

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CONSENT ORDER RESOLVING
v.)	THE UNITED STATES OF
)	AMERICA’S CLAIMS AGAINST
HAMPTON CORPORATION, INC.,)	HEPPER OLSON ARCHITECTS,
DANIEL STAUSS,)	LTD. AND PRIBULA
SCOTT STAUSS,)	ENGINEERING, PLLC
STEEPLE APTS, LLC,)	
HEPPER OLSON ARCHITECTS, LTD.,)	
PRIBULA ENGINEERING, PLLC,)	Case No. 3:20-cv-42
HDD, INC., and)	
TIMES SQUARE TOWNHOMES II, INC.,)	
)	
Defendants,)	
)	
and)	
)	
CARRINGTON TOWNHOMES, INC.,)	
SOUTH HAMPTON TOWNHOMES, INC., and)	
TOWNHOMES AT CHARLESWOOD LLP,)	
)	
Rule 19 Defendants.)	
)	

I. INTRODUCTION

A. Background

1. This Consent Order is entered into between Plaintiff United States of America and Defendants Hepper Olson Architects, Ltd. (“Hepper Olson”) and Pribula Engineering, PLLC (“Pribula”). The Consent Order partially resolves the above-captioned action brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“FHA”), 42 U.S.C. § 3601 *et seq.* and Title III of the Americans with Disabilities Act (“ADA”), 28 U.S.C. § 12181 *et seq.* The United States’ Complaint alleges that Defendants Hampton Corporation, Inc. (“Hampton Corp.”), Daniel

Stauss, Scott Stauss, Steeple Apts, LLC, HDD, Inc., Times Square Townhomes II, Inc.

(collectively, “Hampton Defendants”); Hepper Olson; and Pribula have engaged in a pattern or practice of discrimination against persons with disabilities and denied rights to a group of persons because of disability.

2. Specifically, the United States’ Complaint alleges that, in various combinations, Hampton Corp., Daniel Stauss, Scott Stauss, Steeple Apts, LLC, and HDD, Inc. failed to design and construct 116 single-story, ground-floor units at covered multifamily dwellings with the features of accessible and adaptive design and construction required by 42 U.S.C. § 3604(f)(3)(C). Those 116 units are located at 1908 Burlington Drive in West Fargo, North Dakota (“Townhomes at Charleswood”); 3383 Primrose Court in Grand Forks, North Dakota (“Carrington Court Townhouse Apartments”); 3174, 3274, and 3374 36th Avenue South in Grand Forks, North Dakota (“South Hampton Townhomes”); and 2850 and 2950 36th Avenue South in Grand Forks, North Dakota (“Steeple Apartments”). The Complaint alleges that Hepper Olson and Pribula participated in the design of Steeples Apartments. The Complaint alleges that this conduct constitutes a pattern or practice of discrimination against persons with disabilities and a denial to a group of persons of rights granted by the FHA that raises an issue of general public importance. *See* 42 U.S.C. § 3614(a). Hepper Olson denies its conduct constitutes a pattern or practice since Steeples Apartments was Hepper Olson’s first multifamily project. Pribula denies its conduct constitutes a pattern or practice. Pribula bases this denial on its assertion that the builder did not coordinate with Pribula on plans for sidewalk construction of Steeples Apartments and its assertion that the builder did not construct apartments in accordance with the site plan provided by Pribula.

B. Defendants Party to this Consent Order

3. Defendant Hepper Olson is a North Dakota professional corporation whose principal place of business is Buxton, North Dakota. The United States' Complaint alleges that Hepper Olson participated in the design of Steeples Apartments.

4. Defendant Pribula is a North Dakota professional limited liability company whose principal place of business is Grand Forks, North Dakota. The United States' Complaint alleges that Pribula participated in the design of Steeples Apartments.

5. This Order refers collectively to the United States, Hepper Olson, and Pribula as "the Parties."

C. Relevant Requirements of the Fair Housing Act

6. The FHA provides that all ground floor units in non-elevator residential buildings with four or more dwelling units, and all dwelling units in residential buildings with one or more elevators, which are designed and constructed for first occupancy after March 13, 1991, are "covered multifamily dwellings." Subject to certain exceptions, covered multifamily dwellings are required to be designed and constructed to include certain accessible and adaptive-design features. 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A-B).

7. The accessible and adaptive-design provisions of the FHA require that for covered multifamily dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities using wheelchairs; and (iii) 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 using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C).

D. Statement of Agreement by the Parties

8. The Parties agree that, to avoid costly and protracted litigation, the claims against Hepper Olson and Pribula should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by their signatures below, the Parties agree to the entry of this Order.

