

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CASE NO. 1:14-cv-165 (Keeley)
v.)	
)	Electronically Filed: September 29, 2014
)	
BIAFORA’S INCORPORATED, d/b/a)	
METRO PROPERTY MANAGEMENT;)	
FALCONCREST LLC; FIVE STAR)	
HOLDINGS, LLC; METRO RENTALS)	
LLC; METRO RENTALS II LLC; RDR)	
PROPERTIES LLC; RDR PROPERTIES II)	
LLC; THE GABLES LLC; THE)	
WOODLANDS LLC; 3BT LLC; and CMC)	
COMPANY LLC,)	
)	
Defendants.)	
_____)	

COMPLAINT AND REQUEST FOR JURY TRIAL

The United States of America (“United States”) alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“Fair Housing Act” or “FHA”), 42 U.S.C. §§ 3601-3631, and Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12189. As set forth in full below, the United States alleges that Defendants Biafora’s Incorporated (d/b/a Metro Property Management); Falconcrest LLC; Five Star Holdings, LLC; Metro Rentals LLC; Metro Rentals II LLC; RDR Properties LLC; RDR Properties II LLC; The Gables LLC; The Woodlands LLC; 3BT LLC; and CMC Company LLC, (collectively, the “Biafora Companies”), have unlawfully discriminated against individuals

with disabilities under the FHA and ADA by failing to design and construct multi-family residential properties so as to be accessible to individuals with disabilities.¹

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 3614(a), and 42 U.S.C. § 12188(b)(I)(B). The Court also has authority to grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the United States' claims occurred in this district, and a substantial part of the properties that are the subject of the action are located here.

SUBJECT PROPERTIES

4. The Biafora Companies have participated in the design and construction of one or more of the following properties (collectively, "Subject Properties"):

5. Ashley Oaks is a residential apartment complex located on McCullough Street in Morgantown, West Virginia 26505. It consists of four two-story buildings and one three-story building, none of which has an elevator. There are 20 ground-floor units. The property has common use areas for the apartment units, including a pet litter, a dumpster, and mailboxes.

6. Burroughs Place is a mixed commercial and residential apartment complex located at 503, 507, and 511 Burroughs Street, Morgantown, West Virginia 26505. The buildings located at 503 and 511 Burroughs Street are two-story buildings without an elevator. There is commercial space and six ground floor units above the commercial space. The building located at 507 Burroughs Street is a five-story apartment building containing an elevator, with 51 units. The property has common use areas for the apartment units, including a gym, a recreation room, men's and women's toilet rooms, and a dumpster.

¹ For purposes of the FHA, "disability" means the same as "handicap."

7. Cedar Ridge is a residential apartment complex located on Cedar Ridge Road in Waynesburg, Pennsylvania 15370. It consists of eight two-story buildings, none of which has an elevator. There are 48 ground-floor units. The property has public and common use areas, including an onsite leasing office, a fitness center, garages, a playground, dumpsters, a community room, and mailboxes.

8. City Gardens is a residential apartment complex located at 1503, 1505, and 1507 North Willey Street, Morgantown, West Virginia 26505. It consists of one two-story, two three-story, and four two-story buildings, none of which has an elevator. There are 28 ground-floor units. The property has common use areas, including a pet litter, a dumpster, and mailboxes.

9. Courtyard West is a residential apartment complex located at 327 Willey Street, Morgantown, West Virginia 26505. It consists of a five-story building without an elevator and contains six ground-floor units. The property has common use areas, including a laundry room, dumpsters, and mailboxes.

10. Crestview Apartment Homes is a residential apartment complex located on Crestview Terrace in Bridgeport, West Virginia 26330. It consists of 16 two-story buildings, none of which has an elevator. There are 40 ground-floor units. The property has common use areas, including a community building, a fitness center, unisex toilet rooms, a pet litter, and mailboxes.

11. Crosswinds is a residential apartment complex located on Crosswinds Court in Fairmont, West Virginia 26554. It consists of five two-story buildings, none of which has an elevator. There are 20 ground-floor units. The property has common use areas, including a dumpster and mailboxes.

