

SHORT RECORD
NO. 13-1871
FILED 4/24/13

IN THE
 UNITED STATES COURT OF APPEALS
 FOR THE SEVENTH CIRCUIT

THE SECRETARY, UNITED)	
STATES DEPARTMENT OF)	
HOUSING AND URBAN)	
DEVELOPMENT,)	
)	
Petitioner,)	Petition for Enforcement of
)	Administrative Order,
v.)	No. HUDALJ 10-M-171-FH-20
)	
HECTOR CASTILLO ARCHITECTS,)	
INC., 914 W. HUBBARD, INC., and)	
HECTOR CASTILLO,)	
)	
Respondents.)	

**PETITION FOR ENFORCEMENT
 OF AN ORDER OF THE UNITED STATES
 DEPARTMENT OF HOUSING AND URBAN
 DEVELOPMENT AGAINST RESPONDENT 914 W. HUBBARD, INC.**

Introduction

Petitioner Shaun Donovan (the Secretary), Secretary of the United States Department of Housing and Urban Development (HUD), pursuant to the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* (the Act), petitions the court to enforce the Initial Decision and Consent Order (Consent Order) issued on January 10, 2011, against Respondent 914 W. Hubbard, Inc. (“Hubbard Respondent”) in the matter entitled *The Secretary, United States Department of Housing and Urban Development v. Hector Castillo Architects, Inc., 914 W. Hubbard, Inc., and Hector Castillo*, No. HUDALJ 10-M-171-FH-20, which became final on February 9, 2011. 42 U.S.C. § 3612(h)(1). Because the Hubbard Respondent did not seek judicial

review of the Consent Order within the time allowed by the Act, the administrative law judge's findings of fact and order are now conclusive for purposes of this petition, pursuant to 42 U.S.C. § 3612(l). The Act directs that on filing of this petition for enforcement, the "clerk of the court of appeals . . . shall forthwith enter a decree enforcing the order" 42 U.S.C. § 3612(n).

This petition for enforcement is filed pursuant to 42 U.S.C. § 3612(j)(1), which provides: "The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred . . . for the enforcement of the order of the administrative law judge . . . by filing in such court a written petition praying that such order be enforced" The procedure governing a Petition for Enforcement in the Court is provided by Fed. R. App. P. 15.

The court has jurisdiction over this petition pursuant to 28 U.S.C. § 2342(6). The court is the proper venue for this action under 42 U.S.C. § 3612(j)(1), because the relevant unlawful housing practice occurred in the Northern District of Illinois.

Facts on Which Venue Is Based

Respondents allegedly failed to design and construct the subject property at 914 W. Hubbard Street, Chicago, Illinois, in compliance with the accessibility requirements of section 3604(f) of the Fair Housing Act. Ex. 1, Consent Order at 2. The subject property allegedly failed to meet the accessibility standards of section 3604(f)(3)(C) in a variety of ways, including but not limited to narrow doorways, inadequate turning radii, insufficient bathroom maneuvering space, and excessive

doorway opening force. *Id.* at 2-3. Therefore, the respondents allegedly violated sections 3604(f)(1) and 3604(f)(2) of the Act because “discrimination,” as defined in those provisions includes a failure to design and construct multifamily dwellings in the manner described in § 3604(f)(3)(C). *Id.*

These facts demonstrate that the relevant unlawful housing practice occurred in the Northern District of Illinois.

Administrative Proceedings

The Secretary of the United States Department of Housing and Urban Development initiated these proceedings on October 30, 2008, by filing an administrative complaint alleging that Hector Castillo Architects, Inc. and 914 W. Hubbard, Inc. (“Hubbard Respondent”) violated the Fair Housing Act (Act), 42 U.S.C. §§ 3601 *et seq.*, by failing to design and construct a 22-unit multi-family building located at 914 W. Hubbard Street in Chicago, Illinois (“subject property”) in compliance with the accessibility requirements of section 3604(f) of the Fair Housing Act. Ex. 1 at 2. The complaint was amended on June 2, 2010, to personally name Hector Castillo, the architect of record. *Id.*

On July 26, 2010, after an investigation of the allegations, HUD determined that there was reasonable cause to believe that discriminatory acts had occurred, and issued a charge of discrimination alleging that the respondents alleging designed and constructed the subject property in a manner which failed to meet the accessibility standards of section 3604(f)(3)(C) of the Fair Housing Act. *Id.* The charge alleged that the subject property failed to meet the accessibility standards of

§ 3604(f)(3)(C) in a variety of ways, including but not limited to narrow doorways, inadequate turning radii, insufficient bathroom maneuvering space, and excessive doorway opening force. *Id.* HUD alleged that the respondents violated §§ 3604(f)(1) and 3604(f)(2) of the Act because “discrimination,” as defined in those provisions, includes a failure to design and construct multifamily dwellings in the manner described in § 3604(f)(3)(C). *Id.*

