

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

Secretary, United States Department of)
Housing and Urban Development, on behalf of)
Complainant Northwest Fair Housing Alliance,)
)
Charging Party,)
)
v.)
)
Keith Riexinger, Tamra Riexinger, and)
Riexinger Enterprises, Inc., d/b/a Crossroads)
Construction,)
)
Respondents.)
_____)

ALJ No. _____

FHEO No.10-15-0136-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On March 17, 2014, Complainant Northwest Fair Housing Alliance (“Complainant”) filed a complaint with the U.S. Department of Housing and Urban Development (“HUD”) alleging that Respondents Keith Riexinger, Tamra Riexinger, and Riexinger Enterprises, Inc., d/b/a Crossroads Construction discriminated against Complainant based on disability¹ in violation of the Fair Housing Act (“Act”), as amended, 42 U.S.C. §§ 3601-19. HUD formally filed the complaint on February 6, 2015.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has re-delegated the authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director for Fair Housing and Equal Opportunity, Region X, on behalf of the Assistant Secretary, 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 of Discrimination. 42 U.S.C. § 3610(g)(2).

¹ The Fair Housing Act prohibits discrimination based on “handicap.” “Disability” is used in place of “handicap” herein.

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents Keith Riexinger, Tamra Riexinger, and Riexinger Enterprises, Inc., d/b/a Crossroads Construction are hereby charged with violating the Act as follows.

A. Legal Authority

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 so sold, 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).
2. Unlawful discrimination under Section 804(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:
 - 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. 42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. § 100.205(a), (c).
3. As used in 42 U.S.C. Section 3604(f)(3)(C), "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.
4. A "dwelling" is any building or portion thereof which is occupied as, or designed or intended for occupancy as, a residence for one or more families. 42 U.S.C. § 3602(b). A "dwelling unit" is a single unit of residence for a family or one or more persons. "Dwelling units" subject to the Act's design and construction provisions include rooms in which people sleep in buildings in which sleeping accommodations are provided but bathing and cooking facilities are shared by occupants of more than one room, such as dormitory rooms. 24 C.F.R. § 100.201.

B. Subject Property and Parties

5. The subject property, located at 2400-2404 N. Ridgeview Lane, Ellensburg, Washington, consists of three, identical, nine-unit, non-elevator buildings collectively known as Ashlynn Estates. Each unit consists of a large private room with a locking keypad entry, built-in desk, walk-in closet, and full bathroom. Tenants share a common use kitchen, living room and laundry room; there are no shared bathrooms. The subject property essentially functions as a college dormitory. The subject property is a "dwelling" and the four ground floor units in each building are "covered multifamily dwellings," as defined by the Act. 42 U.S.C. §§ 3602(b), 3604(f)(7).
6. The building permits for the subject property were issued between April 30, 2013, and May 30, 2013. The certificates of occupancy were issued between October 23, 2013, and January 8, 2015.
7. Complainant Northwest Fair Housing Alliance is a nonprofit corporation organized under the laws of the State of Washington. Complainant's organizational mission is to eliminate housing discrimination and ensure equal housing opportunity for the people of Washington State through education, counseling, and advocacy. Complainant's principal place of business is 35 W. Main Avenue, Spokane, Washington 99201.
8. Complainant is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i).
9. Respondents Keith Riexinger and Tamra Riexinger, a married couple, reside in Ellensburg, Washington. Respondent Riexinger Enterprises, Inc.'s principal place of business is 504 E. Mountain View Avenue, Ellensburg, Washington, 98926.
10. Respondents Keith Riexinger and Tamra Riexinger are the owners of the subject property. Respondent Keith Riexinger is the President of Riexinger Enterprises, Inc.
11. Respondent Riexinger Enterprises, Inc., a Washington corporation, was the developer and original owner of the subject property. Ownership of the property was transferred to Respondents Keith and Tamra Riexinger on June 13, 2013.
12. Respondent Riexinger Enterprises, Inc., acting under the registered trade name Crossroads Construction, was the contractor responsible for the construction of the subject property. Respondent Riexinger Enterprises, Inc., was also responsible for the design of the subject property.

C. Factual Allegations

13. On or about October 7, 2013, Complainant found an advertisement on Craigslist for Master Bedroom Suites for rent in "Brand New Ashlynn Estates." The advertisement touted private rooms for rent, each with its own full bathroom, in new nine-bedroom houses within walking distance of Central Washington University. Common areas included a large kitchen, living room and laundry room. Applicants could choose to rent

the entire house, a floor of four or five bedrooms, or “a room for yourself (includes all utilities).”

