

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 2 GOLD LLC, TF CORNERSTONE, INC., :  
 TF CORNERSTONE PROPERTIES, LLC, :  
 AVINASH K. MALHOTRA ARCHITECTS, :  
 and AVINASH K. MALHOTRA, :  
 :  
 Defendants. :  
-----X

13 Civ. 2679 (RPP)(DCF)

ECF CASE

CONSENT DECREE

**A. Background**

This Consent Decree is entered into between the United States of America (the "United States") and Defendants Avinash K. Malhotra and Avinash K. Malhotra Architects (collectively referred to as "Architect Defendants").

WHEREAS, the United States brought this action (the "Action") to enforce provisions of the Fair Housing Act ("FHA"), codified at 42 U.S.C. §§ 3601-3619. Specifically, the United States' complaint in this Action, filed on April 23, 2013, alleges that the Architect Defendants and their co-defendants have engaged in a pattern or practice of discrimination, and have denied rights to a group of persons in a manner raising an issue of general public importance, by failing to design and/or construct 2 Gold Street ("2 Gold"), a rental apartment complex, with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C);

**B. Architect Defendants**

WHEREAS, individual defendant Avinash K. Malhotra was, at all relevant times, an architect licensed in New York;

WHEREAS, the business entity defendant Avinash K. Malhotra Architects is the sole proprietorship of individual defendant Avinash K. Malhotra.

WHEREAS, the Architect Defendants were the architect of record for 2 Gold and prepared the architectural plans for the 2 Gold residential dwelling units and, in these capacities, designed the residential dwelling units of 2 Gold;

**C. Relevant Requirements of the Fair Housing Act**

WHEREAS, the FHA provides that Covered Multifamily Dwellings must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability, 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require that for Covered Multifamily Dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons using wheelchairs; (iii) 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 using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(C) (these provisions and features are referred to herein as the “Accessible Design Requirements”);

**D. Conditions at 2 Gold**

WHEREAS, 2 Gold, a multifamily residential apartment complex located at 2 Gold Street, New York, New York, consists of a tower with elevator access and contains 650 rental

dwelling units, as well as public and common areas such as a fitness center, a pool, a rooftop solarium, a children's play room, a club room, and an on-site garage;

WHEREAS, 2 Gold was designed and constructed for first occupancy after March 23, 1991, and thus is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, the United States inspected 2 Gold and specifically identified, *inter alia*, the following conditions at 2 Gold:

- Excessively high thresholds at door entrances that interfere with accessible routes for persons in wheelchairs;
- Insufficient clear opening width of doors;
- Insufficient clear floor space within bathrooms for maneuvering by persons in wheelchairs;
- Kitchens lacking sufficient clearance to accommodate persons in wheelchairs;
- Electrical outlets inaccessible to persons in wheelchairs;
- Kitchen sinks and ranges not fully usable by persons in wheelchairs;
- Bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by persons in wheelchairs;
- Common area doors that lack sufficient maneuvering clearance, that require excessive force, and that close too quickly for disabled persons to pass through;
- Mailboxes mounted too high;
- Protruding objects in common areas that are not detectable by canes;
- Common area bathrooms inaccessible for persons in wheelchairs; and
- Intercom and emergency buttons; phones, coat and towel hooks; and paper towel,

seat cover, and soap dispensers in common areas inaccessible to persons in wheelchairs.

WHEREAS, the United States alleges and the Architect Defendants deny, that the above conditions are failures to meet the Accessible Design Requirements.

**E. Consent of the Parties to Entry of this Order**

WHEREAS, the United States and the Architect Defendants (collectively, the "Parties") agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a); and

WHEREAS, the Parties further agree that this controversy should be resolved without further proceedings and without an evidentiary hearing or a trial, and agree to the entry of this Consent Decree; **IT IS HEREBY ORDERED, ADJUDGED, and DECREED:**

**I. GENERAL INJUNCTION**

1. The Architect Defendants, and each of their employees, agents, successors, and assigns, if any, and all other persons in active concert or participation with them, are enjoined from discriminating on the basis of disability as prohibited by the Fair Housing Act, 42 U.S.C. § 3604.

