

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

J. RANDOLPH PARRY ARCHITECTS, P.C., *et al.*,

Defendants,

and

GAHC3 BETHLEHEM PA ILF, LLC, *et al.*,

Rule 19 Defendants.

No. 5:20-cv-06249-JMG

**CONSENT ORDER BETWEEN PLAINTIFF UNITED STATES AND DEFENDANTS
ONE BOYERTOWN PROPERTIES, L.P. AND J. RANDOLPH PARRY ARCHITECTS,
P.C.**

I. INTRODUCTION

1. This action is brought by the United States to enforce provisions of the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189. Specifically, the United States’ Second Amended Complaint alleges that Defendants have engaged in a pattern or practice of discrimination against persons with disabilities and denied rights to a group of persons because of disability by failing to design and construct covered multifamily dwellings with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3), and as required by the ADA, 42 U.S.C. § 12183(a)(1). *See* ECF No. 41. These covered multifamily dwelling units include properties for seniors, including independent living, assisted living, and memory support dwelling units.

2. The United States and Defendant One Boyertown Properties, L.P., a Pennsylvania limited partnership (“One Boyertown” or “Defendant”), have entered into this Consent Order (hereinafter “Order”) (collectively “Parties”) and agree that this Court has jurisdiction over the subject matter of this case under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B). The Parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial.

3. The United States and Defendant J. Randolph Parry Architects, P.C. (“Parry”) previously entered into a consent order in this case that the Court approved on September 28, 2022 (“September 2022 Order”). *See* ECF No. 200. Parry is only a party to this Order for administrative purposes, specifically to memorialize the receipt of funds from One Boyertown and the administration of such funds as further set forth herein, and this Order in no way modifies, alters, amends, supplements, or revises the September 2022 Order. To the extent there is any conflict or ambiguity between this Order and the September 2022 Order, the September 2022 Order shall control.

4. Specifically, as to One Boyertown, the United States alleges that One Boyertown engaged in a pattern or practice of discrimination and a denial of rights based on disability when it failed to design and construct Chestnut Knoll with the accessibility features required by the FHA and ADA. The United States’ Second Amended Complaint alleges that accessibility violations at the Chestnut Knoll include, but are not limited to, barriers at accessible routes, common-use laundry rooms, activity rooms, and amenities, and insufficient clear floor space in unit bathrooms and kitchens.

5. One Boyertown denies that it engaged in intentional or willful discrimination against persons with disabilities and states that at all times it has attempted to comply with all

applicable federal laws, including those requiring accessibility such as the FHA and ADA, in the design and construction of Chestnut Knoll.

6. One Boyertown represents that it is no longer an active entity, although it has not been wound-up in accordance with the Pennsylvania Limited Partnership Act, 15 Pa.C.S. § 8611, *et seq.* One Boyertown further represents that it has no intention of becoming an active entity in any jurisdiction or designing or constructing multifamily properties in the future.

7. The Parties agree that this Order is being entered into by One Boyertown as a compromise of disputed claims, and should not be deemed an admission of liability by One Boyertown.

8. As indicated by the signatures appearing below, the Parties agree to the entry of this Order.

II. DEFINITIONS

9. “Subject Property” means Chestnut Knoll, a personal care and memory care community located at 120 West 5th Street, Boyertown, PA 19512.

10. “Defendant” means One Boyertown Properties, L.P. (“One Boyertown”).

11. “Accessible Design Requirements” means the requirements that are listed in the accessible and adaptive design provisions of the FHA and stated in Paragraph 17.

12. “One Boyertown Participants” means One Boyertown, or any principal, manager, officer, or owner with an ownership interest of 10% or greater in One Boyertown.

III. RECITALS

A. Subject Property

13. As set forth herein, and in the Second Amended Complaint, One Boyertown owned Chestnut Knoll at the time of its design and construction. Chestnut Knoll is a 78-unit personal care and memory care community that offers various amenities to its residents.

14. One Boyertown states that it sold Chestnut Knoll in 2015 to its current owner, GAHC3 Boyertown PA ILF, LLC.

15. The Parties agree that the Chestnut Knoll is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3), and the ADA, 42 U.S.C. § 12183(a)(1).

B. Relevant Requirements of the Fair Housing Act

16. The FHA provides that, for residential buildings with an elevator consisting of four or more dwelling units, all units 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 to make such units accessible to or adaptable for use by persons with disabilities. 42 U.S.C. § 3604(f)(3)(C) and (f)(7)(A).

17. The FHA provides that, for non-elevator residential buildings with four or more dwelling units, all ground-floor units 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 to make such units accessible to or adaptable for use by persons with disabilities. 42 U.S.C. § 3604(f)(3)(C) and (f)(7)(B).

18. The Accessible Design Requirements in the FHA for covered multifamily dwellings include: (i) the public use and common use portions of such dwellings must be 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 must be sufficiently wide to allow passage by persons with a disability using wheelchairs; (iii) all premises within such dwellings must 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).

