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, Charging Party, v. Hector Castillo Architects, Inc., 914 W. Hubbard, Inc., and Hector Castillo, Respondents.	)	FHEO Nos.: 05-09-0142-8 05-09-0143-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 30, 2008, the Assistant Secretary for Fair Housing and Equal Opportunity of the United States Department of Housing and Urban Development, (hereinafter referred to as "HUD"), filed a complaint on its own initiative alleging that Hector Castillo Architects, Inc. ("Respondent Castillo Architects") and 914 W. Hubbard, Inc. ("Respondent 914 W. Hubbard") violated the Fair Housing Act as amended in 1988, 42 U.S.C. §3601, *et seq.*, (hereinafter referred to as the "Act"), by designing and constructing a multifamily property located at 914 W. Hubbard St., Chicago, Illinois ("Subject Property") in a manner that is not readily accessible to and usable by persons with disabilities. The complaint was amended on June 2, 2010, to add as a respondent Hector Castillo ("Respondent Castillo"), the architect of record for the architectural plan for the Subject Property.

The Act authorizes the issuance of a charge of discrimination on behalf of an aggrieved person following an investigation and 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 (54 Fed. Reg. 13121), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68442), the authority to issue a charge of discrimination, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity, or his or her designee.

The Office of Fair Housing and Equal Opportunity Region V Director, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS THAT SUPPORT THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD complaint and Determination of Reasonable Cause, Respondents Castillo, Castillo Architects, and 914 W. Hubbard (collectively, "Respondents") are charged with discrimination on the basis of disability in violation of § 3604(f)(1), 3604(f)(2) and 3604(f)(3)(C) of the Act, as follows:

1. Pursuant to § 3604(f)(1) of the Act, it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter or a person residing or intending to reside in that dwelling after it is sold, rented, or made available or any person associated with that buyer or renter.

2. Pursuant to § 3604(f)(2) of the Act, 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 disability of that person, 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.

3. Pursuant to § 3604(f)(3)(C) of the Act, "discrimination" as used in § 3604(f)(1) and (f)(2) includes a failure to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, in a manner that:

    a. the public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

    b. all the doors designed to allow passage into and 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.

4. The *Fair Housing Act Accessibility Guidelines*, in conjunction with the *Supplement to Notice of Fair Housing Accessibility Guidelines*, dated June 28, 1994, (collectively,

"Guidelines"), 24 C.F.R. Ch.I., Subch.A, App. IV, are recognized as a safe-harbor for compliance with § 3604(f)(3)(C) of the Act. 24 C.F.R. § 100.205. The Guidelines incorporate the accessibility standards set forth by the American National Standards Institute ("ANSI") A117.1-1986.[1]

5. The Subject Property is a 4-story, 22-unit, multi-family elevator building located at 914 Hubbard Street, Chicago, Illinois.

6. Respondent Castillo Architects provided the architectural plan for the construction of the Subject Property.

7. Respondent Castillo, the architect of record for the Subject Property, certified the architectural plan that was used for the construction of the Subject Property.

8. Respondent 914 Hubbard is the builder and owner of the Subject Property.

9. On or about March 10, 2006, the City of Chicago issued a construction permit for the subject property (Permit No. 100100791).

10. On or about March 28, 2007, the City of Chicago approved the revised architectural plan for the Subject Property (Permit No. 100159892).

11. On or about May 15, 2009, the City of Chicago issued a final occupancy certificate for the Subject Property. Construction of the Subject Property was completed after February 24, 2009.

12. On or around September 25, 2006, HUD and the Illinois Department of Human Rights ("IDHR") entered into a cooperative agreement under which HUD funded IDHR to conduct accessibility compliance testing of covered multi-family dwellings. IDHR subsequently contracted with Access Living of Metropolitan Chicago ("Access Living"), a Chicago-based nonprofit center for independent living and disability rights organization, to conduct accessibility tests under the cooperative agreement.

13. On or around October 29, 2007, Access Living dispatched a tester with a disability using a wheelchair to test the Subject Property. The disabled tester met with Mark Fisher, the president of Respondent 914 W. Hubbard, and was given a tour of Units 102, 107, 202 and 206.

14. The tester, who was using a 24 inch-wide wheelchair, was unable to maneuver through various parts of the units. Specifically, he was unable to enter the master bathrooms in Units 107 and 206 because the doors were too narrow and because the angle of entry to the door was too sharp in relation to the hallway. Additionally, the tester was unable to maneuver in the kitchens in Units 102, 107 and 202 due to inadequate clear floor space and he could not enter the second bedroom in Unit 206 because of the narrow door. The tester further noticed that the security control panels

[1] Compliance with the 1986 ANSI 117.1 standards is a safe harbor to the accessibility requirements under the Act.

were approximately six inches above his head, making them difficult or impossible for him to use.