HUD alleged that respondents’ discriminatory acts inflicted public injury for which HUD sought remedies. *Id.* at 3. Specifically, HUD alleged that the subject property would not be available to persons with mobility disability without retrofit; that individuals with mobility disabilities, particularly those using wheelchairs would be discouraged from renting at the subject property; that persons becoming physically disabled while living at the subject property would likely have to move; and that persons with disabilities, particularly those using wheelchairs, would find it difficult or impossible to visit the subject property to view units or visit with friends and family. *Id.*

HUD subsequently entered into a consent order with the Hubbard Respondent, in order to avoid uncertain, protracted, and costly litigation. *Id.*¹ Among other things, the Hubbard Respondent agreed to pay \$20,000 into an accessibility fund operated by the City of Chicago’s Mayor’s Office for People with Disabilities (“the Fund”). *Id.* at 5-6. This payment was to be made in installments

¹ HUD entered into a separate consent order with the Castillo respondents. Only the consent order between HUD and the Hubbard respondents is at issue before this Court.

of \$5,000, paid every six months directly into the fund, for a period of two years from the date the consent order became final. *Id.* at 6. Mark Fisher, the president and sole owner of the Hubbard Respondent, personally guaranteed the \$20,000 payment against his personal assets and agreed to be held personally liable if the Hubbard Respondent failed to make timely payments to the Fund in full. *Id.* The Hubbard Respondent also waived any right to challenge the validity of the consent order. Ex. 1 at 15. The administrative law judge signed the consent order on January 10, 2011. Ex. 1 at 19.

Under the Act, the decision of the ALJ was subject to review and revision by the Secretary of HUD within 30 days. 42 U.S.C. § 3612(h)(1). Because the Secretary took no action in this case, the ALJ decision became final after the 30 days for review expired, which would have been February 9, 2011. *Id.* After the ALJ decision became final, the Hubbard Respondent was permitted 30 days under the Act to seek judicial review of the final order. 42 U.S.C. § 3612(i). In this case, the Hubbard Respondent did not seek judicial review at any time.

The Hubbard Respondent should have paid the \$20,000 into the Fund no later than February 8, 2013. The Hubbard Respondent has failed to comply with this provision of the consent order. The Secretary therefore petitions the court for the entry of an order enforcing the consent order.

Conclusion

The Secretary respectfully requests the court, pursuant to 42 U.S.C. §3612(j)(1), (l), and (n), to enter an order enforcing the consent order.

Respectfully submitted,
GARY S. SHAPIRO
United States Attorney

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Certificate of Service

I hereby certify that on April 24, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit.

I further certify that I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days to the following:

Douglas W. Michaud
Senak Keegan Gleason Smith &
Michaud, Ltd.
621 South Plymouth Court, Suite
100
Chicago, Illinois 60605

Eileen C. Lally
Eileen C. Lally & Associates
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s/ Ernest Y. Ling
ERNEST Y. LING
Assistant United States Attorney
219 South Dearborn Street
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Exhibit 1

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development,)
)
Charging Party,)
)
)
v.)
)
Hector Castillo Architects, Inc.,)
914 W. Hubbard, Inc., and)
Hector Castillo,)
)
Respondents.)

HUDALJ: 10-M-171-FH-20

APPROVAL OF INITIAL DECISION AND CONSENT ORDER

By motion dated Jan. 5, 2011, counsel for the Charging Party, on behalf of the Secretary and 914 W. Hubbard, Inc., moved for issuance of a proposed INITIAL DECISION AND CONSENT ORDER (attached), which bears signatures of those with authority to execute on behalf of Charging Party and Respondent 914 W. Hubbard, Inc. and, by its terms, settles the issues between the Secretary and 914 W. Hubbard, Inc. in the above-captioned case. The proposed order, incorporating those parties' settlement agreement, appears to be in the public interest.

Accordingly, the proposed INITIAL DECISION AND CONSENT ORDER is approved. It is issued this date by signature of the presiding Administrative Law Judge.


Presiding Administrative Law Judge

*SBW
conceding
settlement for
12/16 per HUD
counsel Sol Kim*

The Charging Party alleges that Respondents by their discriminatory acts inflicted public injury for which the Charging Party seeks remedy. Specifically, the Charging Party alleges that the subject property is "not and will not ever, without retrofit, be available to persons with mobility disabilities"; that "individuals with mobility disabilities, particularly those who use wheelchairs, will be discouraged from renting at the property"; that "people who become physically disabled while living at the subject property will likely have to move"; and that "persons with disabilities, particularly those who use wheelchairs, will find it difficult or impossible to visit the subject property to view units or visit with friends and family."

To avoid uncertain, protracted and costly litigation, the Charging Party and Respondent Hubbard have agreed to resolve the above-captioned case without the need for a hearing or adjudication on the merits. The Charging Party and Respondent Hubbard have accordingly consented to the entry of this Initial Decision and Consent Order (hereinafter "Consent Order"), as indicated by the signatures of the parties and counsel below. Respondents Hector Castillo and Castillo Architects, Inc. however, have not consented to, and therefore are not part of, this Consent Order. Accordingly, the action, with respect to Respondents Hector Castillo and Hector Castillo Architects, Inc. is not dismissed by this Consent Order.

