

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS**

The Secretary, United States	)	
Department of Housing and Urban	)	
Development, on behalf of Complainant,	)	
	)	
Denver Metro Fair Housing Center,	)	
	)	
Charging Party,	)	
	)	
v.	)	HUDOHA No.:
	)	FHEO No.: 08-16-4128-8
	)	
PR III/Broadstone Blake St., LLC;	)	
	)	
Alliance Colorado Builders, LLC;	)	
	)	
PS Arch, Inc.; and	)	
	)	
SHF II Battery on Blake Street Owner, LLC;	)	
	)	
Respondents	)	

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On April 22, 2016, Denver Metro Fair Housing Center (“DMFHC”) filed a timely complaint (“the Complaint”) with the U.S. Department of Housing and Urban Development (“Department” or “HUD”), alleging that Respondents PR III Broadstone Blake St., LLC (“Respondent Broadstone”); Alliance Colorado Builders, LLC aka Alliance Residential Builders, LLC (“Respondent Alliance”); and PS Arch, Inc., d/b/a Parikh Stevens Architects (“Respondent PSA”) discriminated on the basis of disability by failing to design and construct accessible multifamily dwellings, in violation of the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601–19.<sup>1</sup> On October 13, 2017, the Complaint was amended to name as an additional Respondent SHF II Battery on Blake Street Owner (“Respondent Battery”), the present owner of the building that acquired the property after the Complaint was filed.

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<sup>1</sup> The term “disability” is used herein in place of, and has the same meaning as, the term “handicap” in the Act and its implementing regulations.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1), (2). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to Regional Counsel. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

By a Determination of Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Regional Director of the Office of Fair Housing and Equal Opportunity for Region VIII has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

The Assistant Secretary for Fair Housing and Equal Opportunity has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. *See* 42 U.S.C. § 3610(g)(2).

## **II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE**

Based on the Department’s investigation of the allegations contained in the Complaint, as amended, and the resulting Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

### **A. Legal Authority**

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to a person because of a disability of that renter, a person residing in or intending to reside in that dwelling after it is rented or made available, or any person associated with that renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. 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 facilities in connection with such a dwelling because of a disability of that person, a person residing in or intending to reside in that dwelling after it is so rented or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. Unlawful discrimination under subsections 804(f)(1) and (f)(2) of the Act includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that, in relevant part:
  - a. the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
  - b. all premises within such dwellings contain an adaptive design that allows for an accessible route into and through the dwelling. 42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205.

4. As used in subsection 804(f)(3)(C) of the Act, “covered multifamily dwellings” includes all units in buildings consisting of four or more units in which there is an elevator. 42 U.S.C. § 3604(f)(7)(A); 24 C.F.R. § 100.201.
5. The Fair Housing Accessibility Guidelines (“Guidelines”) “provide technical assistance . . . to implement the requirements” of the Act’s design and construction provision, as required by 42 U.S.C. 3604(f)(5)(C). 59 Fed. Reg. 9499-9515 (Mar. 6, 1991); *see also* 59 Fed. Reg. 33362-33368 (June 28, 1994) (supplement to the Guidelines). The Guidelines “provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.” 56 Fed. Reg. 9499; 24 C.F.R. § 100.205(e)(2)(i). The Guidelines incorporate by reference many of the standards set forth in the 1986 edition of the American National Standard for building and facilities providing accessibility and usability for persons with disabilities (“ANSI-1986”). HUD regulations at 24 C.F.R. § 100.205(e)(1) specify that the 2003 version of these standards, “ANSI-2003,” may serve as a substitute for ANSI-1986 for the purpose of determining compliance with the Act’s design and construction requirements.
6. The Fair Housing Act Design Manual (“Design Manual”), published in 1996 and revised in 1998, offers explanations and uses detailed illustrations to provide guidance on the applicability of the Guidelines to many aspects of design and construction of multifamily dwellings.