15. On or around October 30, 2007, Access Living dispatched a tester without a disability to the Subject Property. The non-disabled tester was given a tour of Units 101, 202, 206 and 207 and had no difficulty moving through the units.

16. On or about October 30, 2008, based on the statements of the testers, HUD initiated a fair housing investigation, alleging that Respondent Castillo Architects and Respondent 914 W. Hubbard violated the Act by designing and constructing the Subject Property, in contravention of the requirements of § 3604(f)(3)(C) of the Act.

17. On or around February 24, 2009, HUD investigators conducted a site inspection of Units 101, 102, 103, 105 and 106 of the Subject Property. HUD investigators observed the following violations of § 3604(f)(3)(C) of the Act:

    a. The Subject Property's door to the parking garage had an opening force of 14 pounds and the door to the building's primary entrance had an opening force of 18 pounds. The amount of force required to open the door makes it difficult or impossible for persons with disabilities to open those doors.

    b. There is no properly marked designated accessible parking space at the Subject Property for parking by individuals with disabilities, making it difficult or impossible for persons with disabilities arriving by car to access an accessible path of travel to the entrance of the Subject Property.

    c. The U-shaped kitchens in Units 101, 102, 105 and 106 of the Subject Property are not maneuverable by persons with disabilities using wheelchairs because they lack an accessible 60 inch turning radius; the turning radius in those units varies from 46 to 57 ½ inches. The base cabinets in those units are also fixed, rather than removable, resulting in inadequate knee clearance for persons using wheelchairs.

    d. Numerous interior doors at the Subject Property are too narrow for passage by persons with disabilities using wheelchairs as the result of door clearances of less than the accessible clearance of 32 inches. Specifically, the clearance of master bedroom doors in Units 101 and 103 is only 30 inches. The clearance of walk-in closet doors in the master bedroom in Unit 106 is only 28 inches. The clearance of doors in secondary bedrooms in Units 103, 105 and 106 varies from 28 to 30 inches. The clearance of master bathroom doors in Units 101, 102, 103 and 106 is only 30 inches. The clearance of walk-in closet doors in the master bathroom in Unit 102 is only 28 inches. The clearance of private toilet room doors of the master bathrooms in Units 103 and 105 is only 28 inches. The clearance of secondary bathroom doors in Units 102, 103, 105 and 106 is only 28 inches. The inadequate clearance for these doors makes the

units in the Subject Property inaccessible to persons with disabilities using wheelchairs who find it difficult or impossible to pass through these doors.

e. Bathrooms at the Subject Property are not accessible to persons with disabilities using wheelchairs, as follows:

1) Numerous doors to bathrooms at the Subject Property swing into the clear floor space, making it difficult or impossible for persons with disabilities using wheelchairs to enter bathrooms, close the door and maneuver about the space. Specifically, the bathroom doors in Units 101, 102, 105 and 106 swing into the bathrooms and into the clear floor space. The clear floor space outside the swing of the door in the master bathroom of Unit 101 only measures 30 by 42 ½ inches when measured diagonally, which is less than the accessible requirement of 30 by 48 inches of clear space outside the swing of the door. The clear floor space outside the swing of the doors in secondary bathrooms for Units 102, 105 and 106 is only 30 by 34 ½ to 40 inches.

2) Bathrooms at the Subject Property lack sufficient space for persons with disabilities using wheelchairs to maneuver about the toilet area. Specifically, bathrooms lack the accessible clear floor space of 30 by 48 inches in front of the toilet and lack sufficient space for a person in a wheelchair to transfer to and from the toilet and bathtub. Specifically:

i) The clear floor space in front of the toilet in the master bathroom in Unit 101 is only 29 by 48 inches.
ii) The clear floor space in front of the toilet in the master bathroom in Unit 102 is only 29 by 28 ½ inches. Additionally, the toilet is, as measured from the centerline, only 10 inches away from the edge of the sink or other fixture.
iii) The clear floor space in front of the toilet in the private toilet room of the master bathroom in Unit 103 is only 30 by 35 inches; the clear floor space in front of the toilet in the private toilet room of the master bathroom in Unit 105 is only 27 ½ by 48 inches.
iv) The clear floor space in the secondary bathroom in Unit 102 is only 30 by 32 inches. Additionally, the toilet, as measured from its centerline, is only 17 inches away from the edge of the wall.

v) The clear floor space in the secondary bathroom in Unit 105 is only 28 by 36 inches. The clear floor space in front of the toilet in the secondary bathroom in Unit 106 is only 27 ½ by 48 inches. Additionally, the toilet, as measured from its centerline, is only 16 ½ inches away from the edge of the wall.