III. GENERAL INJUNCTION

It is hereby ORDERED that during the effective period of this Consent Order, Respondent Hubbard, its heirs, executors, assigns, agents, employees, and successors, and all other persons engaged in its operation or management are permanently enjoined from designing or constructing any covered multifamily dwelling in a manner that is not readily accessible to persons with disabilities as required under Section 3604(f)(3)(C) of the Act. Respondent Hubbard hereinafter promises and agrees to comply with all the provisions of the Act relevant to the subject property and any other properties it designs, builds, manages or owns.

Respondent acknowledges that the Act makes it unlawful to design and construct covered multifamily dwellings in such a manner that fails to incorporate the following elements of accessible design:

- a. the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
- b. all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
- c. 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 in a wheelchair can maneuver about the space.

IV. GENERAL PROVISIONS

- a. The parties acknowledge that this Consent Order is a voluntary and full settlement of the Charge. No party has been coerced, intimidated, threatened or in any way forced to become a party to the Consent Order. The parties have read and fully understand the significance of all the terms set forth herein.
- b. By signing this Consent Order, Respondent Hubbard does not admit any violation of the Act or wrongdoing. It is expressly understood that neither the entering into this Consent Order, nor any other action taken by Respondent Hubbard pursuant to this Consent Order, shall be construed as an admission of liability.
- c. Respondent Hubbard affirmatively represents that it is infeasible or impossible to bring the subject property into full compliance with Fair Housing Amendments Act of 1988. Therefore, the modifications to the subject property agreed to by the parties to this Consent Order are designed to bring the property into compliance with the Fair Housing Amendments Act Accessibility Guidelines to the maximum extent feasible and provide, at a minimum, a "visitable" standard of accessibility in the majority of the units. As such, each unit modified under Section V of this Consent Order is designed, at a minimum, to provide a kitchen, one sitting room, one bedroom and one full bathroom that are accessible to disabled individuals using wheelchairs, subject to certain negotiated and reasonable construction tolerances.
- d. Various provisions of this Consent Order require Respondent Hubbard to submit documents or other information to the Charging Party. In each such place where the Consent Order requires Respondent Hubbard to submit documents or other information to the Charging Party, such submissions shall be addressed and directed to the Department's Office of the Regional Counsel for Region V, as follows:
- Mr. Courtney Minor, Regional Counsel
Office of the Regional Counsel, Region V
U.S. Department of Housing and Urban Development
77 W. Jackson Boulevard, 26th Floor
Chicago, Illinois 60604
- e. The signatures of the parties to this Consent Order may be executed by way of facsimile transmission and shall be deemed to be an executed and admissible Consent Order for all purposes as may be necessary under the terms of this Consent Order.

- f. The parties and their counsel agree that, in the interest of prompt conclusion of this matter, the execution of this Consent Order by the parties may be accomplished by separate execution of consents (the original executed Consent and Signature Pages) to be attached to the body of this Consent Order to constitute one document.
- g. The parties and their counsel agree that if the situation arises where a party to this Consent Order needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained by mutual agreement of the parties and all signatories or their successors in writing.
- h. This Consent Order shall govern the conduct of the parties to it for a period of three (3) years from the date this Consent Order becomes final pursuant to 42 U.S.C. §3612(h), specifically set forth in Section X, below.
- i. This Consent Order is binding upon Respondent Hubbard and its employees, officers, heirs, successors, assigns, and all others working for or in association with Respondent Hubbard in the design, construction, operation or management of the subject property.
- j. The Consent Order does not in any way limit or restrict the Charging Party's authority to investigate, charge or seek remedy in any other complaint involving Respondent Hubbard or its employees, officers, heirs, successors, assigns and any other affiliated entities pursuant to the Act, or any other complaint within the Charging Party's jurisdiction. For all future HUD investigations and litigation activities concerning the matters addressed in this Consent Order, Respondent Hubbard agrees to provide full cooperation with the Charging Party, including providing testimony and documents, when requested. This provision covers any ongoing and possible future litigation against Respondent Hector Castillo and Respondent Hector Castillo Architects, Inc.
- k. It is understood that, according to 42 U.S.C. §3610(b)(4) of the Act, this Consent Order shall be a public document.
- l. Except as provided herein, the signatures of the parties to this Consent Order further constitute a waiver of any right to apply for additional attorney's fees or costs pursuant to 42 U.S.C. § 3612 (p) and 24 C.F.R. § 180.705 (2009).

V. SPECIFIC RELIEF

In exchange for the Charging Party's agreement to dismiss this Charge, Respondent Hubbard, shall take the following corrective actions:

- a. Respondent Hubbard agrees to make a monetary contribution in the total amount of twenty thousand dollars (\$20,000.00) to an accessibility fund

operated by the City of Chicago's Mayor's Office for People with Disabilities.¹ ("the Fund").