19. One Boyertown agrees that the Subject Property was designed and constructed for first occupancy after March 13, 1991, and therefore all the units in buildings with elevators and the ground-floor units in non-elevator buildings at the Subject Property are “covered multifamily dwellings” within the meaning of the FHA, 42 U.S.C. § 3604(f)(7)(A) and (B). As such, those units and the public and common use areas, including the accessible pedestrian routes at the Subject Property, must comply with the Accessible Design Requirements of 42 U.S.C. § 3604(f)(3)(C).

C. Relevant Requirements of the ADA

20. The ADA and the ADA Standards for Accessible Design, ADA Accessibility Guidelines for Buildings and Facilities, 28 C.F.R. pt. 36, app. A (“ADA Standards”), issued by the U.S. Department of Justice (the “Department”) to implement the design and construction requirements of Title III of the ADA, require that all “public accommodations” designed and constructed for first occupancy after January 26, 1993, and the goods, services, facilities, privileges, advantages, or accommodations of those public accommodations, be readily accessible to and usable by persons with disabilities in accordance with certain accessibility standards promulgated under that Act. 42 U.S.C. §§ 12182(a) and 12183(a)(1). A rental or sales office for an apartment, condominium, or patio home complex is a “public accommodation” under the ADA. 42 U.S.C. § 12181(7)(E).

21. One Boyertown agrees that the rental offices at the Subject Property were designed and constructed for first occupancy after January 26, 1993, and therefore the rental offices and the facilities and privileges provided at those offices, such as public parking, are required to be designed and constructed in accordance with the standards promulgated under the ADA.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED:

IV. GENERAL INJUNCTION

22. One Boyertown and its officers, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, are enjoined from discriminating on the basis of disability as prohibited by the FHA and the ADA.

V. SETTLEMENT FUND AND PAYMENTS TO AGGRIEVED PERSONS

23. Within thirty (30) days from the entry of this Order, One Boyertown, by and through its insurance company, will deposit in an interest-bearing escrow account the sum of FIFTEEN THOUSAND DOLLARS (\$15,000) into the interest-bearing escrow account (the "Settlement Fund") established by Parry under paragraph 36 of the September 2022 Order between Plaintiff United States and Parry, *see* ECF NO. 200, for the purpose of compensating any aggrieved persons whom the United States determines were harmed by One Boyertown's alleged discriminatory housing practices (hereinafter "aggrieved persons"). To facilitate this transfer of funds, within fourteen (14) days of the date of entry of this consent order, counsel for Parry shall provide all necessary account and wire transfer information to counsel for One Boyertown.

24. One Boyertown shall submit proof to the United States, in writing, that the money has been deposited into the Settlement Fund within forty-eight (48) hours after the deposit is made.

25. Immediately after the \$15,000 deposit is made to the Settlement Fund by One Boyertown, Parry may withdraw ONE THOUSAND FIVE HUNDRED (\$1,500) as compensation for the administration and distribution of the Settlement Fund as described below in Paragraphs 25-30.

26. Any interest accruing to the Settlement Fund will become a part of the Settlement Fund and be used as set forth herein. Parry will be solely responsible for any taxes assessed or owed on any interest earned on money deposited pursuant to Paragraph 23, above.

27. Potential aggrieved persons have twenty-four (24) months from the entry of this Order to contact the United States. The United States will investigate the claims of allegedly aggrieved persons and inform Parry as to its determination as to which persons are aggrieved and an appropriate amount of damages (plus accrued interest) that should be paid to each aggrieved person. One Boyertown agree that the determinations of the United States will be final, and One Boyertown hereby waives the right to contest the United States' determination in this or any other proceeding.

28. The United States will submit its final recommendations to the Court for approval in the form of a Stipulated Order. Within twenty (20) days from the entry of a Court order providing for the distribution of funds, Parry will deliver to the United States, by overnight delivery, a separate check payable to each aggrieved person in the amounts stated in the Stipulated Order.

29. In no event will the aggregate of all such checks exceed the sum of the Settlement Fund, plus accrued interest.

30. When the United States has received a check from Parry payable to an aggrieved person and a signed release in the form of Appendix A from the aggrieved person, the United States will deliver the check to the aggrieved person and the original, signed release to One Boyertown. No aggrieved person will be paid until he or she has executed and delivered to the United States the release at Appendix A.

31. If any money remains in the Settlement Fund after all aggrieved persons identified by the United States have been compensated, the remainder will be paid to the United States Treasury in the form of an electronic funds transfer in accordance with written instructions to be provided by the United States.

VI. POTENTIAL FUTURE EDUCATIONAL PROGRAM

32. One Boyertown has represented that it is currently a defunct entity and is no longer engaged in the design and/or construction of covered multifamily dwellings. In the event One Boyertown intends to engage in any future design and/or construction of covered multifamily dwellings during the term of this Consent Order, it will report that intention to the United States within seven (7) days.