**II. ACKNOWLEDGEMENTS**

2. With regard to their design of 2 Gold, the Architect Defendants admit and acknowledge the following facts:

i. From 2002 to 2005, the Architect Defendants provided design services to the developer of 2 Gold. Specifically, the Architect Defendants prepared architectural drawings for the dwelling units and supplied specifications

for the dwelling units that were used by the construction contractors to construct the 2 Gold building.

- ii. The Architect Defendants visited the construction site to observe whether 2 Gold conformed generally to their designs. However, the Architect Defendants did not inspect 2 Gold to ensure that it was constructed in compliance with the FHA, and did not assure the developer of 2 Gold that 2 Gold had been constructed in compliance with the FHA.
- iii. As built, certain features of 2 Gold Street did not satisfy the accessibility standards established under the Fair Housing Act Guidelines promulgated by the U.S. Department of Housing and Urban Development.

### **III. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION**

3. For each covered multifamily dwelling that the Architect Defendants are retained to design during the term of this Consent Decree, the Architect Defendants shall retain an FHA compliance reviewer (the "FHA Reviewer"), who shall be mutually agreed upon by the United States and the Architect Defendants to (i) review the plans, drawings, or designs prepared by the Architect Defendants and/or their employees and agents and (ii) advise the Architect Defendants as to whether such plans, drawings, or designs comply with the FHA's Accessible Design Requirements.

4. Within 30 days of retaining the FHA Reviewer, the Architect Defendants shall provide a copy of this Consent Decree to the FHA Reviewer and secure the signed statement from the FHA Reviewer acknowledging that he or she has received and read the Consent Decree and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix A.

5. During the term of this Consent Decree, the Architect Defendants shall submit, on an annual basis, a certification to the counsel for the United States affirming that they have provided the FHA Reviewer with copies of all the plans, drawings, or designs for covered multifamily dwellings that the Architect Defendants prepared during the preceding year. The Architect Defendants shall provide this certification within 20 days of the end of each 12-month period from the entry of this Consent Decree.

6. During the term of this Consent Decree, the FHA Reviewer shall, in addition to advising the Architect Defendants concerning FHA compliance, submit, on an annual basis, an update to the counsel for the United States that (i) identifies each covered multifamily dwelling for which the FHA Reviewer provided review or advisory services to the Architect Defendants and (ii) identifies each instance, if any, where the Architect Defendants refused to adopt the FHA Reviewer's recommendation concerning any modification required to achieve compliance with the FHA's Accessible Design Requirements. The FHA Reviewer shall provide this update within 30 days of the end of each 12-month period from the entry of this Consent Decree.

7. During the term of this Consent Decree, the Architect Defendants shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwellings intended to be designed, in whole or in part, by them or by any entities in which they have a position of control as an officer, director, member, or manager, or have a ten-percent (10%) or larger ownership share:

- the name and address of the project;
- a description of the project and the individual units;
- the name, address and telephone number of the architect(s) who are employed or retained by the Architect Defendants and are involved with the project;

- a statement from each architect who is employed or retained by the Architect Defendants and are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and the Guidelines, and in the field of accessible site design, and certifying that he/she has reviewed the architectural plans for the project and that the design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines.

8. If the architectural plans referred to in Paragraph 7 above are revised, and the revisions could have any impact on whether the dwellings or complex comply with the Fair Housing Act and/or the Guidelines, the Architect Defendants shall obtain, maintain, and provide to the United States upon request, a statement from the architect(s) who are employed or retained by the Architect Defendants and are involved with the project, as applicable, that all specifications in the revised architectural plans, as pertinent, comply with the requirements of the Fair Housing Act and the Guidelines.