- i. The twenty thousand dollar (\$20,000.00) payment to the Fund will be paid over the course of two (2) years from the date on which the Consent Order becomes final, by operation of Section X of this Consent Order, in installments of five thousand dollars (\$5,000.00), paid every six (6) months directly to the fund. The first of such installment payments will be paid within 180 days of the date that this Consent Order becomes final, by operation of Section X of this Consent Order.
 - ii. Mark Fisher, the president of Respondent Hubbard, personally guarantees this payment to the Fund against his personal assets and agrees to be held personally liable if Respondent Hubbard fails to timely make the payment to the Fund in full.
 - iii. Each payment to the Fund shall be made by certified check or money order, payable to the City of Chicago and delivered by certified mail, UPS or Federal Express, to the attention of:

Kimberly A. Taylor, Deputy Commissioner
City of Chicago
Mayor's Office for People with Disabilities
2102 W. Ogden Avenue
Chicago, Illinois 60612
 - iv. Each time Respondent Hubbard makes a payment to the Fund, it shall send a copy of the certified check to the Charging Party, consistent with Section IV (d), above within five (5) days of the payment.
- b. Within one hundred and twenty (120) days of the date on which the Consent Order becomes final, by operation of Section X of this Consent Order, Respondent Hubbard agrees to have Mark Fisher and any other staff with design or construction responsibilities to complete at least two (2) hours of training on the Act's accessibility requirements from a HUD-approved trainer at Respondent Hubbard's expense. Within ten (10) days of receiving training, each member of Respondent Hubbard's staff, including Mark Fisher, shall provide a certification of attendance to the Charging Party, consistent with Section IV (d), above.
- c. Within thirty (30) days of this Consent Order becoming final, by operation of Section X of this Consent Order, Respondent Hubbard will distribute to all

¹ Such contribution is voluntary and charitable in nature, was not solicited in any way by the City of Chicago, and does not insulate Respondent Hubbard from any liability it may have for failing to follow any law, code, or ordinance enforced by the City of Chicago.

tenants and prospective tenants a notice that any tenant, regardless of disability status, may request and receive at any time during their tenancy, accessibility modifications to their units consistent with this Consent Order at no cost to the tenant. The notice to tenants shall be in substantially the same form as Appendix A to this Consent Order. Within 2 weeks of receiving a request for accessibility modification from a tenant, Respondent Hubbard shall forward a copy of the modification request to the Charging Party, consistent with Section IV(d), above. Requests for reasonable modification for existing tenants shall take priority over other modifications conducted in compliance with this Consent Order, provided the modification is to an element covered by the Fair Housing Amendments Act or this Consent Order, and shall be completed in a reasonable period of time, unless infeasible or impossible. If the modifications will take in excess of 30 days from the date of the request, Respondent Hubbard shall notify the Charging Party consistent with Section IV (d), above, and provide the reason for the delay and expected completion date for the project.

- d. A number of units at the subject property (Units #101, #201, #301, #103, #203, #303, #107, #207 and #307) will not be substantively modified for accessibility under this Consent Order, as Respondent Hubbard has affirmatively represented that it is infeasible or impossible to modify those units to comply either with the Fair Housing Amendments Act Accessibility Guidelines or the "visitable" standard described in Section IV(c), above. The parties understand that there may be a circumstance under which an individual living in one of the units not modified under this Consent Order may request an accessibility modification. In such circumstance, during the effective period of this Consent Order, Respondent Hubbard will make any reasonable modification to a unit at the subject property not covered by this Consent Order at its expense, provided that the modification is to a feature covered by the accessibility provisions of the Fair Housing Act Amendments of 1988, is feasible and possible to modify, and is not unduly burdensome, by reason of expense, and does not cause a direct threat to the health or safety of others. Alternatively, if agreeable to the tenant, Respondent Hubbard may move the tenant in this circumstance to a more accessible unit at the subject property, if such unit is available, or release the tenant from his or her lease. Any modification request made concerning Units 101, 201, 301, 103, 203 and 303 should also be forwarded to the Charging Party, in the manner consistent with Sections IV(d) and V(c) above.
- e. Unit 401 at the subject property is not in a construction finished state. As such, the parties agree that when this unit is "built out," it will be fully compliant, in all respects, with the Fair Housing Act Accessibility Guidelines. Respondent Hubbard must ensure that this requirement shall survive any transfer of the subject property to a third party or sale of the subject property to a third party, as required under Section V(1) of the Consent Order.