It is hereby **ORDERED, ADJUGED AND DECREED:**

II. JURISDICTION

9. The Court has jurisdiction over the subject matter of this action, and may grant the relief sought herein, pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. § 3614(a); 42 U.S.C. § 12188(b); and 28 U.S.C. §§ 2201 and 2202.

III. GENERAL INJUNCTION

10. Hepper Olson and Pribula, and each of their officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, are hereby enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(f).

11. Hepper Olson and Pribula, and each of their officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, are enjoined from interfering with or preventing the implementation or completion of this Order, including its provisions related to retrofitting.

IV. NONDISCRIMINATION IN FUTURE DESIGN AND CONSTRUCTION

12. Starting on the effective date of this Order and continuing for the four (4) year term of this order, Hepper Olson and Pribula shall maintain, and shall provide to the United States within twenty (20) days of any request by the United States, the following information regarding any architectural or engineering documents or designs for covered multifamily dwellings prepared by or for them after the entry of this Order, and that have been or are being: (i) released for construction; (ii) filed with government agencies; and/or (iii) used for construction, in whole or in part:

- a. The name and address of the project;
- b. A description of the project and the individual units;
- c. A statement certifying that, based on review of the plans and after a reasonable inquiry into all related facts and circumstances, all the design specifications shown on the plans comply with the requirements of the FHA, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) (“Guidelines”), the ADA, and the ADA Standards;
- d. The actual plans and any revised plans; and
- e. If the plans are revised by them, and the revisions could have any impact on the accessibility of the dwellings or property, they shall obtain, maintain, and provide upon request to the United States a statement that all specifications in the revised plans comply with the requirements of the FHA, the Guidelines, the ADA, and the ADA Standards.¹

¹ All notices and materials required by this Order to be sent to counsel for the United States shall be sent by private business carrier (non-USPS) delivery service addressed as follows: Chief, Housing & Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 150 M Street, N.E., Washington, DC 20002, Attn: DJ 175-56-55, or as otherwise directed by the United States. Correspondence may also be sent via electronic mail to the U.S. Department of Justice, care of the undersigned counsel for the United States.

V. CONTRIBUTION TO STEEPLES APARTMENTS RETROFITS

13. Within thirty (30) days of the effective date of this Order, Hepper Olson shall deposit \$70,000 into an interest-bearing account to be used for retrofits at Steeples Apartments.

14. All of the funds deposited by Hepper Olson, including any accrued interest on those funds, shall be used for retrofit-related costs reasonably incurred at Steeples Apartments. The funds shall not be used for retrofits at any other property.

15. Any interest accruing in the Steeples Apartments retrofit account shall become part of the account and shall be used for retrofit-related costs reasonably incurred at Steeples Apartments.

16. Upon and consistent with the direction of United States, the account shall be used to reimburse the Hampton Defendants for retrofit-related costs reasonably incurred at Steeples Apartments. In no event shall reimbursement exceed the amount deposited plus interest accrued.

17. In the event of any dispute regarding the payment of funds from the retrofit account, the dispute shall be submitted to counsel for the United States who, in its sole discretion, shall resolve the dispute and direct whether payment shall be made from the retrofit account.

18. Hepper Olson shall not participate in or object to decisions related to retrofits of Steeples Apartments. Contribution of funds for retrofit-related costs does not represent endorsement of or agreement with specific retrofits. Hepper Olsen shall not be responsible for the retrofit design, installation, and construction.

19. If no reimbursement is directed or requested under Paragraph 16, or if the sum of the reimbursement amounts directed or requested to be paid under Paragraph 16 is less than the amounts deposited, Hepper Olson shall be entitled to reclaim any funds remaining. Such reclamation shall not occur until after it becomes certain that no further reimbursement may be

directed or requested under the negotiated settlement(s) or judgment(s) resolving all claims in this lawsuit.

VI. TRANSFER OF INTEREST IN PROPERTY

20. The sale, foreclosure, or any other transfer of ownership, in whole or in part, whether voluntary or involuntary, of Steeples Apartments shall not affect Hepper Olson's continuing obligation to contribute to the retrofitting of Steeples Apartments in the manner specified in this Order.

VII. SETTLEMENT FUND AND PAYMENTS TO AGGRIEVED PERSONS

21. Within sixty (60) days of the effective date of this Order, Hepper Olson and Pribula shall deposit into an interest-bearing account, consistent with instructions to be provided by the United States, the following amounts:

- a. Hepper Olson: \$10,000
- b. Pribula: \$10,000

This money shall be referred to as the "FHA Settlement Fund," and it shall be used for the purpose of compensating any aggrieved persons who may have been harmed as a result of Defendants' alleged discriminatory housing practices. Within three (3) business days of depositing the monies, Hepper Olson and Pribula shall provide written verification to the United States that the deposits were made. Any interest accrued shall be distributed to recipients identified by the United States under Paragraph 24.

