

3. Venue is proper under 28 U.S.C. § 1391(b), because the acts and omissions giving rise to the claims alleged herein occurred in the Northern District of Ohio and because all Defendants reside in the Northern District of Ohio.

SUBJECT PROPERTIES

Windham Bridge Condominiums

4. The first subject property is known as Windham Bridge Condominiums (“Windham Bridge”). Windham Bridge is located on a single parcel of land and consists of fourteen buildings. The buildings at Windham Bridge are located between 1109 and 1244 St. Abigail St., SW, and 1119-1125 Lauren Crest, SW, in Hartville, Ohio. Thirteen of the buildings at Windham Bridge are each comprised of four single-story dwellings, (“covered buildings”), and one building is comprised of two single-story dwellings.

5. The fifty-two (52) condominium units contained within the thirteen covered buildings, and the public and common use areas appurtenant thereto, are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B).

6. As designed and constructed, each of the 52 condominium units contained within the covered buildings have three bedrooms and two bathrooms, with all of the dwelling space located on a single floor. Each of dwellings has a two-car attached garage and also was constructed with an unfinished basement. The 52 condominium units at Windham Bridge’s thirteen covered buildings each have one of three different floor plans, “A”, “B”, and “C”, distinguished mainly by their master bathrooms. The condominium units with an “A” floor plans have an L-shaped tub and a shower in the master bath. Those with a “B” floor plan have a straight tub and shower in the master bath. Those with a “C” floor plan have a shower only in

the master bath. Windham Bridge also contains public and common use areas that include a mailbox kiosk.

7. The 52 condominium units in Windham Bridge's thirteen covered buildings are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

8. The dwellings at Windham Bridge were designed and constructed for first occupancy after March 13, 1991. Windham Bridge is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

9. The Certificates of Occupancy for the thirteen covered buildings at Windham Bridge were issued beginning on or about August 29, 2006, and the last certificate of occupancy was issued on or about July 20, 2011.

Hampton Court Condominiums

9a. The second subject property is known as Hampton Court Condominiums ("Hampton Court"). Hampton Court is located at 1237-1263 Lauren Crest Street, SW, in Hartsville, OH, on a parcel of land adjacent to the Windham Bridge property. Hampton Court consists of one three-story building containing fourteen units. Four of the units in the Hampton Court building are on the first floor.

9b. The four first-floor condominium units at Hampton Court, and the public and common use areas appurtenant thereto, are "covered multifamily dwellings" within the meaning of 42 U.S.C. § 3604(f)(7)(B).

9c. As designed and constructed, each of the four first-floor condominium units at Hampton Court has two bedrooms and two bathrooms, with all of the dwelling space located on a single floor. Hampton Court also contains public and common use areas that include a mailbox kiosk.

9d. The four first-floor condominium units at Hampton Court are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

9e. The dwellings at Hampton Court were designed and constructed for first occupancy after March 13, 1991. Hampton Court is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

9f. The Certificate of Occupancy for 1237-1263 Lauren Crest, SW, in Hartville, OH, was issued on or about August 29, 2006. That Certificate of Occupancy lists the tenant of the property as “Windham Bridge Condominiums,” and the owner as “Dean Windham/Guardian Prop. Mgt.”

DEFENDANTS

10. Defendant Noble Homes, Inc. (“Noble Homes”) is an Ohio corporation, and has its principal place of business in Hartville, Ohio. Noble Homes constructed Hampton Court and buildings 1-11, 13 and 26 at Windham Bridge.

11. Defendant Guardian Property Management (“Guardian”) is an Ohio corporation, and has its principal place of business in Hartville, Ohio. Guardian was the owner and developer of Windham Bridge and Hampton Court during construction.

12. Dean Windham (“Windham”), a resident of Hartville, Ohio, has been the principal owner and registered agent for Noble Homes and Guardian at all relevant times except for the time period of September 2007 to December 2008. Windham personally directed the construction of buildings 1-11, 13, and 26 at Windham Bridge and of Hampton Court.

13. Defendant Milton Studer (“Studer”), a resident of Minerva, Ohio, is an architect licensed in Ohio who designed the covered buildings at Windham Bridge and Hampton Court.

Studer operated as a sole proprietorship until April 2009, at which time he formed Studer Architects, LLC.

14. Defendant Studer Architects, LLC., (“Studer Architects”) is an Ohio limited liability corporation, and has its principal place of business in Minerva, Ohio. Studer Architects stamped the design plans for building 26 at Windham Bridge in September 2010.

15. Defendant Hersh Construction Inc. d/b/a Hershberger Homes (“Hersh Construction”) was an Ohio corporation with its principal place of business in Hartville, Ohio. Hersh Construction constructed building 14 at Windham Bridge. Hersh Construction was dissolved in October 2008.

16. Defendants John Hershberger (“Hershberger”), a resident of Hartville, Ohio, was the principal owner and agent for Hersh Construction. Additionally, Hershberger was the principal owner of and agent for Noble Homes and Guardian between September 2007 and December 2008. Hershberger personally directed the construction of building 14 at Windham Bridge.

