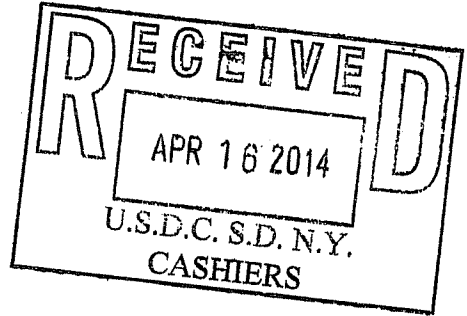


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
UNITED STATES OF AMERICA,

Plaintiff,

v.

THE DURST ORGANIZATION, INC. and its subsidiaries
and affiliates d/b/a THE DURST ORGANIZATION; THE
HELENA ASSOCIATES, LLC; and FXFOWLE
ARCHITECTS, P.C.,

Defendants.
----- X

: 14 Civ. _____

: ECF Case

: **COMPLAINT**

Plaintiff United States of America (the "United States") alleges as follows:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the "Fair Housing Act" or the "Act"), 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101-12213, and its implementing regulation, the ADA Standards for Accessible Design, 28 C.F.R. § 36.401; 28 C.F.R. Pt. 36 Appendix A (1991 ADA Standards for Accessible Design), as amended at 28 C.F.R. Pt. 36 Appendix D (2010 ADA Standards for Accessible Design) (hereinafter, the "ADA Standards"). As set forth in full below,

the United States alleges that Defendants, the developers and architect of the Helena Apartments (“The Helena”), a residential apartment complex in Manhattan, have unlawfully discriminated against persons with disabilities under the Fair Housing Act and the ADA by failing to design and construct The Helena so as to be accessible to persons with disabilities.

Jurisdiction and Venue

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because one or more of the defendants are resident in this District, because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in this District, and because a substantial number of the properties that are the subject of this action are located in this District.

The Property

4. The Helena is a residential apartment building located at 601 West 57th Street in New York, New York. The complex consists of a tower with elevator access, and contains 595 rental apartment units and public and common use areas, including a leasing office, laundry facilities, a roof terrace, a children’s play room, a fitness center, a tenants’ lounge, and storage areas for tenants.

5. The rental units at The Helena are “dwellings” within the meaning of 42 U.S.C. § 3602(b), and “dwelling units” within the meaning of 24 C.F.R. § 100.21.

6. The Helena was designed and constructed for first occupancy after March 13, 1991. All of the rental units are “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7) and 24 C.F.R. § 100.21. The complex is subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(a), (c).

7. In addition, the leasing office and the main lobby at The Helena were constructed for first occupancy after January 26, 1993, and are places of public accommodation within the meaning of 42 U.S.C. § 12181(7)(E) and 28 C.F.R. § 36.104. These areas, therefore, are required to meet the accessibility requirements of the ADA Standards.

The Defendants

8. The Durst Organization, Inc. is a New York corporation with its headquarters at One Bryant Park in Manhattan. The Durst Organization, Inc., directly and operating through its subsidiaries and affiliates that do business as The Durst Organization (collectively, "Durst"), and Helena Associates, LLC, a New York limited liability company, are the owners and developers of The Helena. Durst and Helena Associates, LLC, thus, participated in the design and construction of The Helena.

9. FXFOWLE Architects, P.C. ("FXFOWLE"), a New York professional corporation, drew the architectural plans for The Helena and, in that capacity, designed and constructed the apartment complex. Further, Daniel Kaplan, a partner at FXFOWLE Architects, was the architect of record for The Helena.

Inaccessible Features of The Helena

10. Durst, Helena Associates, LLC, and FXFOWLE participated in the design and construction of The Helena, which is inaccessible to persons with disabilities.

11. For instance, The Helena was designed and constructed with scores of inaccessible features, including, but not limited to, the following:

- a. Reception counter in the main lobby too high to accommodate persons who use wheelchairs;
- b. Inaccessible locations of the grab bars, toilet, and sink in the unisex bathroom in the main lobby;

- c. Sign for the leasing office lacking raised-letter Braille for persons with visual impairments;
- d. Reception counter in the leasing office too high to accommodate persons who use wheelchairs;
- e. Excessively high thresholds at entrances to individual units and at entrances to individual unit bathrooms, kitchens, and terraces;
- f. Insufficient clear opening width of bedroom, bathroom, terrace, and closet doors in individual units;
- g. Kitchens in individual units lacking sufficient width to accommodate persons who use wheelchairs;
- h. Kitchen ranges, sinks, and refrigerators in individual units lacking sufficient clearance for persons who use wheelchairs;
- i. Insufficient clear floor space within bathrooms in individual units for maneuvering by persons who use wheelchairs;
- j. Inaccessible locations of thermostats and kitchen and bathroom electrical outlets in individual units;
- k. Excessively high thresholds at entrances to trash rooms and laundry rooms;
- l. Inaccessible trash chutes;
- m. Inaccessible locations of dryers in the laundry rooms for persons who use wheelchairs;
- n. Excessively high thresholds at the entrance to the children's play room;
- o. Excessive running slope of ramp leading to the roof terrace;
- p. Excessively high threshold at the roof terrace door;
- q. Excessively high threshold at the door to the tenants' storage area; and

- r. Door to the television room in the tenants' lounge too narrow for persons who use wheelchairs.