- f. Interior doors modified under Section V of this Consent Order will be modified to provide a clear opening of 32", measured from the face of the door to the jamb, with the door open at a 90 degree angle. Respondent Hubbard may affect such clearance by means of modification to the width of the door, adjusting the swing of the door, or changing the hinges to the door. For those doors specifically mentioned in the subsequent subsections, the parties agree to a construction tolerance of not more than 1" of clearance, meaning that the minimum nominal clear opening will be no less than 31", clear.
- g. Respondent Hubbard has represented that the oven ranges in kitchens modified under this section of this Consent Order are not situated below the cook top. As such, the parties to this Consent Order agree that kitchens modified under Section V are subject to the exception applicable to "U" shaped kitchens with cook tops located at the base of the "U" as provided for in the *FAIR HOUSING ACT DESIGN MANUAL*, Section 7. See Barrier Free Environments, Inc., *Fair Housing Act Design Manual* §7.11 (1998). The parties to this Consent Order recognize and agree that this exception is not available when the cook top at the base of the "U" is situated over an oven range. In kitchens modified under this section of this Consent Order, cook tops will be placed at lowered or adjustable height counter segments so that they can be used more easily by persons using wheelchairs, except where counters are already installed at heights that provide knee clearance of 30" by 27", and the underside of the cook top will be insulated or enclosed, as provided for in the *FAIR HOUSING ACT DESIGN MANUAL* at 7.11 & 7.14. The cook top kitchens modified under this section of this Consent Order will provide knee clearance of no less than 30" wide by 27" high. Respondent Hubbard may provide removable bases in the cabinets, provided that doing so allows a wheelchair user to pull his or her knees under the cook top. If this is not the effect, then providing removable bases will be insufficient to comply with this section of this Consent Order. All the units agreed to be modified under this Section of the Consent Order must provide a 5 foot turning radius or meet *The Fair Housing Act Design Manual* exception at Sections 7.11 and 7.14.
- h. Within ninety (90) days of the effective date of the Consent Order becoming final, by operation of Section X, Respondent Hubbard agrees to modify the public and common use areas of the subject property in accordance with the accessibility requirements of the Act. Such modifications shall consist of the following:
- (i) The installation of appropriate signage and painting of the access aisle for the accessible parking space located in the parking garage; and
 - (ii) The adjustment to the closing mechanisms of the door to the parking garage and the primary entrance door to require no more than 8.5 pounds of force to open. This may include the installation of power assist features to alleviate the amount of force required to open the doors.

i. Within three (3) years of the Consent Order becoming final, by operation of Section X, or upon each of the units subject to modification under this section becoming vacant or sold—whichever is sooner—Respondent Hubbard agrees to modify the following units at the subject property in the manner described as follows:

(i) Every unit in the subject property:

1) The repositioning of the security system panel so that the operable buttons are located no more than 48” above the finished floor in Units #102, #202, #302, #104, #204, #304, #105, #205, #305, #106, #206, #306 and #401.

(ii) Units #102, #202, #302:

1) The installation of removable bases in the cabinets under the cook top in order to provide a clearance of at least 40”. Cook tops should be placed at lowered or adjustable height counter segments so they can be used more easily by persons using wheelchairs, except where counters are already installed at heights that provide knee clearance of 30” by 27”, and the underside of the cook top should be insulated or enclosed. Respondent Hubbard may provide removable bases to cabinets, provided that doing so allows a wheelchair user to pull his or her knees under the cook top. If this is not the effect, then providing removable bases will be insufficient to comply with this section of this Consent Order. The dimensions of knee space itself must be 30” wide by 27” high. All of the units agreed to be modified under this Section of the Consent Order must provide a 5 foot turning radius or meet *The Fair Housing Act Design Manual* exception at Sections 7.11 and 7.14;

2) The installation of doors in the master bedroom and the master bathroom that measure 34” wide, and the widening of such doorways to accommodate 34” doors with a clear opening of a nominal 32”;

3) Reinforcement of bathroom wall behind the toilet fixture in the master bathroom in order to allow later installation of grab bars on either side of the toilet; and

4) Reinforcement of master bathroom wall at the tub to allow later installation of grab bars at the tub or, in the alternative, the installation of “wing-its” and grab bars at the tub.

(iii) Units #104, #204, #304:

- 1) The installation of removable bases in the cabinets under the cook top in order to provide a clearance of at least 40". Cook tops should be placed at lowered or adjustable height counter segments so they can be used more easily by persons using wheelchairs, except where counters are already installed at heights that provide knee clearance of 30" by 27", and the underside of the cook top should be insulated or enclosed. Respondent Hubbard may provide removable bases to cabinets, provided that doing so allows a wheelchair user to pull his or her knees under the cook top. If this is not the effect, then providing removable bases will be insufficient to comply with this section of this Consent Order. The dimensions of knee space itself must be 30" wide by 27" high. All of the units agreed to be modified under this Section of the Consent Order must provide a 5 foot turning radius or meet *The Fair Housing Act Design Manual* exception at Sections 7.11 and 7.14;
- 2) The installation of doors in the secondary bedroom and the secondary bathroom that measure at least 32" wide and provide a clear opening of at least 31", and the widening of such doorways to accommodate those doors;
- 3) The creation of 30" x 48" minimum clear floor space in front of the toilet fixture in the secondary bathroom by reversing the inward door swing, as measured from the base of the toilet nearest the floor;
- 4) Reinforcement of the bathroom wall behind the toilet fixture in the secondary bathroom in order to allow later installation of grab bars on either side of the toilet; and
- 5) Reinforcement of the bathroom wall at the tub of the secondary bathroom to allow later installation of grab bars at the tub or, in the alternative, the installation of "wing-its" and grab bars at the tub.