22. Individuals who believe they may be eligible to receive monies as aggrieved persons in this case shall have twelve (12) months from the final resolution (i.e., settlement or judgment) of claims in this civil action to contact the United States. The United States shall investigate the

claims of these individuals and, in its sole discretion, make a determination as to which persons are aggrieved and, if so, what amount of damages should be paid to them.

23. No person shall receive monies from the FHA Settlement Fund unless and until he or she has executed and delivered to counsel for the United States, within time limits determined by the United States:

- a. A sworn declaration setting forth the factual basis of his or her claim; and
- b. A signed release in a form consistent with Appendix 1. This release may be modified to add additional released parties at the sole discretion of the United States.

24. The United States will inform Hepper Olson and Pribula in writing of its determinations regarding the identities of aggrieved persons and the amount that each aggrieved person shall receive from the FHA Settlement Fund (“Recipient List”), together with a copy of a sworn declaration setting forth the factual basis of the claim from each aggrieved person.

25. Upon the direction of the United States, Hepper Olson and Pribula shall release the funds in the FHA Settlement Fund, plus a proportionate share of the interest that has accrued in the FHA Settlement Fund as of the day before the funds are released, as directed by the United States. This release may include electronic transfer of funds or issuance of checks to individual aggrieved persons or to the Hampton Defendants. In no event shall the aggregate of funds released exceed the amount deposited into the Settlement Fund, plus the interest accrued on that amount after deposit.

26. After the satisfaction of Paragraphs 21-25, above, and the expiration of the corresponding time periods, any money remaining in the Settlement Fund, including interest, shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States. Notwithstanding the provisions of this

paragraph, the amounts paid to the victim's fund shall be considered compensatory damages and not a fine or penalty.

27. Nothing in this Order shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

VIII. EDUCATIONAL PROGRAM

28. Within three (3) months of the effective date of this Order, Hepper Olson's and Pribula's principals, employees, and agents whose duties, in whole or in part, involve or may involve participation in the development, design, or construction of covered multifamily dwellings, shall undergo training on the design and construction requirements of the FHA and ADA. Hepper Olson and Pribula shall also each provide such training to any of their principals, employees, or agents who subsequently acquires duties involving participation in the development, design, or construction of multifamily dwellings within sixty (60) days of his or her hiring, promotion, or transfer. The training shall be conducted in accordance with the following:

- a. The trainer or training entity shall be independent of any Defendant, qualified to conduct the training, and approved in advance by the United States;
- b. Hepper Olson and Pribula shall each submit to the United States the name and contact information of the person or organization proposed to provide the training no fewer than fourteen (14) days before the proposed training date;
- c. Hepper Olson and Pribula shall distribute a copy of this Order to all attendees at the training;
- d. Within fourteen (14) days after the training, Hepper Olson and Pribula shall each provide to the United States the name(s), address(es) and telephone number(s) of the

trainer(s); copies of the training outlines and any materials distributed by the trainers; and certifications executed by all covered employees and agents confirming their attendance and that they have received a copy of this Order, in a form substantially equivalent to Appendix 2; and

e. Any expenses associated with training shall be borne by Hepper Olson and Pribula.

IX. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

29. Until all material terms of this Order have been satisfied as agreed upon by the Parties in writing, or until final dismissal of the United States' claims against all parties in the litigation, whichever is later, Hepper Olson and Pribula are required to preserve all records related to this Order. Upon reasonable notice, representatives of the United States shall be permitted to inspect and copy any records of Hepper Olson or Pribula bearing on compliance with this Order at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience from such inspections.

30. During the pendency of any aspect of this civil action against any party, Hepper Olson and Pribula shall preserve and provide to the United States non-privileged information relevant to the claims and defenses in this civil action. Subject to law and the Federal Rules of Civil Procedure and Evidence, this includes, but is not limited to, accepting service of and complying with lawful subpoenas for information and testimony, including at deposition, hearings, and at trial.

31. During the term of this Order, Hepper Olson and Pribula shall each advise counsel for the United States in writing within fifteen (15) days of receipt of any written or oral complaint regarding discrimination on the basis of disability in housing that has been made against them or any successor, or against any employee or agent of them or their successor, that was received by

any of them or of which any of them are otherwise aware. Upon reasonable notice, Hepper Olson and Pribula shall each also provide the United States with all information it may request concerning any such complaint. Hepper Olson and Pribula shall each also advise counsel for the United States, in writing, within fifteen (15) days of the resolution of any complaint, including indicating how the complaint was resolved.

