

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-02769

UNITED STATES OF AMERICA,

Plaintiff,

v.

PR III/BROADSTONE BLAKE STREET, LLC,
ALLIANCE COLORADO BUILDERS, LLC, a/k/a Alliance Residential Builders, LLC,

Defendants,

and

SHF II BATTERY ON BLAKE STREET OWNER, LLC,

Rule 19 Defendant.

COMPLAINT

The United States of America alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “FHA”), 42 U.S.C. §§ 3601-3619, on behalf of the Denver Metro Fair Housing Center (“DMFHC”), pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o).
3. Venue is proper under 28 U.S.C. § 1391(b) because the subject property and the events

and omissions giving rise to the claims alleged in this Complaint occurred within the District of Colorado.

SUBJECT PROPERTY

4. The Battery on Blake Street (“the Battery”) is located at 2120 Blake Street in Denver, Colorado, across from Coors Field. It is a six-story multifamily apartment complex consisting of 164 units with 13 different unit types, ranging from studio apartments to one and two-bedroom units. The building also has various storage spaces for residents to rent. The Battery has the following public and common-use spaces: a lobby with seating, leasing office, toilet rooms accessible from the lobby, mail room, resident lounge and kitchen, fitness center, two-lane bowling alley, billiards lounge, conference room, courtyard, swimming pool/hot tub area, rooftop lounge, trash chute rooms, and resident and future resident parking. The Battery has elevators that provide access to all dwelling units.

DEFENDANTS

FHA Defendants

5. Defendant PR III/Broadstone Blake Street, LLC is a Delaware LLC. It was the developer of the Battery and was the owner at the time of the Battery’s construction, and therefore was involved in the design and construction of the Battery. On or about June 15, 2016, Defendant PR III/Broadstone Blake Street, LLC sold the Battery to Defendant SHF II Battery on Blake Street Owner, LLC.
6. Defendant Alliance Colorado Builders, LLC is an Arizona LLC, and was the builder of the Battery and, thus, was involved in the design and construction of the Battery.

Rule 19 Defendant

7. Defendant SHF II Battery on Blake Street Owner, LLC is a Delaware LLC and is the current owner of the Battery. It is a necessary party under Fed. R. Civ. P. 19 with respect to FHA claims, in whose absence complete relief cannot be afforded to the United States.

FACTUAL ALLEGATIONS

HUD Administrative Process

8. DMFHC conducted Fair Housing tests of the Battery on September 23, 2015. These tests revealed accessibility barriers into unit entrances, barriers to balconies from unit interiors, and non-compliant accessible parking spaces.
9. On or about April 22, 2016, DMFHC timely filed a housing discrimination complaint (“Complaint”) with the Secretary of the Department of Housing and Urban Development (“HUD”). The Complaint alleged that Defendants PR III/Broadstone Blake Street, LLC and Alliance Colorado Builders, LLC, among others, discriminated on the basis of disability by failing to design and construct accessible multifamily dwellings, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619. DMFHC amended the Complaint to add Defendant SHF II Battery on Blake Street Owner, LLC on October 17, 2017.
10. Pursuant to 42 U.S.C. § 3610(a) and (b), the Secretary of HUD conducted and completed an investigation of the Complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered during the investigation, the Secretary determined, pursuant to 42 U.S.C. § 3610(g)(1), that reasonable cause existed to believe that illegal discriminatory housing practices had occurred, including violations of 42 U.S.C. § 3604(f).
11. On November 1, 2018, the Secretary issued a Charge of Discrimination, pursuant to 42

U.S.C. § 3610(g)(2)(A), charging all Defendants with engaging in discriminatory housing practices on the basis of disability in violation of Section 804(f)(1), (2), and (3)(C) of the Fair Housing Act, 42 U.S.C. § 3604(f)(1), (2), and (3)(C).

12. On November 8, 2018, DMFHC elected to have the claims asserted in HUD's Charge of Discrimination resolved in a civil action, pursuant to 42 U.S.C. § 3612(a).
13. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action pursuant to 42 U.S.C. § 3612(o).
14. The United States and Defendants executed a series of tolling agreements tolling any statute of limitations relating to the claims in this action until September 30, 2019.

Fair Housing Act Allegations

15. The Battery was designed and constructed for first occupancy after March 13, 1991.
16. The Battery is a "dwelling" and contains "dwellings" within the meaning of 42 U.S.C. § 3602(b).
17. All 164 units in the Battery are "covered multifamily dwellings" within the meaning of 42 U.S.C. § 3604(f).
18. The covered multifamily dwellings in the Battery are subject to the accessibility requirements of 42 U.S.C. § 3604(f).
19. The United States obtained the final property plans of the Battery and conducted a site inspection of the common areas and each of the 13 unit types described in Paragraph 4. Inaccessible features caused by Defendants' design and construction of the Battery include, but are not limited to:
 - a. barriers to building entrance and unit entries, including noncompliant thresholds and excessive running slope;

- b. barriers to patio and balcony entrances within units, including noncompliant thresholds;
- c. barriers in unit bathrooms, including noncompliant toilet installation and noncompliant shower dimensions;
- d. barriers to entrances to public and common use areas, including noncompliant thresholds, door pressure, and hardware;
- e. barriers to access to public and common use areas, such as noncompliant signage, mailboxes, common bathrooms, water fountain, and lack of clear maneuvering spaces blocking access to the billiards room and bowling alley; and
- f. noncompliant accessible parking.

COUNT I – CLAIM PURSUANT TO 42 U.S.C. § 3612(o) UNDER THE FAIR HOUSING ACT AGAINST DEFENDANTS PR III/BROADSTONE BLAKE STREET, LLC AND ALLIANCE COLORADO BUILDERS, LLC (“FHA DEFENDANTS”)

20. The United States re-alleges and incorporates by reference the allegations in paragraphs 1-19, above.

21. By their conduct described above, the FHA Defendants have engaged in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1), (2), and (3)(C).

22. The FHA Defendants violated 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(c) by failing to design and construct covered multifamily dwellings 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; and
- b. all premises within such dwellings contain the following features of adaptive design:
 - i. an accessible route into and through the dwelling; and

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

23. The FHA Defendants, through the actions and conduct referred to in Paragraph 22, 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.

24. DMFHC is an “aggrieved person” as defined in 42 U.S.C. § 3602(i) and has suffered damages as a result of the FHA Defendants’ conduct.

PRAYER FOR RELIEF

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

- A. Declares that the FHA Defendants violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
- B. Enjoins the FHA 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 dwelling units and public and common-use areas at the Battery into full compliance with the FHA;

- b. failing or refusing to conduct FHA compliance surveys to determine whether the retrofits ordered in paragraph (a) above or otherwise performed comply with the FHA; and
 - c. designing or constructing any covered multifamily dwellings and public and common-use areas in the future that do not comply with the FHA.
- C. Enjoins Rule 19 Defendant SHF II Battery on Blake Street Owner, LLC from engaging in conduct that impedes any retrofits required to bring the Battery, including covered multifamily dwelling units and public and common use areas, into compliance with the FHA in a prompt and efficient manner while minimizing inconvenience to the residents of and visitors to the Battery; and
- D. Awards such monetary damages, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1), to DMFHC.

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

Dated: September 26, 2019.

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