

SLR:SDE  
F.#2008V00134

SE-3349

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

Civil Action  
No. 08-CV-3834

v.

(Seybert, J.)  
(Wall, M.J.)

75 MAIN AVENUE OWNERS CORP. and  
BOARD OF DIRECTORS, 75 MAIN  
AVENUE OWNERS CORP.,

Defendants.

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**SETTLEMENT AGREEMENT AND ORDER**

**I. INTRODUCTION**

1. The United States of America, through the United States Attorney’s Office for the Eastern District of New York, has agreed to enter into this Settlement Agreement to resolve the issues raised in the complaint brought by the United States of America against 75 Main Avenue Owners Corporation and its Board of Directors (hereinafter “75 Main Avenue Owners Corp.” or “defendants”), to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 through 3619 (the “Fair Housing Act”). The United States brought this complaint following a Determination of Reasonable Cause and Charge of Discrimination issued by the Secretary of Housing and Urban Development and a timely notice of election filed by the defendants. See 42 U.S.C. § 3612(o). In the United States’ complaint, it alleges that defendants have violated the Fair Housing Act by refusing to allow

Mary Pasko, who has depression, to keep a small dog which, as alleged in the complaint, helps to alleviate her depression. Defendants, a cooperative apartment building and its board of directors, expressly deny any wrongdoing and maintain they have always complied with the Fair Housing Act.

## **II. STATEMENT OF AGREEMENT**

2. The parties agree that the controversy outlined above should be resolved without further litigation. This Settlement Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by the parties or agents of the parties, that is not contained in this Settlement Agreement will be enforceable under its provisions.

3. It is therefore stipulated and agreed, by and between the parties to the above-entitled action as follows:

## **III. GENERAL INJUNCTION**

4. Defendants, their agents, employees, and all other persons in active concert or participation with them, are hereby enjoined from:

- i. Discriminating on the basis of disability in violation of 42 U.S.C. § 3604(f) by failing to make reasonable accommodations in rules, policies, practices, or services, when such reasonable accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling;
- ii. Taking actions that interfere with persons in the exercise or enjoyment of their right to seek a reasonable accommodation, or on account of their

having exercised or enjoyed their right to seek a reasonable accommodation pursuant to the Fair Housing Act.

#### IV. GENERAL PROVISIONS

5. Defendants shall maintain and implement a written policy consistent with the requirements of the Fair Housing Act that permits residents of the building with a disability, as that term is defined in section 802(h) of the Fair Housing Act, 42 U.S.C. § 3602(h), to keep an assistance animal in his or her rental property and on the premises, including amending the House Rules and proprietary "No Pet" provision to include the language "Except as may be permitted by law," and will provide to all members of the Board of Directors, and residents on request, with a copy of Department of Housing and Urban Development Notice 01-02, Section III, F, attached hereto as Exhibit A, which describes the reasonable accommodation to be made for disabled persons with assistance animals.

6. The United States of America agrees to the dismissal of the above-captioned matter with prejudice. In consideration of the dismissal of this action, defendants agree to refrain from enforcing any "no pet" clause in the Proprietary Lease or House Rules applicable to shareholder Joan Anzelone with respect to her mother and co-resident, Mary Pasko, for the limited purpose of permitting Ms. Pasko to keep an appropriate assistance animal in the apartment occupied by Ms. Pasko and Ms. Anzelone at 75 Maine Avenue, Rockville Centre, New York, until such time as Ms. Pasko is no longer a resident in the apartment and will not return to the apartment.

7. Defendants agree to withdraw, with prejudice, the New York State Supreme Court action titled 75 Main Owners Corp. v. Anzelone, Nassau County Index #13615/07, which was brought by the defendants for the purpose of enforcing the "no pets" provision of the proprietary

lease against Ms. Anzelone, and which action has been stayed pending the outcome of the above-captioned action.

8. It is understood and agreed between the parties hereto that this Agreement and the considerations provided in this Agreement do not constitute and shall not be construed as an admission by the defendants of any wrongdoing, or of any violation of any provision or provisions of the Constitution, statutes or case law of the United States or of any state of the United States, any such alleged violation being expressly denied.

**V. ADMINISTRATION OF SETTLEMENT AGREEMENT**

9. The Court shall retain jurisdiction for three years for the purpose of enforcing the terms of this Settlement Agreement. The Settlement Agreement shall be binding on 75 Main Avenue Owners Corp. and any of its employees, representatives, officers, heirs, assigns, subsidiaries, or successors in interest.