12. Falconcrest is a residential apartment complex located at 617 and 801 Locust

Avenue, Fairmont, West Virginia 26554. It consists of two three-story buildings, none of which has an elevator. There are 18 ground-floor units. The property has common use areas, including a dumpster and mailboxes.

13. The Gables is a residential apartment complex located on Gables Place in Bridgeport, West Virginia. It consists of eight two-story buildings and one single-story building, none of which has an elevator. There are 38 ground-floor units. The property has common use areas, including dumpsters, a picnic area, garages, and mailboxes.

14. Glenlock is a residential apartment complex located at 2118 University Avenue, Morgantown, West Virginia 26505. It consists of a four-story building, which does not have an elevator. There are eight ground-floor units. The property has common use areas, including a dumpster and mailboxes.

15. Glenlock South is a residential apartment complex located at 2040 University Avenue, Morgantown, West Virginia 26505. It consists of a five-story building, which does not have an elevator. There are eight ground-floor units. The property has common use areas, including a dumpster, a laundry facility, and mailboxes.

16. Grapevine Village is a residential apartment complex located on Airport Boulevard in Morgantown, West Virginia 26505. It consists of three two-story buildings and one three-story building, none of which has an elevator. There are 25 ground-floor units. The property has common use areas, including a dumpster, a picnic area, a tot-lot, and mailboxes.

17. Metro Towers Northeast, Metro Towers East, and Metro Towers West are residential apartment buildings located on University Avenue, Morgantown, West Virginia 26505. Metro Towers Northeast is a five-story mixed use building without an elevator. Metro Towers East and Metro Towers West are four-story residential buildings without an elevator.

There are 24 ground-floor units at these properties. The properties have public and common use areas, including an onsite leasing office servicing the units at these buildings, unisex toilet rooms, a fitness center, and mailboxes.

18. Mountainview is a residential apartment complex located on Mt. Golf Drive in Morgantown, West Virginia 26505. It consists of six two-story buildings, none of which has an elevator. There are 12 ground-floor units. The property has common use areas, including mailboxes.

19. Orchard Crossing is a residential apartment complex located on Orchard Crossing in Morgantown, West Virginia 26505. It consists of seven two-story buildings and seven four-story buildings, none of which has an elevator. There are 50 ground-floor units. The property has public and common use areas, including an onsite leasing office, a garage, a community room, a gym, dumpsters, a tot-lot, and mailboxes.

20. Parkview Apartment Homes at Charles Pointe is a residential apartment complex located on Parkview Drive, Bridgeport, West Virginia. It consists of 12 two-story buildings, none of which has an elevator. There are 48 ground-floor units. The property has public and common use areas, including a leasing office, a fitness center, dumpsters, a swimming pool, and mailboxes.

21. Pinecrest Office Plaza and Apartments contains a residential apartment building located on Route 857 (Point Marion Road) in Morgantown, West Virginia 26505. It consists of one two-story building with commercial space and 18 ground-floor apartment units above the commercial space. The property has common use areas, including dumpsters and mailboxes.

22. Skyline is a residential apartment complex located on Van Gilder Street and on Prostman Street in Morgantown, West Virginia 26505. It consists of one three-story building

and two four-story buildings, none of which has an elevator. There are 28 ground-floor units. The property has common use areas, including a dumpster and mailboxes.

23. Stonewood is a residential apartment complex located on Valley View Avenue in Morgantown, West Virginia 26505. It consists of three three-story buildings and four four-story buildings, none of which has an elevator. There are 44 ground-floor units. The property has common use areas, including a gym, a pool, a pool house, men's and women's toilet rooms, a dumpster, and mailboxes.

24. Building 1100 and Building 1300 at Valley View Woods are residential apartment complexes located on Valley View Avenue in Morgantown, West Virginia 26505. Building 1100 and Building 1300 are two-story buildings without an elevator. There are 18 ground-floor units. The property has common use areas, including dumpsters and mailboxes.

25. The Villages at West Run is a residential apartment complex on Eagle Run in Morgantown, West Virginia 26505. It consists of 12 two-story buildings, none of which has an elevator. There are 60 ground-floor units. The property has public and common use areas, including an onsite leasing office, a clubhouse, a gym, a pool, a pet litter, dumpsters, and mailboxes.