9. For the term of this Consent Decree, if the Architect Defendants prepare any architectural or site plans, drawing, or blueprints for covered multi-family housing, as defined in the Fair Housing Act, they shall include on such plans, drawing, or blueprints a statement attesting to compliance with the Fair Housing Act, and the Architect Defendants shall maintain and provide such plans, drawing, or blueprints to the United States upon request.

10. The Architect Defendants will make their designs for all new construction of Covered Multifamily Dwellings fully compliant with the Accessible Design Requirements, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Standards to the extent applicable to Covered Multifamily Dwellings. Moreover, with respect to

all new construction of Covered Multifamily Dwellings, the Architect Defendants shall make their design(s) for all such construction fully compliant with the Guidelines or any other safe harbor recognized by HUD where every design feature of the project in question complies with all of the provisions in the particular selected safe harbor that address FHA requirements.

#### **IV. PAYMENTS TO AGGRIEVED PERSONS**

11. Within 30 days of entry of this Consent Decree, the Architect Defendants shall deposit in an interest-bearing account the total sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000) for the purpose of compensating any aggrieved persons who may have suffered as a result of the Architect Defendants' allegedly discriminatory housing practices regarding 2 Gold. This money shall be referred to as the "Architect Settlement Fund."

12. The United States shall investigate the claims of allegedly aggrieved persons and shall determine which persons are aggrieved and an appropriate amount of damages that should be paid to each such person. The United States will inform the Architect Defendants in writing of each of its determinations, together with a copy of a sworn statement or declaration from each aggrieved person setting forth the factual basis of his or her claim.

13. If the Architect Defendants dispute the amount of a payment to an aggrieved person, the Architect Defendants shall, within fourteen (14) days of receiving notice of a determination (a "Determination") from the United States, provide a written objection to the United States, along with any information or documents that they believe may refute the aggrieved person's claim. The United States shall give due consideration to any objections it receives from the Architect Defendants and shall submit, following any objection, its reconsidered determination (a "Reconsidered Determination") to the Architect Defendants, in



writing, setting forth the aggrieved person and the amount that the aggrieved person shall be paid. If the Architect Defendants dispute the Reconsidered Determination, the Architect Defendants shall file an objection with the Court, which may sustain or overrule the objection.

14. The Architect Defendants shall, no later than twenty (20) days after receiving a Determination to which no objection has been made, ten (10) days after receiving a Reconsidered Determination to which no objection has been filed with the Court, or ten (10) days after any decision by the Court overruling a filed objection, whichever is earliest, deliver to the United States checks payable to aggrieved persons in the amounts identified by the United States. In no event shall the aggregate of all such checks exceed the amount of the Architect Settlement Fund, including accrued interest. No aggrieved person shall be paid until he/she has executed and delivered to the United States the release at Appendix C.

15. In the event that less than the total amount in the Architect Settlement Fund including accrued interest is distributed to aggrieved persons, and after the United States determines that no further aggrieved persons will be identified, the remainder of the funds in the Architect Settlement Fund shall be distributed to a qualified organization(s) mutually agreed upon by the United States and the Architect Defendants, subject to the approval of the Court, for the purpose of conducting fair housing enforcement-related activities in New York City. Before selecting the qualified organization(s), the Architect Defendants will obtain a proposal from the organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and the Architect Defendants may request modification of the proposal before approving the organization(s). The parties shall thereafter seek approval from the Court to distribute the remaining funds to the qualified organization(s). The Architect Defendants shall

distribute the funds in a manner directed by the Court after the United States informs the Court that no further aggrieved persons will be identified.

#### **V. CIVIL PENALTY**

16. The Architect Defendants shall pay a civil penalty of THIRTY-FIVE THOUSAND DOLLARS (\$35,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Said sum shall be paid by submitting a check made payable to the “United States of America Department of the Treasury” to counsel for the United States within 30 days of the date of the entry of this Consent Decree.

