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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEDFORD DEVELOPMENT LLC, CARNEGIE  
CONSTRUCTION CORP., ROBERT PASCUCCI,  
JOBSCO INC., and WARSHAUER MELLUSI  
WARSHAUER ARCHITECTS, P.C.,

Defendants,

and

SUTTON MANOR BOARD OF MANAGERS,

Rule 19 Defendant.

17 Civ. 1533 (KMK)

**AMENDED COMPLAINT**

**Jury Trial Demanded**

Plaintiff, the United States of America (the “United States”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action brought by the United States for declaratory relief, injunctive relief, and monetary damages under the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.* It is brought pursuant to 42 U.S.C. § 3612(o) on behalf of Linda Tracey, Michael Tracey, Gloria Koller, Mark Koller, and Ina Grober (collectively, “Complainants”) against defendants Bedford Development LLC, Carnegie Construction Corp., and Warshauer Mellusi Warshauer Architects,

P.C. to redress discrimination on the basis of disability, and pursuant to 42 U.S.C. § 3614(a) against all defendants.

2. As set forth in full below, the United States alleges that defendants Bedford Development LLC, Carnegie Construction Corp., Robert Pascucci, Jobco Inc., and Warshauer Mellusi Warshauer Architects, P.C. (“Defendants”) have unlawfully discriminated against persons with disabilities under the Fair Housing Act, including Complainants, by failing to design and construct Sutton Manor Condominium (“Sutton Manor”)—a building advertised as a “55+ Adult Community”—so as to be accessible to persons with disabilities.

### **JURISDICTION, VENUE, AND PARTIES**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3612(o) and 3614(a).

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

### **PARTIES AND PROPERTY**

5. Plaintiff is the United States of America.

6. Sutton Manor is a residential condominium building located at 234 North Bedford Road in Mount Kisco, New York, that was built and advertised as a “55+ Adult Community.” Sutton Manor was also advertised as being “ADA compliant.” The building is a three-story elevator building with 47 units, a community room, and underground and outdoor parking.

7. Construction on Sutton Manor began in 2004.

8. Each of the 47 units at Sutton Manor is a “dwelling” within the meaning of 42 U.S.C. § 3602(b) and a “dwelling unit” within the meaning of 24 C.F.R. § 100.201.

9. Sutton Manor is a “covered multifamily dwelling” within the meaning of 42 U.S.C. § 3604(f)(7) and 24 C.F.R. § 100.201.

10. Complainant Linda Tracey is a person with a disability within the meaning of 42 U.S.C. § 3602(h) and uses an electric wheelchair.

11. Complainant Michael Tracey is married to, resides with, and cares for Complainant Linda Tracey.

12. Complainants Linda and Michael Tracey reside in Unit 103 at Sutton Manor and are aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

13. Complainant Gloria Koller is a person with a disability within the meaning of 42 U.S.C. § 3602(h) and uses a walker.

14. Complainant Mark Koller is married to, resides with, and cares for Complainant Gloria Koller.

15. Complainants Gloria and Mark Koller reside in Unit 209 at Sutton Manor and are aggrieved persons within the meaning of 42 U.S.C. § 3602(i).

16. Complainant Ina Grober is a person with a disability within the meaning of 42 U.S.C. § 3602(h) and uses a walker.

17. Complainant Grober resides in Unit 307 at Sutton Manor and is an aggrieved person within the meaning of 42 U.S.C. § 3602(i).

18. Defendant Bedford Development LLC (“Bedford”) is a New York limited liability company with an office at 277 Northern Boulevard, Great Neck, New York. Bedford is the developer of Sutton Manor and had an ownership interest in Sutton Manor until December 2013.

19. Defendant Carnegie Construction Corp. (“Carnegie”) is a New York business corporation with an office at 277 Northern Boulevard, Great Neck, New York. Carnegie is the builder of Sutton Manor.

20. Defendant Warshauer Mellusi Warshauer Architects, P.C. (“WMW Architects”) is a New York professional corporation with an office at 100 Clearbrook Road, Elmsford, New York. WMW Architects designed Sutton Manor.

21. Defendant Jobco Inc. (“Jobco”) is a New York business corporation with an office at 277 Northern Boulevard, Great Neck, New York. Jobco provides realty development and construction services, including consulting and strategizing, pre-construction, construction management, and property management, and was involved in the development and design and construction of Sutton Manor.