(iv) Units #105, #205, #305:

- 1) The installation of doors in the secondary bedrooms that measure at least 32" wide and provide a clear opening of at least 31", and the widening of such doorway to accommodate those doors;
- 2) The installation of a door in the secondary bathroom that measures at least 32" wide and provides a clear opening of at least 31", and the widening of the doorway to accommodate the doors;
- 3) In the second bathroom, the creation of 30" x 48" of minimum clear floor space, as measured from the base of the toilet nearest the floor, centered on the sink fixture by taking measures, including, but not limited to, reversing the inward swing of the secondary bathroom door;

- 4) Reinforcement of the bathroom wall behind the toilet fixture in the secondary bathroom in order to allow later installation of grab bars on either side of the toilet;
 - 5) Reinforcement of the bathroom wall at the tub of the secondary bathroom to allow later installation of grab bars at the tub or, in the alternative, the installation of "wing-its" and grab bars at the tub; and
 - 6) The installation of removable bases in cabinets under the cook top in order to provide a clearance of at least 40". The cook tops should be placed at lowered or adjustable height counter segments so it can be used more easily by persons using wheelchairs, except where counters are already installed at heights that provide knee clearance of 30" by 27", and the underside of the cook top should be insulated or enclosed. Respondent Hubbard may provide removable bases to cabinets, provided that doing so allows a wheelchair user to pull his or her knees under the cook top. If this is not the effect, then providing removable bases will be insufficient to comply with this section of this Consent Order. The dimensions of the knee space itself must be 30" wide by 27" high. All of the units agreed to be modified under this Section of the Consent Order must provide a 5 foot turning radius or meet *The Fair Housing Act Design Manual* exception at Sections 7.11 and 7.14.
- (v) Units #106, #206, #306:
- 1) If the kitchens in each of these units do not already have a five-foot turning radius, the installation of removable bases in the cabinets under the cook top in order to provide 60" x 60" of clear floor space at the base of the U-shaped kitchen. Respondent Hubbard may provide removable bases to cabinets, provided that doing so allows a wheelchair user to pull his or her knees under the cook top. If this is not the effect, then providing removable bases will be insufficient to comply with this section of this Consent Order. The dimensions of the knee space itself must be 30" wide by 27" high. For the purpose of this Agreement, the turning radius in the kitchens in units 106, 206 and 306 will be measured from kickplate. All of the units agreed to be modified under this Section of the Consent Order must provide a 5 foot turning radius or meet *The Fair Housing Act Design Manual* exception at Sections 7.11 and 7.14;
 - 2) The installation of a door in the master bedroom that measures 34" wide, and the widening of such doorways to accommodate the 34" door;

- 3) The installation of a door in the secondary bathroom that measures at least 32" wide and provides a clear opening of at least 31", and the widening of the doorway to accommodate the door;
 - 4) The creation of 30" x 48" minimum clear floor space in front of the toilet fixture, as measured from the base of the toilet nearest the floor, in the secondary bathroom by reversing the inward door swing;
 - 5) Reinforcement of bathroom wall behind the toilet fixture in the secondary bathroom in order to allow later installation of grab bars on either side of the toilet; and
 - 6) Reinforcement of bathroom wall at the tub of the secondary bathroom to allow later installation of grab bars at the tub or, in the alternative, the installation of "wing-its" and grab bars at the tub.
- j. Within ten (10) days of becoming aware that a unit at the subject property will become vacant or sold, and again within ten (10) days of completing modifications to any given unit, Respondent Hubbard, shall notify the Charging Party, in compliance with Section IV (d), above.
- k. The notification and modifications specified in this section, above, shall not be deemed to comply with this Consent Order until the Charging Party inspects the modifications and issues a written notification to Respondent Hubbard that the work complies with this Consent Order and were conducted with a reasonable degree of skill and workmanship.
- l. In the event that Respondent Hubbard should dissolve, file for bankruptcy, sell the subject property or undergo a change of controlling ownership, it must notify the Charging Party, consistent with Section IV (d), at least (30) days prior to filing for bankruptcy or dissolution, closing on the sale of the subject property or finalizing the transfer of controlling ownership of the subject property. If Respondent Hubbard transfers or sells the subject property or transfers controlling ownership of the subject property, Respondent Hubbard understands and agrees that this Consent Order survives the transfer of property or ownership interest. As such, all modifications agreed to in this section will be completed prior to such transfer or sale. In the alternative, Respondent Hubbard will ensure that any sale or transfer of the subject property, or change in controlling interest in the subject property, to a third party will be conditioned on compliance with this Consent Order, as a condition of sale or transfer, requiring the third party to assume the obligations and liabilities of this Consent Order. Furthermore, Respondent Hubbard agrees to cooperate with the Charging Party during any related proceedings or transactions to ensure that the requirements of this Consent Order will be fulfilled.
- m. The modifications to the subject property as described in this section are based on representations made by Respondent Hubbard regarding the layout and the features of the units in the subject property. To the extent that any difference

between the actual units and the representations and assumptions regarding those units causes the modifications specified above to fail to achieve the "visitability" standard, as defined in Section IV(c) of this Consent Order, the Charging Party reserves the right to require additional modification work in those units until the "visitability" standard is reached.

