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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 EDWARD ROSE & SONS;)
 EDWARD ROSE & SONS, INC.;)
 EDWARD ROSE & ASSOCIATES, LLC;)
 EDWARD ROSE & ASSOCIATES,)
 INC.; EDWARD ROSE DEVELOPMENT)
 CO., LLC; EDWARD ROSE REALTY,)
 INC.; EDWARD ROSE PROPERTIES,)
 INC.; OCCIDENTAL DEVELOPMENT)
 CO., LLC; OCCIDENTAL)
 DEVELOPMENT, LTD.; HURON)
 DEVELOPMENT, L.P.; GREEN)
 RIDGE, L.P.; DORCHEN/MARTIN)
 ASSOCIATES, INC.;)
 ECKERT/WORDELL ARCHITECTS,)
 P.C.; JAMES R. SAULE,)
 ARCHITECT; GERALD PETERSON,)
 ARCHITECT; ALEXANDER V.)
 BOGAERTS & ASSOCIATES, P.C.;)
 PERSONNEL MANAGEMENT, INC.;)
 MANIFOLD SERVICES, INC.; and)
 SSOE, INC.,)
)
 Defendants.)
)

Case No. 02-73518
Judge Victoria A. Roberts
Magistrate Judge Scheer

F I L E D
JUN 29 2004
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SECOND AMENDED COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 ("Fair Housing Act"), 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§

12181-12189.

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3614(a), and 42 U.S.C. § 12188(b)(1)(B). Venue is proper pursuant to 28 U.S.C. § 1391(b) because (a) a number of defendants reside or do business in the Eastern District of Michigan and (b) all the defendants reside or do business in the State of Michigan.
3. Defendants Edward Rose & Sons, Inc., Edward Rose & Associates, Inc., Edward Rose Properties, Inc., Edward Rose Realty, Inc., Personnel Management, Inc., and Manifold Services, Inc., are corporations organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Defendants Occidental Development Co., LLC, Occidental Development, Ltd., Edward Rose & Associates, LLC, and Edward Rose Development Company, LLC, are limited liability companies organized under the laws of Michigan that conduct business in the Eastern District of Michigan. Defendant Edward Rose & Sons is a limited partnership organized under the laws of Michigan that conducts business in Michigan.
4. Defendants Edward Rose & Sons, Edward Rose & Sons, Inc., Edward Rose & Associates, LLC, Edward Rose & Associates, Inc., Edward Rose Properties, Inc., Edward Rose Realty, Inc., Personnel Management, Inc., Manifold Services, Inc.,

Occidental Development Co., LLC, Occidental Development, Ltd., and Edward Rose Development Company, LLC, (collectively "Rose defendants") are engaged in the development, construction, and operation of rental apartment complexes in the Eastern District of Michigan and elsewhere.

5. The Rose defendants own and are responsible for the design, construction, overall development, and the management and operation of a number of apartment complexes, including the following:

Apartment Complexes Located in MICHIGAN

<u>NAME OF DEVELOPMENT</u>	<u>LOCATION</u>
Byron Lakes Apts.	Kent County, MI
Canal Club Apts.	Eaton County, MI
The Crossings Apts.	Kent County, MI
Foxwood Apts.	Kalamazoo County, MI
The Harbours Apts.	Macomb County, MI
The Hermitage Apts.	Kalamazoo County, MI
Glenn Valley Apts.	Calhoun County, MI
Green Ridge Apts.	Kent County, MI
Gull Prairie Apts.	Kalamazoo County, MI
Gull Run Apts. I&II	Kalamazoo County, MI
Northport Apts.	Macomb County, MI
Pine Knoll Apts.	Calhoun County, MI
Portsmouth Apts.	Oakland County, MI
Southport Apts.	Van Buren County, MI
The Springs I & II	Oakland County, MI
Swiss Valley Apts.	Kent County, MI

Thornridge Apts.	Genesee County, MI
West Lake Apts.	Van Buren County, MI
Windmill Lakes Apts.	Ottawa County, MI

Apartment Complexes Located in WISCONSIN

<u>NAME OF DEVELOPMENT</u>	<u>LOCATION</u>
Tanglewood Apts.	Milwaukee County, WI

Apartment Complexes Located in OHIO

<u>NAME OF DEVELOPMENT</u>	<u>LOCATION</u>
Orchard Lakes Apts.	Toledo, OH
Lake Pointe Apts.	Clermont County, OH

Apartment Complexes Located in ILLINOIS

<u>NAME OF DEVELOPMENT</u>	<u>LOCATION</u>
Timberlane Apts.	Peoria, IL

6. Defendant Huron Development, L.P., a Michigan-chartered limited partnership, participated in the development of Byron Lakes Apartments and Foxwood Apartments. Defendant Huron Development, L.P., has its principal place of business in the Eastern District of Michigan.
7. Defendant Green Ridge, L.P., a Michigan-chartered limited partnership, participated in the development of Green Ridge Apartments. Defendant Green Ridge, L.P., has its principal place of business in the Eastern District of Michigan.
8. Defendant Dorchen/Martin Associates, Inc., a Michigan-chartered corporation, provided architectural and building

designs for Byron Lakes Apartments, Canal Club Apartments, The Crossings, The Hermitage Apartments, the Community Building at Foxwood Apartments, Swiss Valley Apartments, Gull Run Apartments I, Gull Prairie Apartments (excluding buildings 4, 5, and 6), The Harbours Apartments (buildings 41-44 and building 50), and Orchard Lakes Apartments.