22. Defendant Robert Pascucci (“Pascucci”) is the sole shareholder of Bedford and Carnegie, the president of Jobco, and served as the president of Sutton Manor’s Board of Managers until December 2013. Pascucci was personally involved in the development, design and construction, and management of Sutton Manor.

23. Sutton Manor Board of Managers is named only as a necessary or indispensable party to this lawsuit, pursuant to Rule 19 of the Federal Rules of Civil Procedure, in whose absence complete relief cannot be afforded to the United States because none of the Defendants presently has an ownership interest or management role in Sutton Manor.

#### **PROCEDURAL BACKGROUND**

24. On January 20, 2010, Complainants submitted administrative complaints to the U.S. Department of Housing and Urban Development (“HUD”) alleging discrimination on the basis of disability.

25. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD (the “Secretary”) conducted and completed an investigation of the complaints.

26. Based on the information gathered in the HUD investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Bedford, Carnegie, and WMW Architects violated the Fair Housing Act.

27. On March 14, 2016, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2) charging Bedford, Carnegie, and WMW Architects with discriminating against Complainants in the terms, conditions, or privileges of the sale or rental of the dwellings, or in the provision of services or facilities in connection with such dwellings, because of disability in violation of 42 U.S.C. § 3604(f)(2) by failing to design and construct Sutton Manor in accordance with 42 U.S.C. § 3604(f)(3)(C).

28. On March 23, 2016, Complainants filed a timely Notice of Election with HUD, electing to have the claims asserted in the Charge of Discrimination decided in a civil action under 42 U.S.C. § 3612(a). Following this election, the Secretary authorized the Attorney General to file this action on Complainants’ behalf pursuant to 42 U.S.C. § 3612(o)(1).

## **FACTUAL ALLEGATIONS**

### **Development and Construction of Sutton Manor**

29. In his role as president of Jobco, Pascucci negotiated the purchase of the land upon which Sutton Manor was built from Matthew J. Warshauer of WMW Architects. In or around October 2000, WMW Architects sent Jobco a proposed agreement for architectural services in connection with the design and construction of Sutton Manor.

30. Thereafter, Pascucci formed Bedford and, on January 30, 2001, entered the architectural services agreement with WMW Architects on behalf of Bedford.

31. Jobco remained involved in the development of Sutton Manor through at least September 2008. A representative of Jobco was present for nearly all of the site inspections that WMW Architects conducted and Jobco received copies of the field reports prepared after the inspections. Jobco's executive vice president, Robert Welner ("Welner"), sent and received correspondence on behalf of Jobco related to various aspects of the design and construction of Sutton Manor, including an e-mail indicating that Jobco added a cellar storage room that was not part of WMW Architect's plans and a facsimile to a realtor concerning "option choices" for the Kollers' unit. Jobco was also listed as the management agent for at least one Sutton Manor unit in February 2009.

32. Pascucci was involved in approving the design plans for Sutton Manor, determining the terms of the offering plan and its amendments, overseeing unit sales and construction, and, as president of the Sutton Manor Board of Managers, making operational decisions regarding Sutton Manor, including responding to complaints from owners about inaccessible features in the common areas. Pascucci remained president of the Sutton Manor Board of Managers until the last unit was sold by Bedford in December 2013.

33. Carnegie completed construction and Bedford received a Certificate of Occupancy for Sutton Manor in or around January 2007.

**Complainants' Purchase of Units and Efforts to Obtain a  
Remedy for Accessibility Violations**

34. In January 2007, Complainant Grober purchased and moved into a unit on the third floor of Sutton Manor.

35. In January 2007, Complainants Gloria and Mark Koller purchased and moved into a unit on the second floor of Sutton Manor.

36. In May 2007, Complainants Linda and Michael Tracey purchased and moved into a unit on the ground floor of Sutton Manor.

37. One of the reasons each of the Complainants purchased a unit at Sutton Manor was because Defendants advertised Sutton Manor as being accessible to persons with disabilities.

38. In December 2006, Complainant Michael Tracey inspected the unit he planned to purchase and discussed with Carnegie certain concerns with the accessibility of the building, including that the front entrance doors could not be opened by persons using wheelchairs because the doors were too heavy and swung outward and that the shower stall in the second bathroom in his unit had a 4-inch lip that prevented persons using a wheelchair from rolling into the shower. Defendants did not make or approve any alterations in response to Complainant Michael Tracey's concerns.