**B. Parties and Subject Properties**

7. DMFHC is a non-profit organization with an expressed mission of combating housing discrimination in the Denver, Colorado metropolitan area. In furtherance of this goal, DMFHC engages in activities designed to encourage fair housing practices through educational efforts; assisting persons who believe they have been the victims of housing discrimination; and identifying barriers to fair housing in order to help counteract and eliminate discriminatory practices.
8. DMFHC asserts Respondents actively engage in unlawful discrimination against persons with disabilities. As a result of frustration to its mission and diversion of resources in conducting fair housing testing that identified discriminatory practices, Complainant filed a complaint of discrimination against Respondents.
9. DMFHC is an “aggrieved person” as defined by subsection 802(i) of the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
10. The Subject Property is a 164-unit, six-story residential apartment building with covered parking and other common-area amenities, including a swimming pool, in Denver, Colorado. All of the units are accessible by elevator. After the building was constructed, the City and County of Denver issued the final certificate of occupancy for the Subject Property on June 3, 2015.
11. The Subject Property is a “covered multifamily dwelling” as defined by the Act, 42 U.S.C. § 3604(f)(7)(A); 24 C.F.R. § 100.201. Accordingly, Respondents were

required to design and construct the Subject Property and all units within it in compliance with 42 U.S.C. § 3604(f)(3)(C).

12. Respondent Broadstone is a Delaware Limited Liability Company and was the owner of the Subject Property at the time it was constructed and when the Complaint was filed. After the Complaint was filed, the Subject Property was sold to Respondent Battery on or about June 15, 2016.
13. Respondent Battery is the present-day owner of the Subject Property.
14. Respondent Alliance is an Arizona Limited Liability Company and was the builder of the Subject Property.
15. Respondent PSA, a Colorado Corporation, is the architect of record for the Subject Property.

**C. Factual Allegations**

16. On September 23, 2015, DMFHC sent two testers to observe the accessibility of the Subject Property. The testers observed potential violations of the Act's design and construction requirements, including violations related to the accessibility of the route to the swimming pool, the accessibility of the route through observed units to the attached balconies of those units, and insufficient accessible parking spaces.
17. As a result of its testing, DMFHC filed the Complaint with the Department.
18. After accepting the Complaint, HUD investigators conducted a design review of the architectural portion of the blueprints for the Subject Property, focusing on the specifications for the swimming pool, parking lots, and balconies.
19. HUD investigators also conducted two site visits at the Subject Property. During the site visits, HUD inspected portions of the parking garage, a sampling of unit interiors, the route to and from the courtyard, and the swimming pool and adjoining hot tub located in the courtyard. HUD investigators compared the data gathered during the site visits against the blueprints for the Subject Property, the Guidelines, ANSI-2003, the Design Manual, and other relevant sources related to design and construction requirements.
20. Pursuant to its investigation, HUD found that the Subject Property failed to meet the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
21. Respondents failed to design or construct the Subject Property'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) and Guidelines Requirement 2. Specifically, the route to the swimming pool and hot tub is inaccessible for the following reasons:

- a. The route to the swimming pool and adjoining hot tub is inaccessible because the thresholds for the two doorways leading into the second-floor courtyard area containing the swimming pool and hot tub are non-compliant: they are one inch above the finished floor on the courtyard side instead of the ½ inch maximum threshold height. *See* Guidelines Req. 2, ¶1; ANSI-1986 § § 4.3.9, 4.13.8; ANSI-2003 §404.2.4.
  - b. The route to the swimming pool and adjoining hot tub is also inaccessible because the door-opening force required to open the west and east doors to the second-floor courtyard exceeds the maximum allowable force: the force required is 30 pounds-per-square-inch (psi) and 18 psi, respectively, whereas the Guidelines and ANSI standards set forth a maximum of 5 psi. *See* Guidelines Req. 2, ¶ 1; ANSI-1986 § 4.13.11; ANSI-2003 § 404.2.8.
  - c. The route to the swimming pool and hot tub is also inaccessible because both the pool and hot tub were designed and built to be enclosed by a four-foot wide band of coping raised 13.5 inches above the main deck, which prevents wheelchair access to the pool’s edge, as required by the Act. *See* Guidelines Req. 2, ¶14; Design Manual at 2.7 (“swimming pool aprons must be accessible”) and 2.8(5) (“pools must be on an accessible route that continues around the apron.”); *see also* Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act, Q&A 51 (April 30, 2013).
22. Respondents failed to design or construct the Subject Property’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) and Guidelines Requirement 2. Specifically, the Subject Property does not provide accessible parking on an accessible route. Six of the seven parking spaces designated for accessible parking are out of compliance with Requirement 2 of the Guidelines and relevant ANSI standards:
- a. Parking space 153 measures 95 inches wide and is less than the required 96 inches in width. *See* Guidelines Req. 2, ¶ 14; ANSI-1986 § 4.6.2; ANSI-2003 § 502.2.
  - b. The access aisle for parking space 106 measures 58 inches wide and is less than the required 60 inches in width. *See* Guidelines Req. 2, ¶ 14; ANSI-1986 § 4.6.2; ANSI-2003 § 502.4.2.
  - c. Parking spaces 106 and 141 did not have signs designating the spaces as accessible parking. Parking space 168 had an accessible-parking sign during the first inspection by the Department but did not have such a sign during the second inspection. *See* Guidelines Req. 2, ¶ 14; ANSI-1986 § 4.6.2; ANSI-2003 § 502.7.
  - d. Two other spaces, 186 and 187, had signs that measured less than 60 inches above the floor, as measured to the bottom of the signs. *See* Guidelines Req. 2, ¶ 14; ANSI-1986 § 4.6.2; ANSI-2003 § § 502.2 and 502.7.