Defendant Dorchen/Martin Associates, Inc., resides in and has its principal place of business in the Eastern District of Michigan.

9. Defendant Eckert/Wordell Architects, P.C., a Michigan-chartered corporation, provided architectural and building designs for Foxwood Apartments (excluding the Community Building), Glenn Valley Apartments, Green Ridge Apartments, Gull Run Apartments II, buildings 4, 5, and 6 of Gull Prairie Apartments, Pine Knoll Apartments, and Windmill Lakes Apartments. Defendant Eckert/Wordell Architects, P.C., resides in and has its principal place of business in the State of Michigan.
10. Defendant James R. Saule is an architect licensed and domiciled in the Eastern District of Michigan. Defendant SSOE, Inc., is an Ohio-chartered corporation that is registered to conduct business in the State of Michigan, and was the employer of Defendant Saule during the time relevant to this suit. Defendants Saule and SSOE, Inc., provided

architectural and building designs for Tanglewood Apartments.

11. Defendant Gerald Peterson is an architect licensed and domiciled in the Eastern District of Michigan, and was employed by Defendant SSOE during the time relevant to this suit. Defendants Peterson and SSOE, Inc., provided architectural and building designs for Thornridge Apartments.

12. Defendant Alexander V. Bogaerts & Associates, P.C., a Michigan-chartered corporation, provided architectural drawings and building designs for Portsmouth Apartments, The Springs Apartments, West Lake Apartments, Southport Apartments, Northport Apartments, Timberlane Apartments, Lake Pointe Apartments, and The Harbours Apartments (excluding buildings 41 to 44 and building 50). Defendant Alexander V. Bogaerts, P.C., resides in and has its principal place of business in the State of Michigan.

PATTERN OR PRACTICE VIOLATION: FAIR HOUSING ACT

13. Each of the apartment complexes specified in paragraph 5 above (hereinafter referred to as "the subject complexes") contains residential apartment units that are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

14. Those ground floor units at each subject complex designed and constructed for first occupancy after March 13, 1991 are

"covered multi-family dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(A) and are subject to the requirements of 42 U.S.C. § 3604(f)(3)(C). A substantial number of the units contained in each subject complex are "covered" dwelling units.

15. The subject complexes comprise approximately 265 buildings containing residential rental dwellings built since the effective date of the accessible design requirements of the Fair Housing Act. These buildings contain approximately 2456 ground floor units that are subject to the accessibility requirements of the Fair Housing Act.
16. Defendants have failed to design and to construct the covered dwelling units and common use and public use areas in the subject complexes and others in such a manner that:
 - (a) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
 - (b) 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
 - (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.

17. The Rose Defendants, Huron Development, and Green Ridge L.P., have failed to reasonably accommodate persons with disabilities by, inter alia, failing to (1) modify the subject apartment complexes to bring them into compliance with the accessibility requirements of the Act and/or ameliorate the inaccessible features of the complexes; (2) in at least one instance, imposing or threatening to impose a surcharge in return for providing an accessible parking space to a person with a disability.
18. The Rose Defendants have denied housing and made housing unavailable to persons with disabilities by, inter alia, informing persons with disabilities only about availability of certain ground floor units designated as physically handicapped units, while failing to inform them of other available non-designated physically handicapped ground floor

units, and directing prospective residents with disabilities to such designated handicapped units at other complexes even though there are non-designated handicapped ground floor units available at the complex in question.

19. The Rose Defendants discriminated in the terms and conditions for the provision of services and facilities by failing to remove ice and snow from common walkways located at the rear of the apartment buildings that service the rear patio doors of the ground floor units which are typically used by persons with disabilities to get in or out of their apartments, while removing ice and snow from the front sidewalks that service the inaccessible front entrance of the ground floor units which are typically used by persons without disabilities to get in or out of their apartments.
20. Defendants, through the actions described in paragraph 16 - 19 above, have:
 - a. Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to persons because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminated against persons in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental

of a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2);

c. Failed to design and construct dwellings in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C); and

d. Failed to reasonably accommodate persons with disabilities in violation of 42 U.S.C. § 3604(f)(3)(B); and

e. Misrepresented the availability of dwellings for rental by persons with disabilities in violation of 42 U.S.C. § 3604(d).

