States v. Tanski, et al., No. 04-cv-714 (N.D. N.Y.) ("lawsuit") and in consideration of the payment of _____ do fully, finally and forever release, discharge, and hold harmless Howard Jacobson (hereinafter "Defendant"), along with their insurers, attorneys, related companies, principals, predecessors, successors, assigns, affiliates, partners, directors, officers, agents, employers, shareholders, subsidiaries, employees, former employees, heirs, executors, and administrators and any persons acting under their respective direction or control (hereinafter "Releasees"), from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have against Defendant or any of the Releasees for any of Defendant's actions or statements related to those claims through the date of this Consent Order, including claims for damages (both compensatory and punitive), costs, fines and attorneys' fees.

I affirm that the only consideration for signing this Full and Final Release of Claims are the terms stated in the Consent Order signed by the parties, and the monetary payment referenced above. I have accepted the terms of this Release and the Consent Order because I believe them to be a fair and reasonable settlement and for no other reason. This Release and the Consent Order contain and constitute the entire understanding and agreement between the parties.

Print Name:

SIGNATURE

DATE

IN THE UNITED STATES DISTRICT COURT
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United States,)
)
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)
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)
 Defendants.)
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APPENDIX B

CERTIFICATION OF FAIR HOUSING TRAINING ATTENDANCE

I have received a copy of the Consent Order entered in United States v. Tanski, et al., No. 04-cv-714 (N.D. N.Y.). This Consent Order was explained to me all my questions were answered concerning it. I have read and understand the Consent Order.

(Signature)

(Print name)

(Date)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

United States,)
)
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)
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)
 Tanski et al.,)
)
 Defendants.)
_____)

APPENDIX C

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act, including its requirements concerning physical accessibility for people with disabilities. I have had all of my questions concerning the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Date)