3) Bathrooms at the Subject Property lack sufficient space for an individual with a disability to approach and use bathroom sinks, because they are not centered with an accessible 24 inches of clear floor space on either side of the centerline of the sink and because they lack an accessible clear floor space of 30 by 48 inches in front of the fixture to allow a person with a disability using a wheelchair to make a parallel approach to the sink where there is a fixed cabinet. Specifically, in the secondary bathroom in Unit 105, the front of the sink fixture is only 29 inches away from the opposing wall. Furthermore, the centerline of the sink fixtures of each double basin sink in master bathrooms in Units 103, 105 and 106 is only 18 ½ to 19 ½ inches away from the edge of the wall. The centerline of the single basin sinks in secondary bathrooms in Units 103, 105 and 106 is only 16 to 17 inches away from the wall.

18. In addition to accessibility violations in the built environment, HUD investigators also reviewed architectural plans for the Subject Property and determined that the Subject Property was designed in contravention of the accessibility requirements of the Act at 42 U.S.C. § 3604(f)(3)(C). HUD investigators reviewing the final architectural plan for the Subject Property identified the following inaccessible design features which violate the Act:

a. On information and belief, bathroom walls at the subject property are not reinforced for later installation of grab bars. The architectural plans contain no evidence that bathroom walls of any unit of the Subject Property were, in fact, reinforced, making bathrooms difficult or impossible to use by people with disabilities who must use weight-bearing grab bars to transfer to the bathtub or toilet.

b. The door schedule included in the drawings indicates that the bedroom and bathroom doors in each of the units are flush and measure 2' x 8" wide with a thickness of 1 ¾." The result is that many interior doors at the property were designed with a clearance of less than an accessible 32 inches, which is difficult or impossible for persons using wheelchairs to pass through.

c. Most bathrooms and kitchens at the Subject Property were designed with insufficient clear floor space and turning radii, which design makes it difficult or impossible for persons using wheelchairs to use the facilities and/or appliances and maneuver about the space.

19. During an interview with a HUD investigator, Respondent Castillo admitted that only 20 percent of the units at the Subject Property were designed to be accessible to persons with disabilities using wheelchairs.[2] While Respondent Castillo may have considered certain units accessible, due to various defects in design and/or construction, [t]hose units are still not accessible under the Act.

20. Because the Subject Property violates the accessible design and construction requirements of 42 U.S.C. § 3604(f)(3)(C), it is not accessible to persons with disabilities using wheelchairs; such persons cannot move into or live in the Subject Property. Alternatively, even if they can move into or live in the Subject Property, such persons cannot have the full enjoyment of the Subject Property.

21. When Respondents Castillo and Castillo Architects designed and provided the architectural plan for the Subject Property with features that made the Subject Property not accessible to persons with disabilities using wheelchairs, Respondents Castillo and Castillo Architects violated 42 U.S.C. § 3604(f)(3)(C).

22. When Respondent 914 W. Hubbard constructed the Subject Property without fully incorporating the features of accessible design required by the Act, Respondent 914 W. Hubbard violated 42 U.S.C. § 3604(f)(3)(C).

23. As a result of these failures to comply with 42 U.S.C. § 3604(f)(3)(C) of the Act, the Subject Property is not and will not ever, without retrofit, be available to persons with mobility disabilities, such that individuals with mobility disabilities, particularly those who use wheelchairs, will be discouraged from renting at the property; people who become physically disabled while living at the Subject Property will likely have to move; and persons with disabilities, particularly those who use wheelchairs, will find it difficult or impossible to visit the Subject Property to view units or visit with friends and family.

24. For the reasons alleged in Paragraphs 20 to 24, Respondents violated 42 U.S.C. § 3604(f)(1) and (f)(2), as Respondents actions result in unavailability of housing on the basis of disability and/or make it so that the Subject Property is available to persons with disabilities on an inferior basis to non-disabled persons.

III. CONCLUSION

Wherefore, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents Castillo, Castillo

[2] Those alleged accessible units are: 104, 202, 205, 307, and 401.

Architects, and 914 W. Hubbard with engaging in discriminatory housing practices as set forth above and prays that an order be issued that:

A. Declares that Respondents' design and construction of the Subject Property, as set forth above, violates the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and its implementing regulations;

B. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them, from designing or constructing multifamily properties in a manner that is not fully accessible to persons with disabilities;

C. Imposes such monetary damages as will fully allow the Subject Property to be retrofitted or modified to become accessible to persons with disabilities using wheelchairs;

D. Imposes a $16,000 civil penalty against each Respondent for each violation of the Act; and

E. Awards such additional relief as may be appropriate pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully Submitted,

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