



Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1) and (2)(A); 24 C.F.R. § 103.400(a).

### **LEGAL AUTHORITY IN SUPPORT OF CHARGE**

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the 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 sold, rented, or made available; or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
2. Discrimination under 42 U.S.C. § 3604(f)(2) includes failing to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
  - a) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
  - b) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities who use 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); 24 C.F.R. § 100.205(c).

3. “Covered multifamily dwellings” are buildings consisting of four or more units if such buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units. 42 U.S.C. § 3604(f)(7); 24 C.F.R. § 100.201.

### **SUBJECT PROPERTY AND PARTIES**

4. 5th Street Lofts Condominium (“SSL” or “Subject Property”) is a 118-unit condominium development consisting of two residential buildings, known as Building A and Building B, located in the Long Island City neighborhood of Queens, New York. Building A is an eight-story, elevatored building consisting of 102 units. Building B is a five-story, elevatored building consisting of 16 units. Construction of SSL began in 2007, and the Final Certificate of Occupancy, covering all 118 units at SSL, was issued on January 25, 2010.

5. 5SL is a “covered multifamily dwelling” as defined by the Act, 42 U.S.C. § 3604(f)(7). As a covered multifamily dwelling, Respondents were required to design and construct 5SL in compliance with 42 U.S.C. § 3604(f)(3)(C).
6. Each of 5SL’s 118 units is a dwelling, as defined by the Act, 42 U.S.C. § 3602(b).
7. Complainant, [REDACTED], has a mobility disability and uses a wheelchair. Complainant resides in Unit 2B of Building A.
8. Complainant is a person with a disability as defined by the Act, 42 U.S.C. § 3602(h).
9. Complainant is an aggrieved person, as defined by the Act, 42 U.S.C. 3602(i).
10. 5SL was designed and marketed by Toll Brothers City Living, a division of Respondent Toll Brothers Real Estate, Inc (“Toll Brothers”).
11. Respondent 5-01-5-17 48th Avenue LLC (“50517”) was the developer and owner of 5SL during its design and construction and until the units were sold in 2010.
12. Respondent Henry T. O’Hara Jr. (“O’Hara”) is an architect formerly with H. Thomas O’Hara Architect, PLLC, which was the architectural firm hired by Respondent 50517 to design 5SL. Respondent O’Hara signed the architectural plans for 5SL. In 2011, H. Thomas O’Hara Architect, PLLC became insolvent and dissolved.
13. Respondent Sordoni Construction Co. built 5SL.
14. 5SL contains public and common use areas, including: the entrance foyer in the lobby; fitness center with a bathroom; a hallway bathroom next to the children’s room; children’s room; bicycle storage room; mailboxes; refuse rooms on each floor; parking garage; public terrace on the second floor; and public terrace on the roof.

#### **FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE**

15. On February 12, 2007, during pre-construction, Complainant visited the 5SL sales office, with her real estate agent [REDACTED] (“Rosa”), sales agent for Prudential Douglas Elliman, and completed a Qualification Questionnaire under the letterhead “Toll Brothers American Luxury Home Builder.”
16. On February 12, 2007, Rosa sent an email to [REDACTED] (“Shah”), Project Manager for Respondent Toll Brothers, which stated, “I’m not going to see my customer for a few days because it is hard for her to get around due to her disability.” On that same day, he again wrote to Shah, “My customer has a list of questions that I am going to forward to you. She really has to go through everything with a fine comb because of her disability. I hope you understand. I’ll send the questions over to you this evening

for you to review tomorrow.” On that same day, Shah responded, “No worries. We’ll try to answer her questions as quickly as possible.”

17. In June 2008, Complainant purchased Unit 2B on the second floor of 5SL’s Building A and parking space number 12.
18. On or about July 23, 2008, prior to moving in, Complainant inspected her unit. Afterward, [REDACTED] (“Avram”), Property Manager for Respondent Toll Brothers, sent an email to [REDACTED] of Thomas O’Hara Architect, PLLC (“Magarino”), [REDACTED], Project Executive for Respondent Toll Brothers (“Esparragoza”) and [REDACTED], Construction Manager for Respondent Toll Brothers (“Mead”), that “on her walk through[, Complainant noted] that her closet and all her outlets were not to ADA code . . . I would hate for us all to be involved in a legal situation with homeowner later down the road.”
19. On July 24, 2008, Mead responded in an e-mail to Magarino, “Plus the apartment was built to plan, the issue is, is the plan correct? As we found out with the walk-in closet door, the plan was incorrect at having at only 30” wide. If we can verify everything else in the plan is correct, then the apartment should be as well.”
20. On November 13, 2008 at 10:54 a.m., Mead sent an email to Magarino, stating, “I thought the issue had been resolved, but the buyer is now looking at the design requirements according to the Fair Housing Act . . . Do we need to follow these codes? That same day Magarino sent a reply email, indicating, “. . . We believe that the Fair Housing Act does not apply to [New York City.]”
21. Respondents failed to design and construct 5SL’s public and common use areas to be readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i). The inaccessible public and common use areas include, but may not be limited to, the following:
  - a. At the main entrance to 5SL, the reception desk does not have a lower, accessible desktop. The height of the desk is 42 ½ inches, exceeding the 34 inches of maximum height;
  - b. The ramp leading from the children’s room and bicycle storage to main entrance lobby does not provide a level landing at the top with minimum length of 60 inches;
  - c. The cross-slope of the ramp in parking garage leading to the building entrance exceeds 2% and a level landing of at least 60 inches at the bottom of the ramp is not provided;
  - d. Accessible parking spaces numbers 9, 10, and 11 are not located on the shortest route to an accessible entrance;

