

## DETERMINATION OF REASONABLE CAUSE

CASE NAME: Fair Housing of the Dakotas v. PBR, LLC.  
CASE NUMBER: 08-04-0207-8

CASE NAME: Fair Housing of the Dakotas v. Equity Homes, Inc.  
CASE NUMBER: 08-04-0208-8

### I. JURISDICTION

Complainant Fair Housing of the Dakotas (then known as North Dakota Fair Housing Council, Inc.) filed nine complaints with HUD on or about July 6, 2004, alleging that various respondents discriminated based on handicap by failing to design and construct certain housing complexes so that the complexes meet the Fair Housing Act's accessibility requirements. Among the complaints are the two referenced above, which concern East Briar Estates in Sioux Falls, South Dakota, and which are the subject of this determination of reasonable cause.

Complainant's July 6, 2004, complaints with respect to East Briar Estates alleged that Respondents Equity Homes, Inc., and PBR, LLC, 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)(3)(C). On or about August 10, 2005, complaint 08-04-0207-8 was amended to reflect Complainant's new name, *i.e.*, Fair Housing of the Dakotas and to clarify the allegations. On or about August 10, 2005, complaint 08-04-0208-8 was amended to reflect Complainant's new name, *i.e.*, Fair Housing of the Dakotas, to add JSA Consulting and Engineering and Hartung Design as Respondents and to clarify the allegations. On or about July 18, 2008, Complainant amended the complaints to add Jade, Inc. as a Respondent.

According to the complaints, the most recent act of discrimination is alleged to have occurred on May 27, 2004, although the claims are continuing. East Briar Estates is not exempt under the Act. If proven, the allegations would constitute a violation of subsections 804(f)(1), (f)(2) and (f)(3)(C) of the Act. 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(c).

The Respondents receive no federal funding.

### II. COMPLAINANT'S ALLEGATIONS

Complainant Fair Housing of the Dakotas ("FHD") is located at 909 Basin Ave., Suite 2, Bismarck, North Dakota. FHD alleges that on May 6, 2004, a Sioux Falls resident contacted FHD about a potential violation of the Act's design and construction provisions at Kensington Apartments in Sioux Falls, South Dakota. FHD then

investigated the allegations and found that Kensington Apartments was inaccessible. FHD then further investigated other multifamily housing complexes built by the same developers to ascertain whether they too might violate the Act. Complainant investigated the following complexes, all having the same design as Kensington Apartments, *i.e.*, (1) Sertoma Hills Apartments and Villas; (2) West Briar Estates; (3) East Briar Estates; and (4) and Beverly Gardens Apartments.

Complainant's investigation indicated that East Briar Estates failed to meet the Act's accessibility requirements. Among the non-compliant features FHD observed are: inaccessible curb cuts; inaccessible garages; improperly marked handicapped parking; patios that are more than 4" below the sliding glass patio doors.

### III. RESPONDENTS' DEFENSES

Respondents are Equity Homes, Inc., PBR, LLC, JSA Consulting and Engineering, Hartung Design, and Jade, Inc.

Respondents Equity Homes, Inc. and PBR, LLC, were the builders and developers of East Briar. PBR owned the complex during construction. The two respondents assert that they have never and will never discriminate based on disability. Respondents claim that the buildings meet the building codes established by the City of Sioux Falls, South Dakota. They allege further that the problem is that HUD's regulations and requirements are in conflict with the City of Sioux Falls Accessibility Codes.

Respondent Hartung Design, located at 3413 S. Florence, Sioux Falls, is alleged to have created the design plans for East Briar Estates. Hartung Design denies designing East Briar and asserts that it had no involvement with the complex.

Respondent JSA Consulting and Engineering, located at 3700 S. West Ave., Sioux Falls, is alleged to have designed the grading and other exterior portions of East Briar Estates. JSA asserts in its defense that it designed only the drainage and grading and had no control over the design of any other aspects of the complex.

### IV. FINDINGS

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). It is also 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).

Pursuant to these provisions, discrimination includes, in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons; all 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 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).

“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).

Respondent Equity Homes, Inc., with offices located at 4208 West 38<sup>th</sup> St., Sioux Falls, is the developer and builder of East Briar.

Respondent PBR, LLC, with offices at 2520 E. Orchard Trail, Sioux Falls, owns East Briar Estates.

Respondent Jade, Inc., 18408 Beals Chapel Rd., Lenoir City, TN, is the current owner of East Briar Estates and would be a necessary party to obtain relief.

Respondent JSA Consulting and Engineering designed the site layout for East Briar Estates, as established by the site plans for the complex grading and other exterior portions of East Briar Estates. JSA asserts in its defense that it designed only the drainage and grading and had no control over the design of any other aspects of the complex.

