

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, on behalf of	)	
	)	
Victor Rolon-Cruz and Maria E. Hernandez-Rolon,	)	
	)	
Charging Party,	)	
	)	
v.	)	FHEO No. 04-06-0142-8
Palacios de Rio II, Inc.	)	
Homeowner Association, and Desarrolladora del Rio, Inc.	)	
	)	
Respondents.	)	
	)	

**CHARGE OF DISCRIMINATION**

**JURISDICTION**

1. On November 21, 2005, Victor Rolon-Cruz ("Rolon-Cruz") filed a verified complaint with the Department of Housing and Urban Development ("HUD"). He amended the complaint on January 22, 2008 to include his wife, Maria E. Hernandez-Rolon, as an aggrieved person ("Hernandez"). On April 4, 2008, Rolon-Cruz amended the complaint again to add the Respondent Desarrolladora del Rio, Inc. Rolon-Cruz and Hernandez ("Complainants") alleged that Respondents refused to grant Rolon-Cruz a reasonable accommodation in violation of the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* ("Act"). In particular, Complainants alleged that Respondents had refused to allow Rolon-Cruz to retain balusters at the entrance of his home, which he required because of his mobility impairment.
  
2. The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121), who has re-delegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause.

3. The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint were unsuccessful. See 42 U.S.C. § 3610(b).

#### **LEGAL AUTHORITY IN SUPPORT OF CHARGE**

4. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale of a dwelling because of a disability of that person or a person residing in that dwelling after it is sold. 42 U.S.C. § 3604(f) (2) (A) and (B).
5. It is unlawful to discriminate against any person by refusing to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. 42 U.S.C. § 3604(f) (3) (A).
6. It is unlawful to discriminate against any person by refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f) (3) (B).

#### **PARTIES:**

7. Complainant Rolon-Cruz is a 74 year old man who suffers from numerous medical conditions which substantially impair his mobility. He has been diagnosed with disk disease, lumbar spinal stenosis, osteoarthritis, joint degeneration, as well as emphysema and coronary artery disease. As a result of these ailments, Rolon-Cruz is unsteady when walking and when he maneuvers steps. He must use a railing for support. He also uses a cane to ambulate. Rolon-Cruz co-owns and resides in a detached single family home in a gated community located at Tallaboa Street #814-B, Palacios del Rios Development II, ("Palacios") Toa Alto, Puerto Rico.
8. Complainant Hernandez is Rolon-Cruz's wife. She resides with her husband and co-owns their residence. She suffers from various ailments, including diabetes and hypertension.
9. Respondent Desarrolladora del Rio, Inc., is the developer of Palacios del Rio II; it acted as the Homeowners Association until May 25, 2005 when management of the Homeowners Association was transferred to a board composed of persons who had purchased homes in Palacios.

10. Respondent Palacios del Rios II Homeowner Association is a homeowner association, incorporated January 21, 2004, consisting of families who own single family homes in a gated community. Association members share common areas.

#### **FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE**

11. On or about July 24, 2004, Complainants purchased their home in Palacios. At the time, Complainants resided in Chicago, IL and were prepared to move to their new home after the construction of two balustrades by the front steps, required to prevent injury to Rolon-Cruz.
12. Olga Rolon Hernandez ("Olga Rolon"), Complainants' daughter, submitted a letter on her parents' behalf to Gladys Rodriguez, the broker for the developer's on-site lender, explaining her father's disabilities and his need to have two balustrades constructed by the front steps of the house to prevent him from slipping and falling. Hearing no objections, Olga Rolon paid Kilo Family Construction to build the balustrades.
13. The balustrades are 2.5 to 3 feet high and 11 feet long; the top railings are approximately 6 inches wide, accommodating Rolon, who needs to lean on but cannot grasp the railing because of his arthritic hands. They are made of cement similar to the home and painted peach and white to blend with the home's façade. The balustrades do not protrude onto any common areas.
14. Complainants moved into their new home on or about October 4, 2004, following the construction of the balustrades.
15. In a letter to Complainants dated October 12, 2004, the administrator for Respondent Desarrolladora del Rio, Inc., Sonia Fadul, stated that Complainants were to immediately remove the balustrades because they did not comply with Association's construction rules.
16. In a letter dated October 18, 2004, Olga Rolon responded to Ms. Fadul's letter stating that her father was disabled, that he walks with a cane, and that a fall could be fatal to him. She explained the balustrades were constructed to ensure that her father had something to lean on so that he would be safe. Olga Rolon also indicated that there were other homes in the development with altered facades and those homeowners had not been required to remove their alterations.
17. By letter dated November 3, 2004, Ms. Fadul, acknowledging receipt of Olga Rolon's October 18<sup>th</sup> letter, reiterated that the Association's rules prohibited the construction of protrusions from the front of Association homes. Ms. Fadul again requested that Complainants remove the balustrades.