VI. MUTUAL RELEASE

- a. In consideration of Respondent Hubbard's payment to the accessibility fund, compliance with the conditions and terms of this Consent Order and with all orders of this tribunal described herein, and for other good and valuable consideration, the Charging Party, its successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to initiate a proceeding against Respondent Hubbard, its successors, heirs, executors, assigns, agents, employees, officers, and attorneys, including any subsequent owner of the subject property, with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD ALJ No. 10-M-171-FH-20 (solely with respect to Respondent Hubbard), FHEO No. 05-09-0143-8 or which could have been filed in any action or suit arising from said subject matter.
- b. Notwithstanding the previous paragraph, however, the Charging Party is under a statutory mandate to investigate and enforce the Fair Housing Act with respect to any and all fair housing complaints filed by a person or an entity other than the Charging Party. Accordingly, the Consent Order will have no impact on the Charging Party's right to investigate, to charge, and to seek remedies and/or damages against Respondent Hubbard, its successors, heirs, executors, assigns, agents, employees, and officers, including any subsequent owner of the subject property, in connection with a violation of any provision of the Act, including claims concerning facts or allegations settled under this Consent Order, based on a fair housing complaint filed by a person or an entity other than the Charging Party.
- c. In consideration of the execution of this Consent Order, and other good and valuable consideration, Respondent Hubbard, its successors, assigns, agents, employees, officers and attorneys, hereby forever waives, releases, and covenants not to sue the Charging Party or its officers, successors, assigns, agents, employees, officers and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD ALJ No. 10-M-171-FH-20, FHEO No. 05-09-0143-8 or which could have been filed in any action or suit arising from said subject matter.

VII. MONITORING BY HUD

- a. During the term of this Consent Order, the Charging Party may review compliance with the Consent Order. As part of such review, the Charging Party may inspect the subject property, examine witnesses, and copy pertinent records of Respondent Hubbard. Respondent Hubbard agrees to provide its full cooperation in any monitoring review undertaken by the Charging Party to ensure compliance with this Consent Order.

- b. In order to facilitate monitoring and to ensure communication, the president of Respondent Hubbard, Mark Fisher, agrees to provide his contact information to the Charging Party, consistent with Section IV(d) of this Consent Order. Additionally, should Respondent Hubbard and/or Mark Fisher obtain new contact information Mark Fisher must provide the Charging Party with written notice containing the new contact information. Should another entity or person succeed Respondent Hubbard's interest in the subject property, Mark Fisher must provide written notification of the individual's or entity's contact information to the Charging Party, consistent with Section IV(d) and V(l), above.

VIII. DISMISSAL OF CHARGE

In consideration of Respondent Hubbard's payment and compliance with the terms and conditions of this Consent Order, and all orders contained therein, the Charging Party agrees to the dismissal, without a formal determination, of the allegations that Respondent Hubbard violated the Act. Therefore, the Charge against Respondent Hubbard is hereby DISMISSED with prejudice. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order. Furthermore, nothing in this Consent Order should be construed as dismissing the Charge against Respondents Hector Castillo Architects, Inc. or Hector Castillo.

IX. COMPLIANCE

- a. Respondent Hubbard's failure to satisfy the terms of this Consent Order is a breach of the Consent Order which may be enforced in the United States Court of Appeals pursuant to 42 U.S.C. §3612(j) and (m).

- b. Mark Fisher's failure to satisfy his personal guarantee in regard to the twenty thousand dollar (\$20,000.00) payment as required by this Consent Order is a breach of the Consent Order, which may be enforced in the United States Court of Appeals pursuant to 42 U.S.C. §3612(j) and (m).

- c. Respondent Hubbard agrees to be responsible for all costs associated with enforcing this Consent Order should a legal proceeding take place as a result of its breach of the Consent Order. To the extent of his personal guarantee, this provision will also be applicable to Mark Fisher.

X. ADMINISTRATION

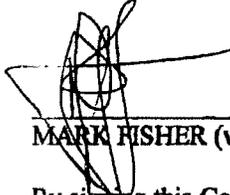
This Consent Order is entered into pursuant to the Fair Housing Act, 42 U.S.C. §3612(g)(3), and shall become final upon the expiration of thirty (30) days or by confirmation of the Secretary within that time. *See* 42 U.S.C. §3612(h). The signatures of the parties to this Consent Order constitutes a waiver of any right to withdraw their consent during the thirty (30) day Secretarial review period and a waiver of any right to challenge the validity of this Consent Order at any time.

XI AGREEMENT OF THE PARTIES

CONSENT AND SIGNATURE PAGES

The undersigned parties have read the foregoing Consent Order, HUD ALJ No. 10-M-171-FH-20, and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes, as signified by their signatures below.

INDIVIDUALLY:



MARK FISHER (with respect to the personal guarantee referenced in Section V.a.ii herein)

By signing this Consent Order, the undersigned signifies and represents that he is authorized, as the president and the sole owner, to agree to the Consent Order on behalf of Respondent 914 W. Hubbard, Inc.