10. This matter is hereby dismissed with prejudice, and without costs, attorneys' fees, disbursements or expenses to any party, or to Ms. Pasko or Ms. Anzelone. Further, the defendants will file a stipulation of discontinuance in the matter of 75 Main Owners Corp. v. Anzelone, Nassau County Index #13615/07, in New York State Supreme Court, Nassau County, with prejudice, and without costs, attorneys' fees, disbursements or expenses to any party, except as otherwise described in this agreement, within thirty days of execution of this agreement.

11. The parties to this Settlement Agreement shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Settlement Agreement prior to bringing such matters to the Court for resolution. Furthermore, the United States shall not bring any matter involving compliance with this Settlement Agreement to the Court for

resolution unless it reasonably believes that defendants have materially violated the provisions of this Settlement Agreement.

12. This Settlement Agreement, when fully executed, will resolve all the issues between 75 Main Avenue Owners Corp., its board, and the United States respecting the subject matter of the United States' Complaint.

13. Nothing in this Agreement is intended to confer or limit any right, remedy, obligation

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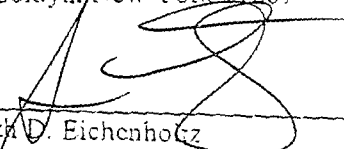
or liability upon any person or entity other than the parties hereto and their respective successors.

Dated: Brooklyn, New York

~~Jan~~ 22, 2009  
January

BENTON J. CAMPBELL  
United States Attorney  
Eastern District of New York  
Attorney for Plaintiff  
271 Cadman Plaza East  
Brooklyn, New York 11201

By:

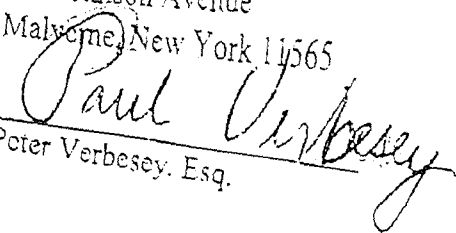
  
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Dated: Malverne, New York


~~Jan~~ 20, 2009  
Jan

LAW OFFICE OF PETER VERBESEY  
Attorneys for Defendants  
110 Johnson Avenue  
Malverne, New York 11565

By:

  
Peter Verbesey, Esq.

SO ORDERED:

 JOANNA SEYBERT

THE HONORABLE JOANNA SEYBERT  
UNITED STATES DISTRICT JUDGE

Dated: January 26, 2010  
Central Islip, NY

**EXHIBIT A**

U.S. Department of Housing and Urban Development

Office of Housing

Special Attention of:

Notice H 01-02 (HUD)

Secretary's Representatives, State  
and Area Coordinators, Multifamily  
Hub Directors, Multifamily Program  
Center Directors; Supervisory  
Project Managers, Multifamily Project  
Owners and Management Agents,  
Community Builders

**Issued:** 02/06/01  
**Expires:** 02/28/02

**Cross References:**

**Subject: Compliance with Section 504 of the Rehabilitation Act of 1973 and the  
Disability/Accessibility Provisions of the Fair Housing Act of 1988**

### I. Introduction

- A. Purpose:** This Notice provides information to participants in most programs and activities under the jurisdiction of the Office of Multifamily Housing Programs concerning applicable requirements for nondiscrimination on the basis of disability in such housing programs. The Notice reminds recipients of federal financial assistance of their obligation to comply with Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8 which provide for non-discrimination on the basis of disability in federally-funded housing and non-housing programs. The Notice also describes the obligations of all housing providers, whether or not they receive federal financial assistance, to comply with pertinent sections of the Fair Housing Act's provisions concerning persons with disabilities. The Notice also provides information on additional accessibility requirements imposed by specific program regulations, and discusses the concept of visitability. Finally, it indicates where participants in the programs below may receive technical assistance concerning these requirements.
- B. Applicability:** This Notice applies, in whole or in part, to the programs and activities under the jurisdiction of the Office of Multifamily Housing Programs, including the following:
1. Section 202 Supportive Housing for the Elderly
  2. Section 202 Direct Loan Program for Housing for the Elderly or Persons with Disabilities
  3. Section 202 Assisted Living Conversion Program
  4. Section 811 Supportive Housing for Persons with Disabilities
  5. Section 8 Project-Based Rental Certificates/Vouchers

**Distribution:** W-3-1



- o Modify any policies and practices that are not or may not be in compliance with Section 504.
- o Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- o Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.
- o The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in recipient owned housing stock, such as demolition of housing units and construction and/or alteration of housing, or changes in the programs and services of the agency.