East Briar Estates consists of 4 two-story buildings with 8 units per building and a total of 32 rental apartments. Each apartment has two bedrooms and one bathroom. The complex is located at 4700, 4704, 4708 and 4712 E. 15<sup>th</sup> St. and 4701, 4705, 4709 and 4711 E. Clark St., Sioux Falls, S.D. Each of the 4 buildings has a building entrance on the north side of the building leading to 2 ground floor units and 2 upper level units. This same configuration is found on the south side of each of the 4 buildings. Sixteen dwellings thus are covered multifamily dwellings subject to the Act’s design and construction requirements. Public and common use areas at East Briar Estates include common entrances to the units, parking lots, sidewalks, a laundry room, and garages.

East Briar Estates was built for first occupancy after March 13, 1991. Its occupancy certificates were issued on or about June 25, 1996.

The investigation revealed that East Briar Estates does not meet the design and construction requirements specified by the Act.

East Briar's 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); Guidelines Req. 1-2. Specifically, the sidewalks along the buildings, which serve as the route from parking to the building entrances, have cross slopes that exceed 2%, with some over 7%. See ANSI 4.3.7. There are also many abrupt level changes and gaps along the sidewalks, including at the front stoops to the buildings. See ANSI 4.3.8. Many of the level changes at the stoops exceed one inch, with the level change at 4711 E. Clark St. being 3 ½" high. Id. There is a gap 3 ½" wide on the sidewalk leading to 4704 E. 15<sup>th</sup> St. See ANSI 4.5.4. The sidewalk at the entrance door at one building slopes more than 2% in the maneuvering clearance. See ANSI 4.13.6. The curb ramp near 4712 E. 15<sup>th</sup> St. has excessive running slopes of up to 11.3%. See ANSI 4.7.2. Several of the building entrance doors require a force greater than 8.5 pounds to open, ranging up to 19 pounds at one entryway. See ANSI 4.13.11. In addition, there is no continuous accessible pedestrian route from the covered units to the public street, i.e., 15<sup>th</sup> Street. See ANSI 4.3.2(1). There are garages but none are accessible. Guidelines Req. 2. There is insufficient clear floor space at the mailboxes (which are located in the common vestibules) to allow a person using a wheelchair to retrieve his/her mail. ANSI 4.2.4. The mailboxes are also too high to be reached by a person using a wheelchair (above 54"). Id. Moreover, the door to the laundry room has a knob door handle, rather than accessible lever hardware.

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, 42 U.S.C. § 3604(f)(3)(C)(ii); Guidelines Req. 3. The walk-in closet in the hallway of the ground-floor units has a doorway that is too narrow to allow passage by a person using a wheelchair; the door is only 30" wide. Id.

In addition, East Briar does not contain the following features of adaptive design:

-- an accessible route into and through the dwelling, 42 U.S.C. § 3604(f)(3)(C)(iii)(I); Guidelines Req. 4; ANSI 4.3.8. The unit entrance doors on the vestibule side have an abrupt level change of one inch. The patio door thresholds are too high at 1 ½" and are not beveled. The level change at the carpet transition strip at the bathroom door and kitchen is ½" high and unbeveled.

-- electrical outlets in accessible locations, 42 U.S.C. § 3604(f)(3)(C)(iii)(II); Guidelines Req. 5. The outlets in the living rooms and bedrooms are too low at 13 ½" – 14" above the floor. Two of the outlets in the kitchen are not accessible because they are located too close to the countertop corner.

-- reinforcements in bathroom walls to allow later installation of grab bars, 42 U.S.C. § 3604(f)(3)(C)(iii)(III); Guidelines Req. 6. The plans do not provide for such reinforcements.

-- usable bathrooms such that an individual in a wheelchair can maneuver about the space, 42 U.S.C. § 3604(f)(3)(C)(iii)(IV); Guidelines Req. 7. There is insufficient maneuvering space at the bathroom sinks because the centerline is 15" from the side wall; it should be at 24" or better.

Complainant's mission is to prevent and eliminate illegal housing discrimination in North Dakota and South Dakota. FHD alleges that, as a result of Respondents' discriminatory actions, its mission has been frustrated. It has expended funds and its staff has spent time on this matter that could have been spent working in other areas such as educational activities, counseling, referral services, and enforcement activities. FHD will also need to continue to monitor Respondents to ensure that the discriminatory housing practices have ended. Consequently, Respondents' alleged discrimination has frustrated FHD's efforts to achieve equal housing for the residents of South Dakota. FHD is an aggrieved person under the Act.

Based on the above, the Department has reasonable cause to believe that Respondents Equity Homes, Inc. PBR, LLC, and JSA Consulting and Engineering failed to design and construct East Briar Estates in accordance with the Act's design and construction requirements, in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(C) of the Act.

There is no reasonable cause to believe that Hartung violated the Act with respect to East Briar Estates. Hartung denies designing East Briar and asserts that it had no involvement with the complex, and the investigation did not reveal evidence suggesting otherwise.

## VI. ADDITIONAL INFORMATION

Notwithstanding this determination by HUD, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

A copy of the final investigative report can be obtained from: Evelyn Meininger, Region VIII Director, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 1670 Broadway Street, 23rd Floor, Denver, CO 80202-4801.



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