26. Vista Del Rio is a residential apartment complex located on Scott Avenue in Morgantown, West Virginia 26508. It consists of two two-story buildings and two three-story buildings, none of which has an elevator. There are 24 ground-floor units. The property has common use areas, including a pet litter, a dumpster, and mailboxes.

27. The Woodlands is a residential apartment complex located on Airport Road in Fairmont, West Virginia 26554. It consists of 12 two-story buildings, none of which has an elevator. There are 50 ground-floor units. The property has common and public use areas,

including an onsite leasing office, a pet litter kiosk, a fitness center, garages, a playground, a picnic area, dumpsters, and mailboxes.

OTHER PROPERTIES

28. Defendants have designed and constructed, or are in the process of designing and constructing, additional properties in West Virginia and Pennsylvania including, but not limited Westminster Apartments in Martinsburg, West Virginia and Park Place at the Meadowlands in Washington, Pennsylvania (collectively, “Properties in Construction”).

THE DEFENDANTS

29. Defendant Biafora’s Incorporated (doing business as Metro Property Management) is a corporation organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Biafora’s Incorporated has the purpose of, inter alia, the management, operation, construction, sale, and acquisition of real estate. Biafora’s Incorporated is a member or manager of several other Biafora Companies and works with each of the Biafora Companies engaged in the development of multi-family residential housing. Biafora’s Incorporated has directed and controlled the design and construction of properties by the other Biafora Companies, including the Subject Properties and the Properties in Construction. Biafora’s Incorporated currently manages the leasing of each of the Subject Properties and the Properties in Construction under its trade name, Metro Property Management.

30. Defendant Falconcrest LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Falconcrest LLC was created with the purpose of owning and leasing residential apartments. Falconcrest LLC owns and participated in the design and

construction of Falconcrest.

31. Defendant Five Star Holdings, LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Five Star Holdings, LLC has the purpose of developing real estate. Five Star Holdings, LLC owns and participated in the design and construction of City Gardens, Glenlock, and Stonewood.

32. Defendant Metro Rentals LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Metro Rentals LLC has the purpose of developing and leasing real estate. Metro Rentals LLC owns and participated in the design and construction of Orchard Crossing and Metro Towers. Metro Rentals LLC also participated in the design and construction of other properties developed by Biafora Companies, including City Gardens and Glenlock.

33. Defendant Metro Rentals II LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. Metro Rentals II LLC was created for the purpose of, inter alia, purchasing and developing several properties, including Courtyard West and Grapevine Village, and owns and participated in the design and construction of those properties.

34. Defendant RDR Properties LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. RDR Properties LLC owns and participated in the design and construction of Ashley Oaks, Cedar Ridge, Crosswinds, Mountainview, Pinecrest Office Plaza and Apartments, Skyline, and The Villages at West Run. RDR Properties LLC

merged with BTB, LLC, which owned and participated in the design and construction of Glenlock South.

35. Defendant RDR Properties II LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. RDR Properties II LLC was created with the purpose of developing several properties, including Valley View Woods and Crestview, and RDR Properties II LLC owns and participated in the design and construction of those properties.

36. Defendant The Gables LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. The Gables LLC owns and participated in the design and construction of The Gables.

37. Defendant The Woodlands LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. The Woodlands LLC owns and participated in the design and construction of The Woodlands.

38. Defendant 3BT LLC is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West Virginia 26508. The purpose of 3BT LLC is to purchase and develop real estate. 3BT LLC owns and participated in the design and construction of Burroughs Place and Vista Del Rio.

39. Defendant CMC Company LLC (converted from Construction, Management, and Consulting Company) is a limited liability company organized under the laws of West Virginia, with its principal place of business located at 6200 Mid-Atlantic Drive, Morgantown, West

Virginia 26508. CMC Company LLC was the general contractor for all of the Subject Properties designed and constructed by the Biafora Companies.

FHA AND ADA ALLEGATIONS

40. Each of the Subject Properties was designed and constructed for first occupancy after March 13, 1991, contain buildings with four or more residential apartment units and are “dwellings” and contain “dwellings” as defined by the Fair Housing Act, 42 U.S.C. § 3602(b).