### **III. The Fair Housing Act of 1988 (24 CFR 100)**

#### **A. Background**

The Fair Housing Act (the Act), prohibits discrimination in housing practices on the basis of race, color, religion, sex, national origin, and applies to almost all housing sold or rented in the United States. The Act was amended in 1988 to provide protections for families with children and persons with disabilities. This Notice focuses only on the provisions of the Act protecting persons with disabilities. The Act also establishes requirements for the design and construction of covered multifamily dwellings built for first occupancy after March 13, 1991, to ensure a minimum level of accessibility for persons with disabilities. (See 24 CFR 100.200 *et seq.*)

#### **B. Applicability**

The Fair Housing Act applies to all **housing providers** operating programs funded by the Office of Multifamily Housing Programs, and all housing providers applying for HUD mortgage insurance; not just those providers that qualify as recipients of federal financial assistance.

#### **C. Definition of Person with a Disability (24 CFR 100.201).**

The Fair Housing Act defines "person with disability" in the same manner as Section 504 as an individual with a physical or mental impairment that substantially limits one or more major life activities. The term "physical or mental impairment" may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current, illegal use of, or addiction to, drugs)

or mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Act also protects persons who have a record of such impairment, or are regarded as having such an impairment.

**D. New Construction**

1. **Requirements.** Section 804(f)(3)(C) of the Fair Housing Act (45 U.S.C. 3604(f)(3)(c)) requires that covered multifamily dwelling units **designed and constructed for first occupancy after March 13, 1991**, be designed and constructed in a manner that:

- (i) the public and common use portions of such dwelling units are readily accessible to and usable by disabled persons;
- (ii) all the doors designed to allow passage into and within the premises within such dwelling units are sufficiently wide to allow passage by disabled persons in wheelchairs; and
- (iii) all premises within such dwelling units contain the following features of adaptive design:
  - (I) an accessible route into and through the dwelling unit;
  - (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 in a wheelchair can maneuver about the space.

Covered multifamily dwellings are:

- o buildings consisting of 4 or more dwelling units, if such buildings have one or more elevators, and
- o ground floor units in other buildings consisting of 4 or more dwelling units.

2. **Applicability.** The Act's design and construction requirements apply on a building-by-building basis and only to a building designed and constructed for first occupancy after March 13, 1991. The Fair Housing Act regulations define "first occupancy" as a building that has never before been used for any purpose.

**E. Accessibility Standards**

The Fair Housing Act regulations provide that meeting the appropriate requirements of the American National Standards Institute (commonly cited as ANSI A117.1) accessibility standards suffices to meet the accessibility requirements in the Act and the Department's regulations. In

addition, the Department's **Fair Housing Accessibility Guidelines** (the Guidelines) provide a safe harbor for compliance. The Guidelines were published in the Federal Register on March 6, 1991 (56 F.R. 9472) and technical corrections to the Guidelines were published in the Federal Register on June 24, 1991. In addition, on June 28, 1994, the Department published a Supplemental Notice to the Guidelines: Questions and Answers About the Guidelines (59 F.R. 33362). The Department also published a **Fair Housing Act Design Manual** which also serves as a safe harbor. For copies of either the Guidelines or the Design Manual, contact HUD's Distribution Center at 1-800-767-7468. Deaf, hard of hearing or speech-impaired individuals also may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

**F. Other Fair Housing Act Disability-Related Nondiscrimination Requirements**

**The Fair Housing Act's nondiscrimination requirements apply to all housing providers, funded or insured through programs of the Office of Multifamily Housing Programs, not just those engaged in the design and construction of new housing.**