12. In light of some and/or all of the inaccessible conditions identified in paragraph 11 above, Defendants also failed to comply with applicable local design and construction provisions, including New York City Local Law 58, in designing and constructing The Helena.

Durst's Additional Properties and Ongoing Constructions

13. The widespread inaccessible conditions at The Helena reflect a pattern or practice on Durst's part of failing to comply with the FHA's accessibility requirements in designing and constructing multi-family dwellings covered by the FHA, and a failure to comply with the ADA Standards with regard to those portions of the building covered by the ADA.

14. Durst has designed and constructed at least three other multi-family dwellings in Manhattan, including The Epic in Chelsea, 1214 Fifth Avenue on the Upper East Side, and several buildings along Front Street in Lower Manhattan. Durst's pattern or practice of failing to design and construct dwellings and associated places of public accommodation in compliance with the FHA and the ADA, as alleged herein, may extend to these other multi-family dwellings and, absent injunctive relief, to other multi-family dwellings that are currently in the process of being designed and constructed, including, but not limited to, the rental complexes at 855 Avenue of the Americas and on West 57th Street between 11th and 12th Avenues.

Fair Housing Act Claims

15. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–14 above.

16. Defendants violated 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205(c), by failing to design and construct The Helena in such a manner that:

- a. the public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities;
- b. all doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by persons who use wheelchairs for mobility; 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/or other environmental controls in accessible locations; and
 - iii) usable kitchens and bathrooms, such that an individual using a wheelchair can maneuver about the space.

17. Defendants, through the actions and conduct referred to in the preceding paragraph, have:

- a. Discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to buyers or renters because of a disability, in violation of 42 U.S.C. § 3604(f)(1) and 24 C.F.R. § 100.202(a);
- b. Discriminated against persons in the terms, conditions, or privileges of the sale or rental 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 24 C.F.R. § 100.202(b); and
- c. Failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205.

18. The conduct of Defendants described above constitutes:
- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and/or
 - b. A denial to a group of persons of rights granted by the Act, 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.

19. Persons who may have been the victims of Defendants' discriminatory housing practices are aggrieved persons under 42 U.S.C. § 3602(i), and may have suffered injuries as a result of Defendants' conduct described above.

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

ADA Claims

21. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-20 above.

22. Defendants violated Title III of the ADA by designing and constructing places of public accommodation, including the leasing offices and lobbies in multi-family dwellings, without ensuring that these places of public accommodation were readily accessible to persons with disabilities to the maximum extent feasible. *See* 42 U.S.C. § 12183(a)(2).

Prayer for Relief

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

- a. Declares that the policies and practices of Defendants, as alleged herein, violate the Fair Housing Act;
- b. Declares that Defendants have violated Title III of the ADA;
- c. Enjoins Durst from designing and/or constructing its current multi-family dwelling projects, including the rental apartment complexes at 625 West 57th Street and 855 Avenue of the

Americas, and associated places of public accommodation, in a manner such that they fail to comply with requirements of the FHA and the ADA;

d. Enjoins Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:

i. Failing or refusing to bring the dwelling units, public use and common use areas, and places of public accommodation and commercial facilities at covered multi-family dwellings that Defendants have designed, developed, and constructed into compliance with the FHA and the ADA;

ii. 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;

iii. Designing and/or constructing any covered multifamily dwellings and associated places of public accommodation in the future that do not comply with requirements of the FHA and the ADA; and

iv. Failing or refusing to conduct a compliance survey at covered multi-family housing complexes and associated places of public accommodation that Defendants have designed, developed, and constructed to determine whether the retrofits ordered in paragraph d(i) were made properly;

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

f. Assesses a civil penalty against each Defendant in the maximum amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest; and

g. Assesses a civil penalty against each Defendant in the amount authorized by 42 U.S.C. § 12188(b)(2)(C); 28 C.F.R. § 36.504(a)(3), to vindicate the public interest.

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

ERIC H. HOLDER, JR.
Attorney General of the United States

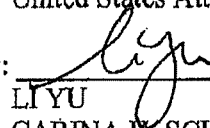


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