#### **VI. EDUCATIONAL PROGRAM**

17. Within 30 days of the entry of this Consent Decree, the Architect Defendants shall provide a copy of this Consent Decree to all their current employees who have responsibilities involving building design (“Architectural Employees”), as well as to any other individuals or entities (*e.g.*, firms) that are involved in the design of any Covered Multifamily Dwellings as the Architect Defendants’ agent, and secure the signed statement from each Architectural Employee and other entity acknowledging that he, she, or it has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix A.

18. During the term of this Consent Decree, any new Architectural Employee of the Architect Defendants who will be involved in the design of Covered Multifamily Dwellings, as well as any entities (*e.g.*, firms) acting as the Architect Defendants’ agent that will be involved in the design of Covered Multifamily Dwellings, shall, within 30 days after the date he or she commences an agency or employment relationship with the Architect Defendants, be given a copy of this Consent Decree by the Architect Defendants, and the Architect Defendants shall

require each such new employee or entity to sign a statement, acknowledging that he, she, or it has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix A.

19. In lieu of providing Architectural Employees, entities or the agents listed in Paragraphs 4, 17 and 18 with copies of the Consent Decree as required therein, the Architect Defendants may provide their Architectural Employees or agents with a summary of the Consent Decree, designed to provide personnel with information relevant to their positions. The Architect Defendants may only provide such summaries in lieu of copies of the Consent Decree with the United States' advance written approval of the form and content of any proposed summary.

20. The Architect Defendants shall also ensure that they and their architect employees, as well as any entities (*e.g.*, firms) acting as their agent, who are involved in the design of any Covered Multifamily Dwellings have a copy of, are familiar with, and personally have reviewed, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998).

21. Within 90 days of the date of entry of this Consent Decree, the Architect Defendants and all of their architect employees whose duties, in whole or in part, involve or will involve supervision over the design of Covered Multifamily Dwellings, as well as any entities (*e.g.*, firms) acting as the Architect Defendants' agent that will be involved in the design of Covered Multifamily Dwellings, shall undergo training on the design and construction

requirements of the Fair Housing Act. The training shall be conducted by a qualified third-party individual (“Third-Party Trainer”), not associated with the Architect Defendants or their counsel, and approved by the Department of Justice, which approval shall not be unreasonably withheld or delayed; and any expenses associated with this training shall be borne by the Architect Defendants. The Architect Defendants shall provide to the United States, 30 days before the training, the name(s), address(es) and telephone number(s) of the trainer(s); and copies of the training outlines and any materials to be distributed by the trainers. The Architect Defendants shall provide to the United States, 30 days after the training, certifications executed by all covered employees and entities confirming their attendance, in a form substantially equivalent to Appendix B.

#### **VII. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS**

22. Within 180 days after the date of entry of this Consent Decree, the Architect Defendants shall submit to the United States the executed certifications and statements required by Paragraphs 4, 17, 18, and 21 of this Consent Decree.

23. Thereafter, during the term of this Consent Decree, the Architect Defendants shall, on the anniversary of the entry of this Consent Decree, submit to the United States any additional signed statements required by Paragraph 18 of this Consent Decree.

24. For the duration of this Consent Decree, the Architect Defendants shall advise the United States in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any property designed by them, or against any employees of the Architect Defendants working at or for any such property, alleging discrimination on the basis of disability in housing under federal law. Upon reasonable notice, the Architect Defendants shall also provide the United States all information in their possession that the United States may

reasonably request concerning any such complaint. The Architect Defendants shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

25. For the term of this Consent Decree, the Architect Defendants are required to preserve all records in their possession related to this Consent Decree, for 2 Gold, and any other Covered Multifamily Dwellings designed by them during the duration of this Consent Decree. Upon reasonable notice to the Architect Defendants, representatives of the United States shall be permitted to inspect and copy any records of the Architect Defendants bearing on compliance with this Consent Decree at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to the Architect Defendants from such inspections.

