

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

RECEIVED
FEDERAL HOUSING
COMMISSION
WASHINGTON, D.C.
20548
AUG 11 2008

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)(ii)(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)(ii)(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

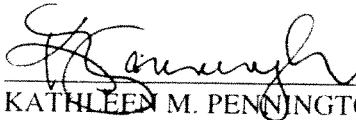
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Equity Homes and Shane Hartung with discriminatory housing practices in violation of 42 U.S.C. § 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

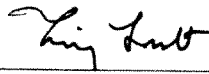
5. Assesses civil penalties pursuant to 24 C.F.R. § 180.671(a)(1) against Respondents Equity Homes and Shane Hartung of sixteen thousand dollars (\$16,000) each for each violation of the Act for which they are liable.

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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Date: 3/10/09

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)	
<hr/>		

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 redelegate 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 ½” 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:

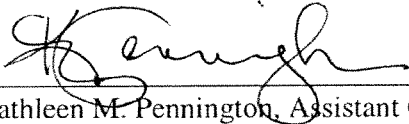
1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(c), and that Respondents are jointly and severally liable;
2. Enjoins Respondents, their agents, employees, and successors, and 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;

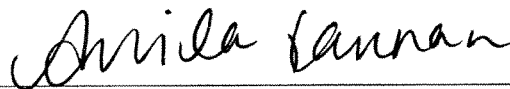
4. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account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



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



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Of Counsel: Estelle Franklin
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UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
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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.)	
)	

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 38th 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 56th 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 56th 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

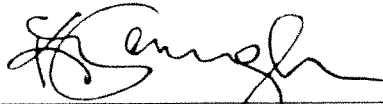
WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents BBR, LLC, Equity Homes, Inc., and Hartung with engaging in discriminatory housing practices in violation 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

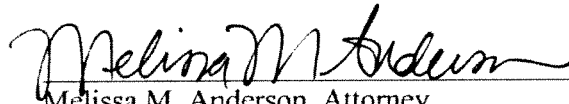
6. Assesses a civil penalty of \$16,000 against Respondents BBR, LLC, Equity Homes, Inc., and Hartung for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671.

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 10th day of March, 2009.



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