14. On or about October 10, 2013, Complainant sent a tester to the subject property to conduct an accessibility site audit. The tester observed exterior barriers to accessibility including steps to the primary entrance doors and inaccessible door hardware. The tester was unable to view the interiors, as the buildings were still under construction.
15. On or about February 21, 2014, Complainant sent the tester to conduct a follow-up accessibility site audit of the property. The tester posed as a father interested in renting a room for his son who would be attending Central Washington University. The tester met with the property manager from Rixinger Rentals and was shown two ground floor units, one upstairs unit, and the common areas.
16. Complainant’s tester observed interior and exterior barriers to accessibility at the property, including steps to the entrance doors of all three buildings, interior doorways that were too narrow for wheelchair passage, and a lack of accessible parking and accessible routes to entrances.
17. The property manager gave the tester an application package, which included a blank lease. The lease stated that “[t]he leased premises consists of the exclusive use and occupancy of the bedroom and the shared use of the common areas of the unit.” The monthly rent was \$600.00 and maximum occupancy was set at one person per bedroom.
18. Discrimination under the Act may be established by showing that the housing does not meet the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9497 (Mar. 6, 1991) (“Guidelines”). This evidence may be rebutted by proof of compliance with a recognized, comparable, objective measure or standard of accessibility.
19. Respondents do not assert that the subject property was designed and constructed in accordance with any of the safe harbors listed in the HUD regulations at 24 C.F.R. Section 100.205(e)(1)-(3) or any other accessibility standards.
20. The public use and common use portions of the subject property are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i). Specifically, the inaccessible features include, but may not be limited to, the following: (a) no accessible route to primary entrances to the building; (b) slopes from the sidewalk and street to building entrances exceed 5% without handrails, with slopes up to 7.2%; (c) three steps to primary building entrances; (d) insufficient maneuvering space at primary building entrances and the entrances to two of the four ground floor units; (e) no accessible parking spaces; (f) inaccessible controls on the dryer in common use laundry room; and (g) inaccessible round door knobs on the primary entrance doors, unit entrances, and laundry room doors. The public use and common use areas do not meet the requirements of Guidelines 1, 2 and 3(1).

21. All doors designed to allow passage into and within all premises within ground floor units at the subject property are not sufficiently wide to allow passage by persons with disabilities in wheelchairs, as required by 42 U.S.C. § 3604(f)(3)(C)(ii). Specifically, the violations include, but may not be limited to, the following: In dwelling units, the clear opening width of the door to the bathroom measured 28 to 29 inches and the opening to the walk-in closet measured 30 to 30.75 inches, which is less than the nominal 32 inches required by Guideline 3(2).
22. The ground floor units at the subject property lack certain features of adaptive design required by 42 U.S.C. § 3604(f)(3)(C)(iii). Specifically, the violations include, but may not be limited to, the following:
 - a. The electrical outlets in the ground floor units are not located in accessible locations, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(II). The lower receptacle in duplex outlets is too low, at 13.5 to 14 inches above the finished floor, which is less than the 15 inches required by Guideline 5. The upper receptacles in outlets located above kitchen counters were too high, at 46.5 to 47 inches, higher than the maximum 46 inches allowed in Guideline 5.
 - b. The subject property lacks reinforcements in bathroom walls for the later installation of grab bars as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(III) and Guideline 6.
 - c. The subject property lacks usable bathrooms 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). Barriers to usability include the lack of clear floor space at the sink, toilets and bathtubs, as required by Guideline 7(2)(a)(ii).
23. The building plans for the subject property do not comport with the design and construction requirements of the Act in several important respects, including that they do not provide for an accessible route to the primary entrance doors due to steps at the entrance, sufficiently wide doorways to the bathrooms and walk-in closets, and reinforcements in bathroom walls for the later installation of grab bars.
24. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages, including diversion of resources and frustration of its organizational mission.

D. Legal Allegations

25. As described in paragraphs 1 to 24, above, Respondents Keith Riexinger, Tamra Riexinger, and Riexinger Enterprises, Inc., violated subsection 804(f)(2) of the Act when they discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling, or the provision of services or facilities in connection with such dwelling because of disability, by failing to design and construct the subject property in accordance with subsection 804(f)(3)(C) of the Act. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

26. As described in paragraphs 1 to 24, above, Respondents Keith Riexinger, Tamra Riexinger, and Riexinger Enterprises, Inc., violated subsection 804(f)(3)(C) of the Act when they failed to design and construct covered multifamily dwellings and public and common use areas at the subject property in accordance with the accessibility requirements of the Act and the regulations promulgated thereunder. 42 U.S.C. § 3604(f)(3)(C); 24 C.F.R. §§ 100.205(a), (c).

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(2) and 3604(f)(3)(C), and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate Sections 804(f)(2) and 804(f)(3)(C) of the Act, 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(C);
2. 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 against any person in any aspect of the sale or rental of a dwelling;
3. Directs Respondents, their agents, employees, and successors to bring the public and common use areas and the covered ground floor units at the subject property into compliance with 42 U.S.C. Section 3604(f)(3)(C), including providing reasonable compensation to tenants for inconvenience caused by, and other expenses related to, such retrofitting;
4. Awards such monetary damages as will fully compensate Complainant;
5. Assesses a civil penalty of \$ 16,000 against each respondent for their violations of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

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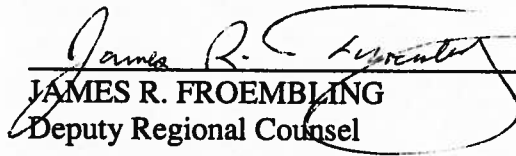
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6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 14th day of September, 2016.



MONA A. FANDEL
Regional Counsel



JAMES R. FROEMBLING
Deputy Regional Counsel



JO ANN RIGGS
Trial Attorney

U.S. Department of Housing and
Urban Development
Region X
Seattle Federal Office Building
909 First Avenue, Suite 260
Seattle, Washington 98104-1000
(206) 220-5191