1. **Reasonable Modifications to Existing Premises (24 CFR 100.203).** The Fair Housing Act provides that it is unlawful for a housing provider to refuse to permit a person with a disability to make reasonable modifications, at his or her own expense, of existing premises occupied or about to be occupied by a person with a disability, if such modification may be necessary to afford the person with a disability full enjoyment of the premises. If it is reasonable to do so, the housing provider may condition permission for a modification of a dwelling unit, (not the common areas) on the renter agreeing to restore the unit to the condition that existed before the modification, reasonable wear and tear excepted. In such case, the housing provider may require the tenant to pay into an interest bearing escrow account, over a reasonable period, the funds necessary to restore the premises to its original condition (see regulation for further requirements and guidance). **However, participants in programs receiving federal financial assistance that are also subject to section 504, such as owners of Section 202 and Section 811 projects, owners receiving project based Section 8 certificates, participants in the Section 236 Rental Insurance Program or the 221(d)(3) Below Market Rate Insurance Programs must follow the more stringent requirements of 24 CFR 8.4, 8.24, 8.23(b)(1) and 8.33, which require them to pay the cost of modifications unless such modifications are determined to be an undue financial and administrative burden (in such cases, other alternatives for providing the accommodation must be implemented by project owners).**
2. **Reasonable Accommodations (24 CFR 100.204).** This obligation applies to all housing providers regardless of whether they receive federal financial assistance. This requirement is the same under Section 504 and the Fair Housing Act.

An "**accommodation**" is a change, exception, or adjustment to a rule, policy, practice or service, which may be necessary in order for a person with a disability to use and enjoy a dwelling, including public and common use spaces. Since persons with disabilities may have special needs, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling. The Fair Housing Act makes it unlawful to refuse to make "**reasonable accommodations**" to rules, policies, practices, or services, when such accommodations **may be necessary** to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

In order to show that a requested accommodation **may be necessary**, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. A provider may refuse to provide a requested accommodation if providing the accommodation would constitute an undue financial and administrative burden or fundamental alteration of the provider's housing program.

Examples of reasonable accommodations are: providing an assigned parking space in front of an entrance to a tenant's unit, where the housing provider has a policy of no assigned spaces; allowing a tenant with a disability to have an assistive animal. (see below) where the housing provider has a "no pets" policy; allowing a tenant whose disability makes it difficult for her to leave her unit to mail her rent, where the landlord has a policy of requiring rent to be paid in person at the rental office.

3. **Assistive Animals.** Assistive animals are animals that serve as a reasonable accommodation for persons with disabilities by assisting those individuals in some identifiable way by making it possible for them to make more effective use of their housing. Such animals are often referred to as "service animals, assistive animals, support animals, or therapeutic animals" and may include any animal that actually performs tasks or a service for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with hearing impairments to intruders or sounds, pulling a wheelchair, fetching items or providing emotional support to persons with mental disabilities. Regular pet policies do not apply to assistive animals. If a tenant or applicant can establish that he or she needs an assistive animal as a reasonable accommodation to his or her disability, the housing provider must allow the animal to live in the unit.
4. **Unlawful Inquiries (24 CFR 100.202).** The Fair Housing Act provides that it is unlawful for a housing provider (a) to inquire whether an applicant for a dwelling, a person intending to reside in a dwelling after it becomes available, or anyone associated with an applicant or resident, has a disability or (b) to inquire as to the nature or severity of a disability of such persons. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

- o Inquiry into an applicant's ability to meet the requirements of tenancy;
- o Inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance; and
- o Inquiry to determine if an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

There may be instances where the housing has been developed under programs designed to provide housing for persons with a disability. In such instances, a housing provider may make the following inquiries of all applicants:

- o Inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability, and
- o Inquiry to determine if an applicant qualifies for a priority available to persons with disabilities or to persons with a particular disability. For example:
  - A housing provider offers accessible units to persons needing the features of these units on a priority basis. The provider may ask applicants whether they have a disability which will benefit from the features of the units, but may not in such circumstances ask applicants whether they have other types of impairments.

Housing providers may not assess an applicant's ability to live independently, may not apply different types of screening criteria to persons with disabilities, and may not request copies of a tenant or applicant's medical records.

#### **IV. Examples of How Developments May Be Subject to Both Section 504 and the Fair Housing Act Design and Construction Requirements**

In many cases properties constructed with Federal financial assistance must meet both the Section 504 new construction requirements at 24 CFR 8.22 as well as the Fair Housing Act design and construction requirements. Multifamily projects consisting of four (4) or more units in a building that are constructed with federal financial assistance for first occupancy after March 13, 1991 must meet both the Section 504 new construction requirements at 24 CFR 8.22 as well as the Fair Housing Act design and construction requirements. For example:

- o A newly constructed elevator building must have 5% of its units meet the Section 504 accessibility requirements at 24 CFR 8.22. The remaining 95% of the units must comply with the Fair Housing Act design and construction requirements at 24 CFR 100.205 (see Section III.D. Above).

**Note:** As required by Section 504, an additional 2% of the units must be accessible for people with vision and hearing impairments.