39. On August 22, 2007, Complainant Grober sent a letter to Bedford providing a list of building problems including those related to accessibility. Specifically, Complainant Grober noted that the front door and the doors at the elevator banks were not accessible by persons with disabilities and attached surveys from the other Complainants who noted, among other things, that within the units, the kitchen did not provide enough space for persons using a wheelchair to turn around, and the shower was not accessible to persons with disabilities.

40. On September 19, 2007, Welner, who was the executive vice president of Jobco and the vice president of Bedford at the time, held a meeting at Sutton Manor with Complainants and other unit owners to identify problems with the building and requests for alterations, including alterations related to accessibility.

41. On October 30, 2007, the property management company, JMI Management Company, Inc. (“JMI”), an affiliate of Jobco, conducted a walkthrough of Sutton Manor with unit owners to identify requests for alterations, including alterations related to accessibility.

42. On November 8, 2007, nine unit owners sent a letter to Bedford requesting that the problems identified during the October 30, 2007 walkthrough be remedied.

43. On November 26, 2007, Westchester Residential Opportunities, Inc. (“WRO”) sent a letter to Bedford on behalf of many Sutton Manor residents regarding the accessibility of the doors in the common areas of the building.

44. WRO sent another letter to Bedford on May 13, 2008, requesting a response to the November 26, 2007 letter and noting several other letters Sutton Manor residents sent to Bedford concerning disability access to which they had received no response.

#### **Westchester County Human Rights Commission’s Investigation and Findings**

45. In October 2008, Complainant Mark Koller contacted the Westchester County Human Rights Commission (“WCHRC”) on behalf of himself and other unit owners to complain about accessibility problems at Sutton Manor and, on November 4, 2008, sent WCHRC a list of accessibility problems to be addressed both in the common areas of the building and in the individual units. The accessibility problems Complainant Mark Koller identified included, among other things: (a) the double glass doors at the entrance to the building are too heavy and swing out; (b) the garage door is too low to permit certain wheelchair-accessible vans to enter and the ceiling in the garage is too low for other wheelchair-accessible vans to open their tops; (c) the double glass doors from the elevators into the garage swing out and cannot be opened by individuals who are using a wheelchair; (d) the doors outside the elevators on the second and third floors of the building are too heavy; (e) the patio doors in the ground floor homes are too



narrow and the threshold is too high for wheelchairs to pass through; (f) locks on the patio doors are too high and too low for persons using wheelchairs to reach; (g) some mailboxes are too high for persons using wheelchairs to reach; (h) units lack doorbells; (i) peepholes on unit doors are too high for persons using wheelchairs; (j) shower stalls have a 4-inch lip that prevents persons using wheelchairs from rolling into the shower; (k) kitchens in units are too narrow to permit persons using wheelchairs to maneuver; and (l) hall passages in units are too narrow to permit persons using wheelchairs to access the washing machine and dryer in the hall closet.

46. In February 2009, WCHRC filed a commissioner-initiated complaint against Bedford, Jobco, Welner, JMI, Carnegie, WMW Architects, and Pascucci, among others (collectively, the “WCHRC Respondents”), alleging that the WCHRC Respondents violated Westchester County Local Law No. 4-2008, Chapter 700 Article II Fair Housing Law, by discriminating against senior citizens and individuals with disabilities by failing to design and construct Sutton Manor to be accessible to persons of advanced age and persons with disabilities and/or permitting the design and construction to be and remain in a manner detrimental to persons of advanced age and persons with disabilities. WCHRC specifically referenced in the complaint many of the accessibility problems Complainants identified in the list they provided to WCHRC on November 4, 2008. WCHRC amended its complaint in July 2009 to add, among other things, a claim in connection with the WCHRC Respondents’ failure to design and construct the glass partition doors separating the elevator entrance from the main hallways on the second and third floors in an accessible manner.

47. While the WCHRC complaint was pending, Complainants retained counsel who sent a letter to counsel for Bedford, Jobco, Welner, and Pascucci, dated October 28, 2009, stating that Complainants were prepared to pursue their rights and remedies against Bedford, Jobco,

Welner, and Pascucci for violations of their federal, state, and local fair housing rights, but were willing to discuss alternatives to litigation.