21. The conduct of defendants described above constitutes:

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

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

22. There are persons who have been the victims of defendants' discriminatory housing practices and who are aggrieved persons as defined in 42 U.S.C. § 3602(i). Such persons have suffered injuries as a result of defendants' conduct

described above.

23. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others.

PATTERN OR PRACTICE VIOLATION:
AMERICANS WITH DISABILITIES ACT

24. The rental offices at the subject complexes are sales or rental establishments, the operations of which affect commerce, and therefore are "public accommodations" within the meaning of 42 U.S.C. § 12181(7).
25. The rental offices at the subject complexes other than Canal Club, The Crossings, and Pine Knoll Apartments were designed and constructed for first occupancy after January 26, 1993. The rental offices and the facilities, privileges, and accommodations provided for the public appurtenant to the use of the rental offices, including the parking, sidewalks, and restrooms at the rental offices, are covered by the prohibition on discrimination in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1).
26. Defendants have failed to design and construct the rental offices at the subject complexes and others that were designed and constructed for first occupancy after January 26, 1993, and the appurtenant parking, sidewalks, and restrooms at those rental offices, in such a manner that the facilities are readily accessible to and useable by

individuals with disabilities.

27. The Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership have failed to remove accessibility barriers from the rental offices at the subject complexes where such removal is readily achievable.
28. The actions of the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership, as described in paragraphs 23-27 above, constitute:
 - a. Discrimination against individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges, and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 12182(a);
 - b. A failure to remove architectural barriers where such removal is readily achievable as required by 42 U.S.C. §12182(b)(2)(A)(iv); and
 - c. A failure to design and construct public accommodations in compliance with the requirements mandated by 42 U.S.C. § 12183(a)(1).
29. The conduct described in paragraphs 23-27 above constitutes:
 - a. A pattern or practice of discrimination

under Title III of the ADA, 42 U.S.C.

§§ 12181-12189; and

b. Discrimination against a person or group of persons under Title III of the ADA, 42 U.S.C. §§ 12181-12189, which discrimination raises an issue of general public importance.

30. Persons who have been the victims of these discriminatory practices are persons aggrieved within the meaning of 42 U.S.C. § 12188(b)(2)(B), and may have suffered injuries as a result of the conduct of the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership, described above.

PRAYER FOR RELIEF

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

1. Declares that defendants' policies and practices, as alleged herein, violate the Fair Housing Act;
2. Enjoins defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
 - a. Failing or refusing to bring the covered dwelling units and public use and common use areas at the subject complexes and others into immediate compliance with the

requirements of 42 U.S.C. § 3604(f)(3)(C);

b. Failing or refusing to take such affirmative steps as may be necessary to restore the victims of the defendants' unlawful practices to the position they would have been in but for the discriminatory conduct; and

c. Failing or refusing to design and construct any covered multi-family dwellings in the future in compliance with the requirements set forth in 42 U.S.C. § 3604(f)(3)(C);

3. Awards such damages as would fully compensate each person aggrieved by defendants' discriminatory housing practices for their injuries and damages resulting from defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);

4. Awards each person aggrieved by defendants' discriminatory conduct punitive damages because of the intentional and wilful nature of defendants' conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

5. Assesses a civil penalty against defendants for their violation of the Fair Housing Act in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. 85.3(b)(3), to vindicate the public interest.

6. Declares that practices of the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited

Partnership, as alleged herein, violate Title III of the ADA;

7. Enjoins the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:

- a. Failing or refusing to bring the rental offices at the subject complexes and others, and the parking, sidewalks, and restrooms at the rental offices, into compliance with the requirements of 42 U.S.C. § 12183(a)(1);
- b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the unlawful practices of the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership in violation of the ADA, to the position they would have been in but for the discriminatory conduct; and
- c. Failing or refusing to design and construct any public accommodations in the future in compliance with the requirements of 42 U.S.C. § 12183(a)(1);

8. Awards such damages as would fully compensate each

person aggrieved by the discriminatory practices in violation of the ADA of the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership, for their injuries and damages resulting from defendants' discriminatory conduct, pursuant to 42 U.S.C. § 12188(b)(2)(B); and

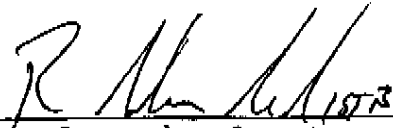
9. Assesses civil penalties against the Rose defendants, Huron Development Limited Partnership, and Green Ridge Limited Partnership for each of their violations of the ADA, in an amount authorized by 42 U.S.C. § 12188(b)(2)(C), to vindicate the public interest.


The United States requests a jury trial of all issues triable thereby.

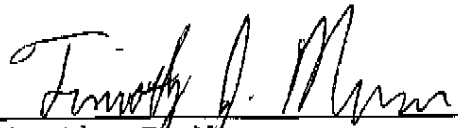
The United States further prays for such additional relief as the interests of justice may require.

Respectfully submitted,

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