23. Respondents failed to design or construct the Subject Property so as to provide an accessible route into and through covered dwelling units, as is required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I) and Guidelines Req. 4. Specifically, based on a sampling of three covered units—Units 511, 518, and 608—the routes onto the balcony from the interior of the units are not accessible for the following reasons:
- a. The threshold height for the secondary, sliding balcony doors exceed the permissible  $\frac{3}{4}$  inch allowed by the Guidelines. *See* Guidelines Req. 4, ¶ 4; Design Manual at 4.12 and 4.14 (diagram); ANSI-1986 § 4.13.8; ANSI-2003 § § 1003.5, 1004.5.2.2. For example:
    - i. Unit 511: The sliding door threshold rises approximately  $1\frac{1}{4}$  inches from the interior floor to the top of the threshold.
    - ii. Unit 516: The sliding door threshold rises approximately 1 inch from the interior floor to the top of the threshold.
    - iii. Unit 608: The sliding door threshold rises approximately  $\frac{5}{8}$  inch from the interior floor to the top of the threshold.
  - b. The balcony floors are more than  $\frac{1}{2}$  inch below the interior floor. *See* Guidelines Req. 4, ¶ 5; Design Manual at 4.11 and 4.14 (diagram); ANSI-1986 § 4.5.2; ANSI-2003 § 303.3. For example:
    - i. Unit 511: The exterior balcony floor is  $\frac{3}{4}$  inch lower than the interior unit floor.
    - ii. Unit 516: The exterior balcony floor is 1 inch lower than the interior unit floor.
    - iii. Unit 608: The exterior balcony floor is  $1\frac{5}{8}$  inch lower than the interior unit floor.
24. The Subject Property does not comply with the Guidelines, which provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act. 56 Fed. Reg. 9499; 24 C.F.R. §100.205(e)(2)(i). Contrary to Respondents’ assertion that the Subject Property complies with the accessibility standards articulated in ANSI-2003, the Subject Property complies with neither ANSI-2003 nor ANSI-1986.
25. Because of Respondents’ discriminatory conduct, Complainant DMFHC suffered actual damages, including diversion of resources and frustration of its organizational mission.

#### **D. Legal Allegations**

26. As described in paragraphs 16 to 25 above, Respondents discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to persons with disabilities and others by failing to design and construct the Subject Property in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(1) of the Act. 42 U.S.C. § 3604(f)(1) and (f)(3); 24 C.F.R. § 100.202(a).
27. As described in paragraphs 16 to 25 above, Respondents discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such dwellings because of disability by failing to design and construct the Subject Property in accordance with subsection 804(f)(3) of the Act, in violation of subsection 804(f)(2) of the Act. 42 U.S.C. § 3604(f)(2) and (f)(3); 24 C.F.R. § 100.202(b).

### **III. CONCLUSION**

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to section 810(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of subsections 804(f)(1), (f)(2) and (f)(3)(C):

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate subsections 804(f)(1), (f)(2) and (f)(3)(C) of the Act, 42 U.S.C. §§ 3604(f)(1)-(3);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of disability against any person in the sale or rental of a dwelling;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, to bring all non-compliant designated parking spaces, dwelling units, and public use and common use areas into compliance with 42 U.S.C. § 3604(f)(3)(C), including by providing reasonable compensation to the owners and tenants of the Subject Properties for inconvenience caused by, and other expenses related to, such retrofitting;
4. Awards such actual damages as will fully compensate Complainant DMFHC and any other individuals who resided or sought to reside at the Subject Property for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);

5. Assesses the maximum civil penalty against each Respondent for each discriminatory housing practice, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 1st day of November 2018.

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