48. On February 9, 2010, WCHRC issued a Determination and Order finding that Bedford, JMI, Pascucci, Welner, and WMW Architects had failed to design and/or construct the Sutton Manor main entranceway doors, terrace doors, mailboxes, and glass partition doors dividing the elevators from the second and third floor hallways so that they are accessible to persons with disabilities.

49. Complainants filed their complaints with HUD in April 2010.

50. On October 24, 2011, WCHRC reached a Stipulation of Settlement with the WCHRC Respondents on behalf of the residents of Sutton Manor except for Complainants, who were not parties to the Stipulation of Settlement and were specifically exempted from it.

51. The Stipulation of Settlement did not fully resolve Defendants' violations of the Fair Housing Act arising from their failure to design and construct Sutton Manor so as to be accessible to persons with disabilities.

#### **Inaccessible Conditions at Sutton Manor**

52. Sutton Manor was designed and constructed with numerous inaccessible features, many of which remain unresolved, including, but not limited to, the following:

- a. Insufficient clear opening width at and excessive force required to operate the elevator lobby doors;
- b. Excessively high threshold at entrance to patio from community room;
- c. Ceiling-mounted light fixtures in circulation path in community room do not provide 80 inches of clear headroom;

- d. Inaccessible locations of electrical outlets in community room kitchen for persons who use wheelchairs;
- e. Insufficient clear floor space in community room bathroom for maneuvering by persons who use wheelchairs;
- f. Inaccessible location of paper towel dispenser in community room bathroom for persons who use wheelchairs;
- g. Art display lighting fixtures on hallway walls protrude more than four inches into passageway, posing a safety hazard for persons who are blind;
- h. Outgoing mail drop mounted too high for persons who use wheelchairs;
- i. Counter/work surface in first floor mail area is too high for persons who use wheelchairs;
- j. Trash disposal chute door handles require tight gripping and twisting action to operate;
- k. In units with a patio or balcony,
  - 1. insufficient clear opening width of each panel of the double-leaf doors leading to the patio or balcony;
  - 2. locks are both too low and too high for use by persons who use wheelchairs;
  - 3. excessively high thresholds at entrance to patio or balcony;
- l. Insufficient clear floor space in the hallway at the washer/dryer closet of certain units for maneuvering by persons who use wheelchairs;
- m. Insufficient clear floor space in kitchen of certain units for maneuvering by persons who use wheelchairs; and

- n. Excessively high thresholds at the entrance to showers in certain units.

### COUNT I

53. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 52 of this Complaint as if fully set forth in this paragraph.

54. Defendants violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205(c), by failing to design and construct Sutton Manor in such a manner that:

- a. the public and common use areas are readily accessible to and usable by persons with disabilities;
- b. in the units with patios or balconies, the patio or balcony doors are sufficiently wide to allow passage by a person using a wheelchair; and
- c. all units within Sutton Manor contain the following features of adaptive design:
  - i. an accessible route into and through the dwelling; and
  - ii. usable kitchens such that an individual using a wheelchair can maneuver about the space.

### COUNT II

55. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 54 of this Complaint as if fully set forth in this paragraph.

56. Defendants, through the actions and conduct referred to above, 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); and

- 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).
57. The conduct of Defendants referred to above constitutes:
- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3619; and
  - b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3619, which denial raises an issue of general public importance.

58. Defendants’ discriminatory actions were intentional and taken in disregard of Complainants’ rights.

59. Complainants and other persons who may have been the victims of Defendants’ discriminatory practices are aggrieved persons under 42 U.S.C. § 3602(i), and may have suffered injuries as a result of Defendants’ conduct described above.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff United States requests that the Court enter judgment:

- 1. Declaring that Defendants’ policies and practices as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*;
- 2. Enjoining Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with them, from:

- a. discriminating in the sale or rental of, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of disability, in violation of 42 U.S.C. § 3604(f)(1);
  - b. discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
  - c. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617;
  - d. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Complainants, and any other individuals injured by Defendants' discriminatory conduct, to the position they would have been in but for the discriminatory conduct; and
  - e. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' discriminatory conduct.
3. Awarding monetary damages to Complainants, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);
  4. Awarding monetary damages to other individuals injured by Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

5. Granting such further relief as this Court may deem just and proper.

**JURY DEMAND**

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: New York, New York  
March 6, 2017

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