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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

Plaintiff,

- v. -

WEBSTER AV MANAGEMENT, LLC,

Defendant.  
----- X

16 Civ. 9913 (PGG)

**CONSENT ORDER OF  
PRELIMINARY INJUNCTION**

**INTRODUCTION**

This Consent Order of Preliminary Injunction (the "Consent Injunction") is entered into between plaintiff the United States (the "Government") and defendant Webster AV Management, LLC ("Defendant" or "WAM LLC");

WHEREAS, the accessible design and construction provisions of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the "FHA"), provide that residential buildings with four or more dwelling units and one or more elevators that are designed and constructed for first occupancy after March 13, 1991, are Covered Multifamily Dwellings and must include certain basic features of accessible and adaptive design as set forth in 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require the following basic accessible features at Covered Multifamily Dwellings:

- i. the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability;
- 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 a disability 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;

*See* 42 U.S.C. § 3604(f)(3)(c) (these provisions and features are referred to herein as the “FHA Accessible Design Requirements”);

WHEREAS, on December 23, 2016, the Government initiated the above-captioned action (the “Action”) to enforce the accessible design and construction provisions of the FHA, alleging, *inter alia*, that Defendant<sup>1</sup> has engaged in a pattern or practice of developing rental properties that contain inaccessible conditions;

WHEREAS, the Government alleges that two rental properties that Defendant designed and constructed — Riverdale Parc in the Bronx and Bluestone Commons in Maybrook, New York, which together contain 125 rental units — have certain conditions that fail to comply with the FHA Accessible Design Requirements, such as:

- Excessively high thresholds at the building entrance;
- Insufficiently wide doorways into bedrooms in individual units;
- Insufficient clear opening width of bedroom doors;
- Insufficiently wide doorways into bathrooms in individual units;
- Excessively high thresholds to balconies in individual units; and
- Inaccessible locations of light switches and thermostats in individual units.

WHEREAS, Defendant intends to file an answer disputing the allegations in the Action;

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<sup>1</sup> The Government initially named Abraham Strulovitch, an officer of WAM, LLC, as the defendant. The parties have since stipulated to substituting WAM LLC for Mr. Strulovitch as the defendant herein.

WHEREAS, Defendant, directly and/or operating through one or more entities that it owns and/or controls (“Related Entities”), currently is designing and constructing a rental building with elevator access in the Bronx, 640 West 238<sup>th</sup> Street, and also designing and seeking approvals for another rental building in the Bronx with elevator access, 3707 Blackstone Avenue (together with 640 West 238<sup>th</sup> Street, the “Buildings under Construction”);

WHEREAS, absent a consensual resolution, the Government intends to seek a preliminary injunction to compel Defendant to ensure that the Buildings under Construction will be constructed in accordance with the FHA Accessible Design Requirements;

WHEREAS, the Government and Defendant have agreed to resolve the dispute concerning the Buildings under Construction without further proceedings or an evidentiary hearing;

WHEREAS, Defendant agrees to retain an FHA compliance reviewer (the “FHA Reviewer” or “Reviewer”) to review the design documents for the Buildings under Construction and to inspect the as-built features at the Buildings under Construction so as to ensure that both the designs and the as-built features comply with the FHA Accessible Design Requirements;

WHEREAS, the Government and Defendant also are engaging in negotiations toward a full and final settlement of the remaining claims in the Action; and

WHEREAS, the Government and Defendant agree to the entry of this Consent Injunction;

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. For the duration of this Consent Injunction, Defendant, together with any Related Entity, the officers, directors, agents, employees, and servants of Defendant or of any such Related Entity (including, but not limited to, Abraham Strulovitch), as well as any other persons or entity in active concert or participation with any of them, shall design and construct all

Covered Multifamily Dwelling in compliance with the FHA Accessible Design Requirements.

2. Within fifteen (15) days of the entry of this Consent Injunction, Defendant shall retain Dominic Marinelli of the United Spinal Association as the FHA Reviewer. The retention agreement between Defendant and United Spinal Association shall (i) include a copy of this Consent Injunction as an attachment, (ii) specify that Dominic Marinelli is being retained as the FHA Reviewer as set forth here, and (iii) contain a written representation by Dominic Marinelli that he will be available to discharge in a timely fashion all obligations of the FHA Reviewer under this Injunction.

**I. THE FHA REVIEWER'S REVIEW OF AND PROPOSED MODIFICATIONS TO THE DESIGNS OF THE BUILDINGS UNDER CONSTRUCTION**

3. Within fourteen (14) days of retaining the FHA Reviewer, Defendant shall provide the Reviewer with copies of the blueprints and other architectural or design drawings and/or specifications for the Buildings under Construction. Defendant also shall promptly provide to the Reviewer such additional design documents as requested by the Reviewer that are in the possession of, or otherwise available to, Defendant.

4. Within sixty (60) days of receiving the design documents for the Buildings under Construction, the FHA Reviewer shall provide Defendant with an analysis of the design documents, which shall include, at a minimum, (i) a list of the design elements that do not comply with the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwellings, 56 Fed. Reg. 9,472 (Mar. 6, 1991) (the "FHA Guidelines") and (ii) recommended modifications to make those elements compliant with the FHA Guidelines.

5. Upon receipt of the analysis from the FHA Reviewer, Defendant shall have forty-five (45) days to confer with the Reviewer regarding the non-compliant elements identified by the Reviewer and to explore possible alternatives to the modifications recommended by the

Reviewer.

6. Within 75 days of its receipt of the Reviewer's analysis of the design drawings and/or specifications for the Buildings under Construction or any subsequent revised analysis thereof by the Reviewer, Defendant shall make modifications to the design drawings and/or specifications for the Buildings under Construction based on the Reviewer's recommendations that Defendant deems necessary to comply with the FHA's accessibility requirements and submit the modified design drawings and/or specifications to the Reviewer.