FOR RESPONDENT 914 W. HUBBARD, INC.:



MARK FISHER, PRESIDENT

Date: 12/22/10

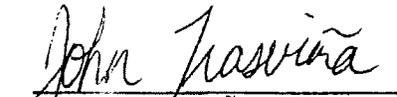
DEC 28 '10 PM 12:40

F.H.E.O.

CONSENT AND SIGNATURE PAGES

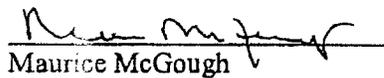
The undersigned parties have read the foregoing Consent Order, HUD ALJ No. 10-M-171-FH-20, and willingly consent to it with a full understanding of the rights it confers and the responsibilities it imposes on them, as signified by their signatures and that of their counsel, below:

FOR THE DEPARTMENT:


JOHN TRASVIÑA
Assistant Secretary

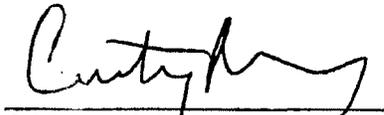
Office of Fair Housing and Equal Opportunity

12/28/2010
Date



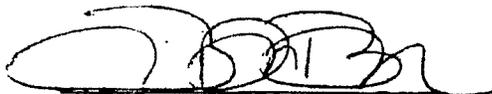
Maurice McGough
Deputy Regional Director, Region V
Office of Fair Housing and Equal Opportunity

12/28/2010
Date



COURTNEY MINOR
Regional Counsel
Region V

12/28/2010
Date



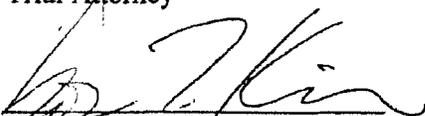
LISA M. DANNA-BRENNAN
Supervisory Attorney-Advisor
for Fair Housing

12/28/2010
Date



DANA ROSENTHAL
Trial Attorney

12/28/2010
Date



SOL TERENCE KIM
Trial Attorney

12/28/2010
Date

XI ORDER OF THE COURT

*diversion made by
Adrienne for 1/7/11
per Sol Kim
SJK*

The hearing in this matter was initially scheduled for November 16, 2010. On August 26, 2010, Respondent Hubbard notified the court by a motion for extension that the parties were engaging in settlement discussions. In response, the Court extended the deadline for all of the Respondents to file an Answer to the Complaint. On Dec. 30, 2010, the parties forwarded to the Court a draft of the foregoing Order, incorporating the terms of their settlement agreement. On Dec. 30, 2010, counsel for the Charging Party and Respondent Hubbard indicated that they were prepared to sign the agreement. Counsel had no further matters to raise and the Court indicated that the agreement appeared to be in the public interest. All the parties to the Consent Order having signed, their agreement (incorporated in the foregoing Initial Decision and Consent Order) is accepted.

So Ordered, this 10th day of January 2011.



Presiding Administrative Law Judge

APPENDIX A

To all current and prospective tenants:

The United States Department of Housing and Urban Development and 914 Hubbard Street, Inc. have entered into an agreement, otherwise referred to as a consent order, to make certain accessibility modifications to this building, to address charges that the building does not incorporate all features of accessible design, as required by the federal Fair Housing Act ("Act"). As part of the consent order, 914 West Hubbard Street is required to make specific accessibility modifications to units at the property at no cost to tenants.

If you are interested in receiving accessibility modifications and/or are interested in what modifications are available for your unit, you may request a copy of the consent order or request accessibility modifications at any time during your tenancy by contacting Mark Fisher, president of 914 Hubbard Street, Inc., in writing, and mailing your request to the same address as you pay your rent. These accessibility modifications may be requested by disabled or nondisabled tenants at any time during your tenancy.

APPENDIX B

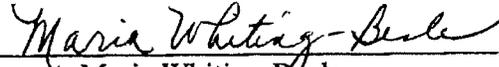
I, MARK FISHER, hereby certify that the principle staff of 914 West Hubbard Street attended the training session on fair housing law given by a qualified fair housing enforcement agency on _____, 201____, pursuant to Section V of the foregoing Consent Order, HUD ALJ No.: 10-M-171-FH-20, FHEO No.: 05-09-0143-8.

MARK FISHER

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that copies of this **Initial Decision And Consent Order** signed by Susan L. Biro, Chief Administrative Law Judge, in HUDALJ 10-M-171-FH/20 were sent to the following parties on this 11th day of January, 2011, in the manner indicated:



Maria Whiting-Beale
Staff Assistant

FIRST CLASS MAIL AND FACSIMILE TO:

Douglas W. Michaud, Esquire
Senak Smith & Michaud, Ltd.
550 West Jackson Boulevard, Suite 1400
Chicago, IL 60661

Sol T. Kim, Esquire
Office of Regional Counsel
U.S. Department of Housing & Urban Development
77 West Jackson Boulevard, Room 2617
Chicago, IL 60604-3507

FIRST CLASS MAIL TO:

Kathleen M. Pennington, Assistant General
Counsel for Fair Housing Enforcement
U.S. Department of Housing & Urban Development
451 7th Street, SW, Room 10270
Washington, DC 20410