JUDGE NATHAN

14 CV 6066

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	**COMPLAINT**
Plaintiff,	
v.	14 Civ.
TOWER 31, LLC; ATLANTIC 31st, LLC; COSTAS KONDYLIS & PARTNERS, LLP; and ALAN L. GOLDSTEIN,	
Defendants.	

Plaintiff United States of America (the "United States") alleges as follows:

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 (the "Fair Housing Act" or the "Act"), 42 U.S.C. §§ 3601-3619. As set forth in full below, the United States alleges that Defendants, the developers and architect of the Tower 31 apartments ("Tower 31"), a residential apartment complex in Manhattan, have unlawfully discriminated

against persons with disabilities under the Fair Housing Act by failing to design and construct Tower 31so as to be accessible to persons with disabilities.

Jurisdiction and Venue

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3614(a).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because the claims alleged in this action arose in the Southern District of New York, and concern or otherwise relate to real property located in this District.

The Property

4. Tower 31 is a residential apartment building located at 9 West 31st Street in New York, New York. The complex consists of a tower with elevator access, and contains 283 rental apartment units and public and common use areas including a leasing office, laundry facilities, outdoor terraces, a fitness center, a recreation center, and storage areas for tenants.

5. The rental units at Tower 31 are "dwellings" within the meaning of 42 U.S.C. § 3602(b), and "dwelling units" within the meaning of 24 C.F.R. § 100.21.

6. Tower 31 was designed and constructed for first occupancy after March 13, 1991. All of the rental units are "covered multifamily dwellings" within the meaning of 42 U.S.C. § 3604(f)(7) and 24 C.F.R. § 100.21. The complex is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(a), (c).

The Defendants

7. Tower 31, LLC, a New York limited liability company, is the owner and developer of Tower 31and, in that capacity, participated in the design and construction of

Tower 31.

8. Atlantic 31st, LLC, is a New York limited liability company and member of Tower 31, LLC and, in that capacity, participated in the design and construction of Tower 31.

9. Costas Kondylis & Partners, LLP, a New York limited liability partnership, drew the architectural plans for Tower 31 and, in that capacity, participated in the design and construction of the apartment complex. Further, Alan L. Goldstein, formerly a partner at Costas Kondylis & Partners, was the architect of record for Tower 31.

Inaccessible Features of Tower 31

10. Tower 31, which the Defendants designed and constructed, is inaccessible to persons with disabilities.

11. For instance, Defendants designed and constructed the following inaccessible features in Tower 31:

a. Opening force required to operate the main entrance doors interfering with accessibility for persons with certain disabilities;

b. Counter at main lobby desk too high to accommodate persons who use wheelchairs;

c. Excessively high threshold at the entrance to the leasing office interfering with accessibility for persons who use wheelchairs;

d. Sign for the leasing office lacking raised-letter Braille for persons with visual impairments;

e. Location of the sink in the lobby unisex bathroom interfering with accessibility for persons who use wheelchairs;

f. Mailboxes mounted too high to accommodate persons who use wheelchairs;

g. Excessively high thresholds at bathroom and kitchen entrances in individual units interfering with accessible routes for persons who use wheelchairs;

h. Insufficient clear opening width of bedroom, bathroom, terrace, and closet doors in individual units;

i. Kitchens in individual units lacking sufficient width to accommodate persons who use wheelchairs;

j. Kitchen ranges and sinks in individual units lacking sufficient clearance for persons who use wheelchairs;

k. Insufficient clear floor space within bathrooms in individual units for maneuvering by persons who use wheelchairs;

l. Kitchen outlets in individual units inaccessible to persons who use wheelchairs;

m. Trash rooms lacking sufficient clearance to accommodate persons who use wheelchairs;

n. Entrance to the laundry room lacking sufficient clearance and presenting excessively high threshold for persons who use wheelchairs;

o. Entrance doors to the common terraces too narrow and/or too uneven for access by people who use wheelchairs;

p. Opening force required to operate the entrance doors to the fitness center, the tenant storage room, and the bicycle storage room interfering with accessibility for persons with certain disabilities; and

q. Door to terrace area in the tenants' entertainment lounge lacking sufficient clearance for persons who use wheelchairs.

12. In light of some or all of the inaccessible conditions identified in paragraph 11 above, Defendants failed to comply with applicable State and local design and construction provisions, including New York City Local Law 58, in designing and constructing Tower 31.

Additional Properties

13. Defendants have participated in the design and construction of other multifamily housing complexes for first occupancy after March 13, 1991, which also are subject to the Fair Housing Act's accessibility requirements and may not comply with those requirements.

Fair Housing Act Claims

14. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–13 above.

15. Defendants violated 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205(c), by failing to design and construct Tower 31 in such a manner that:

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

b. all doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by persons who use wheelchairs for mobility; 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/or other environmental controls in accessible locations; and

iii) usable kitchens and bathrooms, such that an individual using a wheelchair can maneuver about the space.

16. Defendants, through the actions and conduct referred to in the preceding paragraph, have:

a. Discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to buyers or renters because of a disability, in violation of 42 U.S.C. § 3604(f)(1) and 24 C.F.R. § 100.202(a);

b. Discriminated against persons 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 a dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2) and 24 C.F.R. § 100.202(b); and

c. Failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205.

17. 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/or

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

18. Persons who may have been the victims of Defendants' discriminatory housing practices are aggrieved persons under 42 U.S.C. § 3602(i), and may have suffered injuries as a result of Defendants' conduct described above.

19. Defendants' discriminatory actions and conduct described above were intentional, willful, and taken in disregard for the rights of others.

Prayer for Relief

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

a. Declares that the policies and practices of Defendants, as alleged herein, violate the Fair Housing Act;

b. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:

i. Failing or refusing to bring the dwelling units and public use and common use areas at Tower 31 and at other covered multifamily housing complexes that Defendants have designed and constructed into compliance with 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205;

ii. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;

iii. Designing and/or constructing any covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205; and

iv. Failing or refusing to conduct a compliance survey at Tower 31 or at other covered multifamily housing complexes that Defendants have designed and constructed to determine whether the retrofits ordered in paragraph b(i) were made properly;

c. Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3613(c)(1) and § 3614(d)(1)(B), to each person harmed by Defendants' discriminatory conduct and practices; and

d. Assesses a civil penalty against each Defendant in the maximum amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

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

ERIC H. HOLDER, JR.
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Date: New York, New York
August 4, 2014

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