41. Most of the buildings at the Subject Properties do not contain an elevator. The ground-floor units in all of the non-elevator buildings at the Subject Properties are “covered multi-family dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3604(f)(7), including the dwelling units over commercial space at Burroughs Place and Pinecrest Office Plaza and Apartments.

42. Burroughs Place contains a building with an elevator that serves every unit. All of the units in this building are “covered multi-family dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3604(f)(7).

43. The ground-floor units at the non-elevator buildings and all units in the elevator buildings are subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C).

44. The leasing offices located at Cedar Ridge, Metro Towers, Orchard Crossing, Parkview Apartment Homes at Charles Pointe, The Woodlands, and The Villages at West Run were each designed and constructed for first occupancy after January 26, 1993 and are places of public accommodation with the meaning of the ADA, 42 U.S.C. § 12181(7)(E) and 28 C.F.R. § 36.104. These areas are required to meet the accessibility requirements of the ADA standards.

45. Defendants, individually or through their agents or other Defendants, failed to design and construct the Subject Properties so as to be accessible to individuals with disabilities.

These practices include, but are not limited to, the failure to design and construct these properties such that:

- a. all buildings have an accessible building entrance on an accessible route;
- b. the public use and common use areas are readily accessible to and usable by individuals with disabilities;
- c. all doors within ground-floor units and/or units served by elevators are sufficiently wide to allow for passage into and within all premises by individuals with disabilities who use wheelchairs;
- d. all covered multi-family 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; and
 - iii. usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

46. Defendants provided the United States with all of the property plans within their possession. None of these plans indicates that the dwellings contain reinforcements in bathroom walls to allow for the later installation of grab bars.

47. The following is an illustrative, but not exhaustive, list of inaccessible features created and caused by Defendants in designing and constructing the Subject Properties:

- a. failure to provide walkways or sidewalks from units to public use or common use areas, such as gyms, pools, recreational centers, leasing offices, and/or mailbox kiosks;

- b. routes from units to public use and common use areas containing one or more steps or abrupt level changes greater than $\frac{1}{4}$ inch, severely steep running slopes greater than five percent without handrails and/or cross slopes greater than two percent, non-beveled, and other obstructions;
 - c. non-compliant hardware at the primary entry unit doors that requires grasping or twisting of the wrist;
 - d. building entrances that contain abrupt level changes greater than $\frac{1}{4}$ "', steps, severe running slopes greater than five percent without handrails and cross slopes greater than two percent, and other obstructions;
 - e. light fixtures mounted less than 80 inches from the floor and protruding more than 4 inches into the walkway leading to units;
 - f. failure to provide any accessible parking spots and/or failure to provide an access aisle for parking spots designated as accessible;
 - g. amenities with insufficient or unlevel maneuvering spaces;
 - h. doors within the units with less than a nominal 32-inch clear width;
 - i. routes within and throughout units containing unbeveled abrupt level changes greater than $\frac{1}{4}$ inch, and other obstructions;
 - j. light switches, environmental controls, and/or electrical outlets that are in inaccessible locations;
 - k. and bathrooms and/or kitchens that fail to provide sufficient clear floor space, clearances, or appropriate positioning of sinks, tubs, and other features such that they may be used by individuals with disabilities.
48. The following is an illustrative, but not exhaustive, list of inaccessible features

created and caused by Defendants in designing and constructing the leasing offices at Cedar Ridge, Metro Towers, Orchard Crossing, Parkview Apartment Homes at Charles Pointe, The Woodlands, and The Villages at West Run:

- a. an inaccessible vehicular and pedestrian route from the site arrival point, including a failure to provide van accessible parking spaces;
- b. entrance doors with a non-compliant threshold;
- c. insufficient and/or unlevel maneuvering spaces at doors to public use areas;
- d. public restrooms that lack compliant signage, contain insufficient clear floor space within the room, lack sufficient knee clearance under the sink for a forward approach in a wheelchair, lack grab bars on the rear and side walls, and contain features, such as the toilet, flush control, toilet tissue holder, and paper towel dispenser, that are located in inaccessible locations.

FIRST CLAIM FOR RELIEF

Fair Housing Act

49. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-48 above.