17. Collectively, Defendants Noble Homes, Guardian, Windham, Studer, Studer Architects, Hersh Construction, and Hershberger are referred to herein as the “FHA Defendants.”

18. Defendant Windham Bridge Condominium Unit Owners’ Association, Inc. (“Condominium Association”) is an active, non-profit Ohio corporation, and has its primary place of business in Hartville, Ohio. The Condominium Association administers the public and common use areas at Windham Bridge, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.

18a. Defendant Hampton Court of Stark County Condominium Unit Owners’ Association, Inc. (“Hampton Court Condominium Association”) is a non-profit Ohio

corporation, and has its primary place of business in Hartville, Ohio. The Hampton Court Condominium Association administers the public and common use areas at Hampton Court, and is a necessary party in this action in whose absence complete relief cannot be afforded to the United States.

FACTUAL ALLEGATIONS

19. Fair Housing Advocacy Association, Inc. (“FHAA”) is an Ohio nonprofit corporation with offices located in Akron, Ohio. FHAA’s organizational purposes are to promote equal housing opportunities and eliminate illegal housing discrimination in the State of Ohio. In furtherance of its mission, the FHAA provides fair housing services including education and outreach.

20. On or about August 8, 2011, FHAA’s Executive Director, Vincent B Curry, drove through Windham Bridge and observed that many units had a series of steps at their entrances. Mr. Curry also observed that no accessible route appeared to connect the covered dwelling units to the common use mailbox kiosk. Mr. Curry subsequently contacted the Stark County Building Department (“SCBD”) in order to obtain the identification of the builder, developer, and architect of Windham Bridge. The FHAA diverted resources from its education and outreach work to investigate the allegations described herein.

20a. Tri-County Independent Living Center, Inc. (“Tri-County”) is an Ohio nonprofit corporation with offices located in Akron, Ohio. Tri-County’s organizational purpose is to empower citizens with disabilities to be in charge of their lives and participate as members of their communities. In furtherance of its mission, the FHAA provides direct services to people with disabilities and advocates for a greater awareness of disability issues in the community.

20b. In April 2006, while the Windham Bridge and Hampton Court properties were under construction, Tri-County conducted two on-site accessibility surveys and took photos of the unit entrances at the properties. On April 20, 2006, Tri-County filed a complaint alleging that Defendants Noble Homes, Inc., Dean Windham, and Milton Studer denied equal access to the Windham Bridge and Hampton Court properties based on a person's physical disability in their design and construction of those properties. That complaint was investigated by the Ohio Civil Rights Commission (AKRH3(31129)042020006; 05-06-1123-8; 22A-2006-18965F). On July 26, 2013, the Ohio Civil Rights Commission waived the case back to HUD for investigation under the federal Fair Housing Act, 42 U.S.C. 3601-3619. Tri-County diverted resources from work directly assisting those with disabilities, as well as its education and outreach work, to investigate the allegations described herein.

21. The design and construction of Windham Bridge and Hampton Court do not meet the accessibility requirements of the Act, including the following features:

- a. The existence of steps leading up to the front, primary entrances to thirty-one (31) of the fifty-two (52) covered units at Windham Bridge;
- b. An abrupt change in level of 6 ¼ inches from the exterior landings at the primary entrances to the floors of some of the covered units at Windham Bridge;
- c. Some of the walkways leading from the driveways to the front entrances of the units at Windham Bridge, and the driveways themselves, have excessive running slopes ranging between 7.3% and 11.7%, and excessive cross slopes of 4.4%;

- d. There are no sidewalks or accessible pedestrian routes that connect the covered dwelling units to public streets or to the mailbox kiosk at Windham Bridge;
- e. The mailbox kiosks at Windham Bridge and Hampton Court are inaccessible;
- f. The model unit at Windham Bridge is inaccessible;
- g. There are no designated handicap parking spaces at Windham Bridge;
- h. Numerous interior unit doors are too narrow and do not provide the required clear width at Windham Bridge and Hampton Court;
- i. The interior threshold at the entrance doors in the type A and C units at Windham Bridge is 1 ¼ inches high with no beveling. In the type B units at Windham Bridge, the exterior and interior thresholds are 1 ¼ inches high with no beveling;
- j. The kitchens at Windham Bridge and Hampton Court do not have the requisite clear space in kitchens for proper accessibility;
- k. The master bathrooms at Windham Bridge are inaccessible because they lack the requisite clear floor space at the toilets;
- l. The bathrooms at Windham Bridge and Hampton Court lack reinforcements required for the installation of grab bars;
- m. Thermostats in units at Hampton Court are located at 57” above the finished floor; and
- n. The buzzers for unit entry at Hampton Court are located approximately 67.5” above the porch slab.

HUD ADMINISTRATIVE PROCESS

22. On or about September 1, 2011, FHAA filed an administrative complaint with the United States Department of Housing and Urban Development (“HUD”) pursuant to 42 U.S.C. § 3610(a) alleging that Defendants Noble Homes and Studer discriminated against persons with disabilities by failing to design and construct buildings that meet the accessibility guidelines required by the federal Fair Housing Act.