- e. The width of the access aisle between accessible spaces numbers 11 and 10 is 53 inches, narrower than the required 60 inches of minimum width;
  - f. A column on the accessible route to spaces numbers 9, 10, and 11 reduces the route's clear width to 31 inches, narrower than the required 36 inches;
  - g. The only signage for accessible space number 9 is painted on the ground, which can be obscured by a vehicle parked in the space;
  - h. The opening and closing controls for the garage doors that access Fifth Street are obstructed by two bollards that make the side reach to controls greater than 24 inches;
  - i. The opening force of second-floor, public terrace door exceeds the maximum opening allowable force of 8.5 pounds for an exterior hinged door;
  - j. The wall sconces located in the common area outdoor patios protrude over 4 inches into the circulation path, thus creating a danger to persons with visual disabilities;
  - k. The top rows of mailboxes are not located within accessible reach ranges. The reach to these mailboxes is from a parallel approach over an obstruction and exceeds the maximum allowable height of 46 inches; and
  - l. Refuse room entry doors exceed 5 pounds of maximum opening force. In addition, the doorway threshold measures 1 inch, exceeding the maximum height of ½ inch, and the threshold is not beveled. The trash chute door hardware is not accessible as it requires tight grasping, pinching, or twisting of the wrist, and the opening force of the trash chute door is 13 pounds exceeding 5 pounds maximum.
22. Respondents failed to design and construct units at 5SL so that all doors are sufficiently wide to allow passage by a person using a wheelchair as required by 42 U.S.C. § 3604(f)(3)(C)(ii). The inaccessible doors include, but may not be limited to, the following:
- a. The master bedroom walk-in closet doors in several units provide 28 to 31 inches of nominal clear width, less than the required 32-inch minimum nominal clear width;
  - b. In Unit 2A, patio door provides 30.5 inches of nominal clear width, less than the required 32-inch minimum nominal clear width;
  - c. In Unit 2Q, master bathroom door provides 31 inches of nominal clear width, less than the required 32-inch minimum nominal clear width; and

- d. In Unit 7D, hall bath door provides 31 inches of nominal clear width, less than the required 32-inch minimum nominal clear width.
23. Respondents failed to design and construct 5SL with accessible routes into and through the covered multifamily dwelling, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). The inaccessible routes include, but may not be limited to, the following:
    - a. For Units 2Q, 7D, and 3J, thresholds at entry doors exceed  $\frac{3}{4}$  inch and are not beveled;
    - b. In units with patios or terraces, the accessible routes to those areas are interrupted by stairs leading to those areas; and
    - c. The thresholds of bathroom doors exceed  $\frac{1}{2}$  inch and are not beveled.
  24. Respondents failed to design and construct units at 5SL with light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, as required by 42 U.S.C § 3604(f)(3)(C)(iii)(II). This includes, but may not be limited to, the following features:
    - a. Electrical outlets are located at heights between 12 and 12.5 inches, lower than the minimum permissible 15 inches;
    - b. In kitchens, electrical outlets' side reach over countertops exceeds maximum height of 46 inches; and
    - c. The control knobs of bathroom ventilation fans are located at heights of 10 inches, lower than the minimum permissible 15 inches.
  25. Respondents failed to design and construct units at 5SL with usable kitchens such that an individual in a wheelchair can maneuver about the space, as required by 42 U.S.C § 3604(f)(3)(C)(iii)(IV). This includes, but may not be limited to, the following:
    - a. clearance between oven and opposing kitchen counter base cabinets in Q line units is 39 inches, less than the required 40 inches; and
    - b. In one-bathroom units, 30 inches by 48 inches of clear floor space has not been provided beyond swing of door.
  26. Because of Respondents' discrimination set forth above in this Charge, Complainant has suffered actual damages, including emotional distress, inconvenience and the inability fully to access her housing.

**FAIR HOUSING ACT VIOLATIONS**

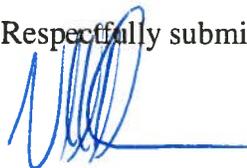
27. By failing to design and construct the Subject Property in accordance with subsection 804(f)(3)(C) of the Act, Respondents discriminated in the terms, conditions, or privileges of the sale or rental of the dwellings, or in the provision of services or facilities in connection with such dwellings, because of disability, in violation of subsection 804(f)(2) of the Act. 42 U.S.C. § 3604(f)(2) and (3)(C).

**CONCLUSIONS**

**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 with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(2) and (f)(3)(C); 24 C.F.R. §§ 100.202(a)-(b) and 100.205, and requests that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Requires Respondents to retrofit the public and common use areas and individual dwelling units at 5SL to comply with the design and construction requirements of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C);
3. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability in the design and construction of covered multifamily dwellings;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant and any other aggrieved persons for the damages Respondents' discriminatory conduct caused them;
5. Assesses a civil penalty against each Respondent for each violation of the Act in the maximum amount authorized pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

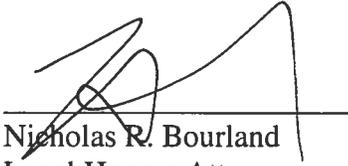


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