33. Within thirty (30) days of notification to the United States, One Boyertown will ensure that its principals, employees, and agents who have authority over the design and/or construction of covered multifamily dwellings have a copy of, are familiar with, and personally review the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998). One Boyertown Participants and all employees and agents whose duties, in whole or in part, involve the management, sale, and/or rental of multifamily dwellings at issue in this case will be informed of those portions of the Fair Housing Act that relate to accessibility requirements, reasonable accommodations, and reasonable modifications.

34. Within sixty (60) days of notification to the United States, One Boyertown and all its principals, employees or agents whose duties, in whole or in part, involve the design and/or construction of covered multifamily dwellings will undergo training on the design and construction requirements of the FHA and the ADA. The training will be conducted by a qualified individual, unconnected to One Boyertown or its attorneys, who has been approved in advance by the United States. Any expenses associated with this training will be borne by One Boyertown. One Boyertown will provide to the United States, within thirty (30) days after the training, 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 persons to which this paragraph applies confirming their attendance, in a form substantially equivalent to Appendix B.

VII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

35. During the term of this Order, One Boyertown will advise the United States in writing within fifteen (15) days of receipt of any written administrative or legal fair housing complaint against any property owned, managed, designed, or constructed by them, or against any employees or agents of One Boyertown working at or for any such property, regarding discrimination on the basis of disability in housing. Upon reasonable notice, One Boyertown will also provide the United States all information it may request concerning any such complaint. One Boyertown will also advise the United States, in writing, within fifteen (15) days of the resolution of any complaint.

36. During the term of this Order, One Boyertown is required to preserve all records related to this Order, to the Subject Property, and to any other covered multifamily dwellings designed, constructed, owned, operated, or acquired by them during the term of this Order. Upon reasonable notice to One Boyertown, representatives of the United States will be permitted to inspect and copy any records of One Boyertown or inspect any properties or dwelling units under the control of One Boyertown bearing on compliance with this Order at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to One Boyertown and residents from such inspections.

VIII. DURATION OF CONSENT ORDER AND TERMINATION OF LEGAL ACTION

37. This Order will remain in effect for three (3) years from the entry of the Consent Order.

38. By consenting to entry of this Order, the Parties agree that in the event that One Boyertown engages in any future conduct occurring after entry of this Order that leads to a

determination of a violation of the FHA, such conduct will constitute a “subsequent violation” under 42 U.S.C. § 3614(d)(1)(C)(ii).

39. The Court will retain jurisdiction for the duration of this Order to enforce the terms of the Order; at the expiration of the Order, the case will be dismissed with prejudice. The United States may move the Court to extend the duration of the Order in the interests of justice.

40. All Parties will endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by One Boyertown to perform, in a timely manner, any act required by this Order or otherwise for its failure to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys’ fees which may have been occasioned by the violation or failure to perform.

IX. TIME FOR PERFORMANCE

41. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the United States and One Boyertown. Dated: 11/02/2023

/s/ John M. Gallagher

United States District Judge

FOR THE UNITED STATES:

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/s/ Lauren M. Marks

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FOR DEFENDANT:

One Boyertown Properties, L.P.


By: _____

DAVID LOVITZ

Title:

FOR DEFENDANT:

J. Randolph Parry Architects, P.C.

and limited to Paragraphs 22 through 30 only

By:

Title:

FOR DEFENDANT:

One Boyertown Properties, L.P.

By:

Title:

FOR DEFENDANT:

J. Randolph Parry Architects, P.C.

and limited to Paragraphs 22 through 30 only



By:

John A. Parry, Jr.

Title:

PRESIDENT

APPENDIX A

RELEASE OF ALL CLAIMS

In consideration of and contingent upon the payment of the sum of (\$_____), in accordance with the Consent Order between the United States and One Boyertown Properties, L.P. entered by the United States District Court in *United States v. J. Randolph Parry Architects, PC, et al.* (E.D. Pa.), I hereby release and forever discharge Chestnut Knoll and One Boyertown Properties, L.P. from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in this action that involve Chestnut Knoll facility in Boyertown, PA, as of the date of the entry of this Consent Order. I fully acknowledge and agree that this release of Chestnut Knoll and One Boyertown Properties, L.P. will be binding on my heirs, representatives, executors, successors, administrators, and assigns. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

(Signature)

NAME: _____

ADDRESS: _____

DATE: _____

APPENDIX B

**CERTIFICATION OF FAIR HOUSING AND
AMERICANS WITH DISABILITIES ACT TRAINING**

On _____, I attended training on the federal Fair Housing Act and Americans with Disabilities Act, including its requirements concerning physical accessibility for people with disabilities. I have had all of my questions concerning the Fair Housing Act and Americans with Disabilities Act answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)