32. During the term of this Order, Hepper Olson and Pribula shall, on each anniversary of the entry of this Order, each submit to the United States a report containing signed statements (in the form of Appendix 2) of employees and agents whose duties, in whole or in part, involve or will involve the development, design, or supervision of construction of covered multifamily dwellings, indicating that they have received and read this Order and had an opportunity to have questions about the Order answered, except that the last report shall be due sixty (60) days prior to the Order's expiration.

X. SCOPE OF CONSENT ORDER

33. The provisions of this Order shall apply to Hepper Olson and Pribula and any subsidiaries, predecessors, acquired companies, or successor entities. It shall also apply to the officers, directors, employees, agents, representatives, assigns, and successors-in-interest.

34. In the event that Hepper Olson or Pribula is acquired by or merges with another entity, that Defendant shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Order for the remaining term of this Order.

35. This Order does not release claims for practices not addressed in the Complaint's allegations. This Order does not release any claims that may be held or are currently under

investigation by any federal agency against any Defendant, any of their affiliated entities, and/or any of their institution-affiliated parties.

36. Nothing in this Order will excuse Hepper Olson or Pribula from complying with any currently or subsequently effective provision of law, or with an order of a regulator with authority over Hepper Olson or Pribula, that imposes additional obligations on Hepper Olson or Pribula.

37. The United States may review compliance with this Order at any time including, but not limited to, by conducting fair housing tests at any multifamily housing for which Hepper Olson or Pribula participated in the design or construction. Hepper Olson and Pribula shall cooperate with the United States in any review of compliance with this Order. Upon reasonable notice, Hepper Olson and Pribula shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Order.

XI. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE

38. The Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 39.

39. The Parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Hepper Olson or Pribula, whether willful or otherwise, to perform in a timely manner any act required by this Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been

performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by that Defendant's violation or failure to perform.

40. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the Parties.

41. The terms of this Order shall not be modified, revised, or altered unless mutually agreed upon in writing by the Parties and approved by the Court, except as provided in Paragraph 40.

XII. DURATION

42. This Order is effective immediately upon its entry by the Court. For purposes of this Order, the phrases "effective date" and "entry of this order" refer to the date on which the Court enters the Order.

43. This Order shall be in effect for a period of four (4) years from its date of entry, except that Hepper Olson's and Pribula's obligations set forth in Paragraphs 14-27 shall continue until completed, as determined by the United States. The Court shall retain jurisdiction for the duration of this Order to enforce its terms, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Order in the interests of justice.

IT IS SO ORDERED.

Dated this 23rd day of March, 2020.

/s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court

APPENDIX 1

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the Parties' agreement to the terms of the Consent Order entered in the case of *United States v. Hampton Corp., et al.*, Civil No. _:20-cv-_____ (D.N.D.) and in consideration for the payment to me of \$_____, I hereby fully release and forever discharge Hepper Olson Architects, Ltd. and Pribula Engineering, PLLC, along with their insurers, co-insurers, reinsurers, attorneys, related companies, principals, predecessors, successors, assigns, affiliates, partners, directors, officers, agents, employers, shareholders, subsidiaries, employees, former employees, independent contractors, heirs, executors, and administrators and any persons acting under their respective direction or control, of any claim arising prior to the date of this Release related to the facts at issue in the litigation referenced above and related to the alleged violations of the Fair Housing Act that are alleged in the United States' complaint in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20__.

[Signature]

[Print Name]

APPENDIX 2

TRAINING VERIFICATION

I acknowledge that on _____, 20____, I attended training on the design and construction requirements of the FHA and the ADA, as required by the Consent Order partially resolving the lawsuit captioned United States v. Hampton Corp., et al., Civil No. ____:20-cv-____ (D.N.D.). I also acknowledge that I have received, read, and have had an opportunity to have questions answered about the Consent Order partially resolving such lawsuit.

Signature

Print Name

Job Title

Company

Address

Address Continued

Telephone Number

Date

The undersigned hereby apply for and consent to the entry of this Order:

For the Plaintiff the United States of America:

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

DREW H. WRIGLEY
United States Attorney

SAMEENA SHINA MAJEED
Chief
CATHERINE BENDOR
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Dated: March 16, 2020

For Defendant Pribula Engineering PLLC:

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Pribula Engineering, PLLC
208 3rd Avenue NW
East Grand Forks, MN 56721
Tel.: 701-772-7058
Email: npribula@gmail.com

Dated: _____, 2020

The undersigned hereby apply for and consent to the entry of this Order:

For the Plaintiff the United States of America:

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

DREW H. WRIGLEY
United States Attorney

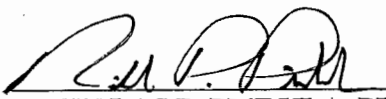
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Dated: _____, 2020

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Dated: March 16, 2020

For Defendant Hepper Olson Architects, Ltd.


Bobbi J. Hepper Olson—Principal | Architect
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Dated: 3-16, 2020