50. Defendants, through the actions and conduct described above, have:

- a. Discriminated in the rental or sale of, or otherwise made unavailable or denied, dwellings to renters or buyers because of a disability, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons in the terms, conditions, or privileges of the rental or sale of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability, in violation of

42 U.S.C. § 3604(f)(2); and

- c. Discriminated in the rental or sale of, or otherwise made unavailable or denied, or discriminated in the terms, conditions, or privileges of the rental or sale of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability, by failing to design and construct dwellings in compliance with the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C).

51. Defendants' conduct and actions described above constitute:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the FHA, 42 U.S.C. §§ 3601-3619, in violation of 42 U.S.C. § 3614(a); and/or
- b. A denial to a group of persons of rights granted by the FHA, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

52. There may be victims of Defendants' discriminatory housing practices who are "aggrieved persons" under the Fair Housing Act, 42 U.S.C. § 3602(i), and may have suffered injuries and damages as a result of Defendants' conduct described above.

53. Defendants' discriminatory actions and conduct described above were intentional, willful, and taken in disregard for the rights of others.

SECOND CLAIM FOR RELIEF

Americans with Disabilities Act

54. Defendants Biafora's Incorporated, Metro Rentals LLC, RDR Properties LLC, and The Woodlands LLC, through the actions and conduct described above, have discriminated

on the basis of disability, in violation of 42 U.S.C. § 12182, by failing to design and construct common and public use areas of Cedar Ridge, Metro Towers, Orchard Crossing, Parkview Apartment Homes at Charles Pointe, The Woodlands, and The Villages at West Run, which were constructed after January 26, 1993, to be readily accessible to and usable by individuals with disabilities as required by 42 U.S.C. § 12183(a)(1) and 28 C.F.R. part 36 & App. A.

55. The conduct and actions of Defendants Biafora's Incorporated, Metro Rentals LLC, RDR Properties LLC, and The Woodlands LLC described above constitute:

- a. A pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b)(1)(B)(i) and 28 C.F.R. § 36.503(a); and/or
- b. Discrimination against any person or group of persons that raises an issue of general public importance, within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

56. There may be individuals affected by the discriminatory actions and practices of Biafora's Incorporated, Metro Rentals LLC, RDR Properties LLC, and The Woodlands LLC who are "aggrieved persons" pursuant to 42 U.S.C. § 12181(b)(2)(B). These individuals may have suffered injuries and damages as a result of the conduct of Metro Rentals LLC and RDR Properties LLC described above.

57. The discriminatory actions and conduct of Biafora's Incorporated, Metro Rentals LLC, RDR Properties LLC, and The Woodlands LLC described above were intentional, willful, and taken in disregard for the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an order that:

1. Declares that the actions, policies and practices of the Defendants, as alleged in this complaint, violate the Fair Housing Act;
2. Declares that the actions, policies and practices of the Defendants Biafora's Incorporated, Metro Rentals LLC, RDR Properties LLC, and The Woodlands LLC, as alleged in this complaint, violate the Americans with Disabilities Act;
3. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
 - a. Failing or refusing to bring covered multi-family dwellings and public and common use areas at the Subject Properties into compliance with 42 U.S.C. § 3604(f)(3)(C), 42 U.S.C. § 12183(a)(1), and 24 C.F.R. part 36 & App. A;
 - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
 - c. Designing and/or constructing any covered multi-family dwellings and places of public accommodation in the future that do not contain the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C), 42 U.S.C. § 12183(a)(1), and 24 C.F.R. part 36 & App. A; and
 - d. Failing or refusing to conduct compliance survey reviews at the Subject Properties to determine whether the retrofits ordered in paragraph 3(a) were made properly, and compliance reviews of plans and as-built

conditions at other properties containing covered multi-family dwellings designed and constructed by Defendants, or such properties that will be designed and constructed in the future, including but not limited to the Properties in Construction, for a period to be determined by the Court, to ensure compliance with the FHA and ADA.

4. Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 42 U.S.C. § 12188(b)(2)(B), to each person harmed by Defendants' discriminatory conduct and practices; and

5. Assesses a civil penalty against each Defendant, pursuant to 42 U.S.C. § 3614(d)(1)(C) and § 12188(b)(2)(C) to vindicate the public interest.

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

Dated: September 29, 2014

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