**VIII. RESOLUTION, WAIVER, DURATION OF CONSENT DECREE AND  
TERMINATION OF LEGAL ACTION**

26. This Consent Decree shall remain in effect for three years following entry of this Consent Decree by the Court. By consenting to entry of this Consent Decree, the parties agree that in the event that the Architect Defendants engage in any future conduct occurring after entry of this Consent Decree that is determined by a Court to be a violation of the Fair Housing Act, such conduct shall constitute a “subsequent violation” pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

27. The Complaint in this Action is hereby dismissed without prejudice as to the Architect Defendants subject to reinstatement in accordance with Paragraph 28.

28. The Complaint in this Action shall be reinstated at any time during the duration of this Consent Decree against the Architect Defendants if the Court determines the Architect Defendants have failed to perform, in a timely manner, any act required by this Consent Decree or has otherwise failed to act in conformity with any provision of this Consent Decree. The

Architect Defendants reserve and shall retain, without limitation, any and all available legal remedies and defenses in law and in equity.

29. This Consent Decree hereby releases the Architect Defendants, and each of their employees, agents, successors, and assigns and all other persons acting in concert or participation with them, from claims by the United States regarding alleged failures, as of the date of entry of this Consent Decree, to design 2 Gold in accordance with to the FHA, including all of the claims alleged in the Action, except for matters referred by the Department of Housing and Urban Development pursuant to 42 U.S.C. § 3612(o). Provided, however, that the Architect Defendants are not released from any claims by the United States concerning any Covered Multifamily Dwellings other than 2 Gold, including any claims regarding previously designed dwellings and any claims regarding current or future designed dwellings. Nor are the Architect Defendants released from claims, if any, regarding FHA violations at 2 Gold other than failures to design those properties as of the Effective Date of this Consent Decree as required by the FHA.

30. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice.

31. The United States and the Architect Defendants shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by the parties to perform, in a timely manner, any act required by this Consent Decree or otherwise for its failure to act in conformance with any provision thereof, any party may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an

order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

32. Upon the expiration of the Consent Decree, the Complaint in this Action shall be dismissed with prejudice as to the Architect Defendant.

#### **IX. TIME FOR PERFORMANCE**

33. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the United States and the Architect Defendants.

#### **X. NOTICES TO PARTIES**

34. All notices under or relating to this Consent Decree shall be in writing and shall be deemed given when sent as follows:

If to the United States: (i) by first-class mail addressed to Chief, Civil Rights Unit, Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007; and (ii) by e-mail to the undersigned attorneys representing the United States.

If to the Architect Defendants: by first-class mail addressed to Glenn Fuerth, Esq., Wilson Elser Moskowitz Edelman & Dicker LLP, 150 East 42<sup>nd</sup> Street, New York, New York 10017.

#### **IX. MISCELLANEOUS**

35. Each party will bear its own costs and attorney's fees associated with this Action.

36. The United States and the Architect Defendants understand and agree that this Consent Decree and the appendices thereto contain the entire agreement between them, and that statements, representations, promises, agreements, or negotiation, oral or otherwise, between the Parties or their counsel not included herein shall be of no force or effect.

The undersigned apply for and consent to the entry of this Consent Decree:


*For the United States:*

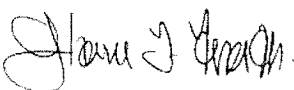
JOCELYN SAMUELS  
Acting Assistant Attorney General  
Civil Rights Division

*For Architect Defendants:*

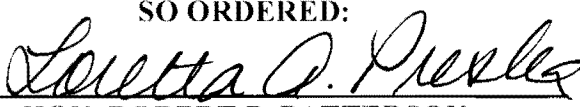
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EDELMAN & DICKER LLP

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SO ORDERED:

  
HON. ROBERT P. PATTERSON  
UNITED STATES DISTRICT JUDGE

*June 4, 2014*