7. Within twenty-one (21) days of receipt of the modified designs from Defendant, the FHA Reviewer shall submit a statement to the Government certifying, *inter alia*, that (i) the Reviewer has reviewed the designs for the Buildings under Construction to identify elements that do not comply with the FHA Guidelines; (ii) the Reviewer has recommended modifications to make those design elements compliant with the FHA Guidelines; and (iii) Defendant has adopted all modifications proposed by the Reviewer except for such instances where, based on discussion with Defendant, the Reviewer agrees that no modification is needed or an alternative modification is equally accessible and safe. In the event that the Reviewer is unable to make any of these certifications, the Reviewer's statement shall specify each such instance and provide an explanation of the circumstances preventing the Reviewer from making the relevant certification.

8. Upon written request from the Government, Defendant shall within twenty (20) days of receipt of the request provide to the Government copies of all design documents that it provided to the FHA Reviewer and the final modified designs. In the event that Defendant and the Reviewer disagree over whether to implement a modification recommended by the Reviewer, the Government may request communications between Defendant and the Reviewer related to the recommended modification, and Defendant shall not unreasonably refuse to provide such communication.

**II. THE FHA REVIEWER'S INSPECTION OF THE BUILDINGS UNDER CONSTRUCTION**

9. Defendant shall direct its employees, agents, and/or contractors, including employees, agents and/or contractors of any Related Entity, to seek the FHA Reviewer's advice regarding the selection of fixtures (*e.g.*, thresholds, doors, base cabinets, and lavatories) and appliances (*e.g.*, ranges and refrigerators); the effect of any deviation from the architects' drawings on the accessibility of conditions at a building; as well as other issues that arise during construction that may affect accessibility at the Buildings under Construction.

10. Prior to the completion of construction of each Building under Construction, Defendant shall arrange for the FHA Reviewer to conduct an inspection of the building to identify any construction issues that have resulted in conditions that fail to comply with the FHA Guidelines and to recommend appropriate solutions.

11. Within 60 days of the completion of all construction at each Building Under Construction, the FHA Reviewer shall submit to the Government a final report (the "Final Report of the FHA Reviewer") that sets forth (*i*) the Reviewer's findings from his inspection of the building, including any condition that fails to comply with the FHA Guidelines; and (*ii*) whether Defendant has implemented the solutions recommended by the Reviewer.

**III. GENERAL PROVISIONS**

12. During the term of this Consent Injunction, the FHA Reviewer shall submit, every 120 days, a report to the Government that (*i*) indicates whether Defendant has complied with all requests for information made by the Reviewer, and (*ii*) identifies each instance, if any, where Defendant refused to adopt the Reviewer's recommendation concerning any construction decision or any retrofit to be made to achieve compliance with the FHA's Accessible Design Requirements.

13. Any notice required to be made to the Government under this Consent



Injunction shall be in writing and shall be sent (i) by e-mail to [li.yu@usdoj.gov](mailto:li.yu@usdoj.gov) and [jacob.lillywhite@usdoj.gov](mailto:jacob.lillywhite@usdoj.gov), and (ii) by overnight mail to the attention of AUSA Li Yu, AUSA Jacob Lillywhite, and the Chief of the Civil Rights Unit at the U.S. Attorney's Office, 86 Chambers Street, 3rd Floor, New York, NY 10007. Any notice required to be made to Defendant under this Consent Injunction shall be in writing and shall be sent (i) by e-mail to [mginsburg@grlawpc.com](mailto:mginsburg@grlawpc.com) and [sbagwin@grlawpc.com](mailto:sbagwin@grlawpc.com), and (ii) by overnight mail to Mark D. Ginsburg and Steven C. Bagwin, Esqs. at Ginsburg & Redmond, P.C., 245 Saw Mill River Road, Hawthorne, NY 10532.

14. For the duration of this Consent Injunction, the Government shall have the right to verify compliance with this Consent Injunction, through any means available to the general public, including by initiating communications to determine whether Defendant is complying with the FIA Accessible Design Requirements.

15. If Defendant, or any other party subject to this Consent Injunction, fails to comply with any of the terms of this Injunction, the Government, prior to seeking relief from the Court, shall notify Defendant in writing of what specific terms of the Injunction are not being complied with. Upon receipt of any such notice Defendant shall have ten (10) days to cure any noncompliance set forth therein. If Defendant does not cure such noncompliance within such 10-day period, the Government may seek appropriate relief from the Court.

16. Any time limit for performance specified by this Consent Injunction may be extended by the mutual written agreement of the Government and Defendant, which shall not be unreasonably denied, withheld or conditioned.

17. This Consent Injunction shall remain in effect until sixty (60) days after the Government's receipt of the Final Report of the FHA Reviewer for both Buildings under Construction. The Government and Defendant each may seek an extension of the term of this Consent Injunction for good cause shown.

18. Because this Consent Injunction does not resolve all claims and defenses in this case, the Action shall remain active on the Court's docket.

PREET BHARARA  
United States Attorney

By: 

LI YU  
JACOB LILLYWHITE  
Assistant United States Attorneys  
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*Attorneys for the Government*

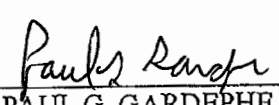
GINSBURG & REDMOND, P.C.

By: 

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245 Saw Mill River Road  
Hawthorne, NY 10532  
*Attorneys for Defendant*

SO ORDERED

DATED: Jan. 25, 2017  
New York, New York

  
HON. PAUL G. GARDEPHE  
UNITED STATES DISTRICT JUDGE