23. On or about January 24, 2012, February 24, 2012, June 6, 2012, and August 6, 2012, FHAA amended its administrative HUD complaint to add Defendants Guardian, Studer Architects, Windham, Hershberger, and Hersh Construction as respondents.

24. 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 complaint filed by FHAA, attempted conciliation without success, and prepared a final investigative report. Based on information gathered during the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices had occurred. Accordingly, on or about September 23, 2013, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the FHA Defendants with engaging in discriminatory housing practices in violation of the Act.

25. On or about September 23, 2013, Defendants Windham, Noble Homes, Guardian, and the Condominium Association elected to have the Charge of Discrimination resolved in a civil action filed in federal district court, pursuant to 42 U.S.C. § 3612(a).

26. Following the Notice of Election, the Secretary authorized the Attorney General to commence this civil action, pursuant to 42 U.S.C. § 3612(o).

COUNT I

27. Plaintiff realleges and incorporates by reference herein the allegations described in paragraphs 1 - 26, above.

28. The FHA Defendants have failed to design or construct the covered units at Windham Bridge and Hampton Court in accordance with 42 U.S.C. § 3604(f)(3)(C). The violations include, but are not limited to, the following:

- a. There are no accessible building entrances on an accessible route at approximately thirty-one covered dwelling units at Windham Bridge;
- b. Public use and common use portions of Windham Court and Hampton Court are not readily accessible to and usable by individuals with disabilities;
- c. Units at Windham Bridge and Hampton Court do not 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.

29. By failing to design and construct the dwellings in accordance with the Act, the FHA Defendants made housing unavailable because of disability in violation of section 804(f)(1) of the Act, 42 U.S.C. § 3604(f)(1).

30. By failing to design and construct the dwellings in accordance with the Act, the FHA Defendants discriminated in the terms, conditions, or privileges of the sale or rental of the

Windham Bridge and Hampton Court properties in violation of section 804(f)(2) of the Act, 42 U.S.C. § 3604(f)(2).

31. FHAA is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendants’ conduct described above.

31a. Tri-County is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendants’ conduct described above.

32. The FHA Defendants’ discriminatory actions and practices described above were intentional, willful, and taken in disregard for the rights of others.

COUNT II

33. Plaintiff realleges and incorporates by reference herein the allegations described in paragraphs 1 - 32, above.

34. The conduct of the FHA Defendants described 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; or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance.

35. In addition to the FHAA and Tri-County, there may be other victims of the FHA Defendants’ discriminatory housing practices who are aggrieved persons as defined in 42 U.S.C. § 3602(i) and may have suffered injuries and damages as a result of the FHA Defendants’ actions and practices described above.

36. Defendants’ discriminatory actions and practices described above were intentional, willful, and taken in disregard for the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court enter an ORDER that:

1. Declares that the FHA Defendants' policies and practices, as alleged herein, violate the Fair Housing Act;
2. Declares that the FHA Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act or have denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;
3. Enjoins the FHA Defendants, their officers, employees, agents, successors and all other persons in active concert or participation with any of them, from:
 - a. Discriminating in the rental, or otherwise making unavailable or denying dwellings to renters, because of handicap in violation of 42 U.S.C. § 3604(f)(1);
 - b. Discriminating against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of handicap in violation of 42 U.S.C. § 3604(f)(2);
 - c. Failing or refusing to bring the covered units and public and common use areas at Windham Bridge and Hampton Court into compliance with 42 U.S.C. § 3604(f)(3)(C);
 - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the FHA Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;

- e. Failing or refusing to take such affirmative steps as may be necessary to prevent recurrence of any discriminatory conduct in the future, and to eliminate, to the extent practicable, the effects of their unlawful practices;
- f. Designing and/or constructing any covered multifamily dwellings in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C);

4. Enjoins Defendant Condominium Association and Defendant Hampton Court Condominium Association, described above in paragraphs 18 and 18a, from engaging in conduct that denies access to the common and public use areas or from failing to take any other action appropriate to ensure that any retrofits required to bring the public and common use areas into compliance with the accessibility provisions of the Fair Housing Act be done in a prompt and efficient manner;

5. Awards monetary damages pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1) and 3614(d)(1)(B) to the FHAA, Tri-County, and to any other person harmed by Defendants' discriminatory conduct and practices and

6. The United States further prays for such additional relief as the interests of justice may require.

Respectfully submitted this 14th day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2014, a copy of the foregoing *Amended Complaint* was filed electronically. Notice of this filing will be sent to the original Defendants by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A copy of the Amended Complaint along with a Notice of Lawsuit and Request for Waiver of the Service of Summons and was served upon the newly added Defendant, Hampton Court of Stark County Condominium Unit Owners' Association, Inc., by First Class U.S. Mail to:

Hampton Court of Stark County Condominium Unit Owners' Association, Inc.,
c/o Marie Wilson, Statutory Agent
1253 Lauren Crest Street SW
Hartville, Ohio 44632

and

Hampton Court of Stark County Condominium Unit Owners' Association, Inc.,
c/o Jocelyn Harhay, Board Member
1249 Lauren Crest Street SW
Hartville, Ohio 44632

s/Sara L. Niles
SARA L. NILES
Trial Attorney
U.S. Department of Justice