18. By letter dated April 19, 2005, legal counsel representing the Association, advised Complainants to immediately remove the balustrades. The letter further stated that if Complainants failed to comply, the matter may result in court action, and they would be responsible for legal costs and attorney's fees.
19. Complainants were greatly distressed with the threat of legal action. Rolon-Cruz 's medical conditions were exacerbated requiring additional treatment. On May 30, 2005, he was treated at the Veteran's Administration hospital as an outpatient for chest pains, shortness of breath and neck pain, which he attributed to stress induced by the Respondents' refusal to allow him to keep the balustrades. Hernandez was also treated for changes to her medical conditions as the result of stress created by Respondents' threats.
20. Complainants engaged legal counsel who sent letters on May 4, and May 16, 2005, offering to meet with the Association to review available options. Counsel stated in the latter correspondence that the Association had failed to take into account Rolon-Cruz's disability and advised that there were laws against disability discrimination and that a disabled person had a right to a reasonable accommodation when such an accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. Both letters went unanswered by the Association.
21. On May 25, 2005, the administration of the Homeowners Association moved from Respondent Desarrolladora del Rio, Inc. to a Board consisting of homeowners.
22. On July 22, 2005, the administrator acting on behalf of the new Homeowners Association, Lourdes Soto, sent a letter to Complainants, referencing the October 12, 2004 letter, and again requesting that they remove the balustrades because they violated the purchase agreement's restrictive covenants.
23. On August 15, 2005, Complainants, through legal counsel, wrote to the president of the Association stating that Rolon-Cruz was disabled and entitled to a reasonable accommodation under the Federal Fair Housing Act and was protected by state law against discrimination. Complainants received no response to this letter.
24. Rolon-Cruz filed a discrimination complaint with HUD on November 21, 2005. After the complaint was filed, Respondent Palacios del Rios II Homeowner Association convened a general extraordinary assembly of its members on February 28, 2006. Complainants were present at the assembly and explained their request for a reasonable accommodation. A vote was taken and a majority of the homeowners rejected Complainants' request for a reasonable accommodation allowing the balustrades.
25. The Association's rejection embarrassed and humiliated Complainants, leaving them feeling ostracized from the other homeowners and their neighbors.

**FAIR HOUSING ACT VIOLATIONS:**

26. Respondents violated the Act because they refused to permit Complainants to reasonably modify their existing premises when such modification was necessary to afford full enjoyment of the premises by Rolon-Cruz, a person with a disability.
27. Respondents violated the Act because they refused to make a reasonable accommodation in their rules, policies, practices, or services, when such an accommodation was necessary to afford Rolon-Cruz equal opportunity to use and enjoy his dwelling.
28. Respondents violated the Act because they discriminated against Complainants in terms, conditions, or privileges of sale of the dwelling or in the provision of services or facilities in connection with such dwelling, because of the disability of a person residing in that dwelling after it is so sold.

**CONCLUSION:**

**WHEREFORE**, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g) (2) (A), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 (f) (2), § 3604 (f) (3) (A) and § 3604 (f) (3) (B) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;
2. Enjoin Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of handicap against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g) (3);
3. Enjoin Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from taking any legal, or other action, to have the balustrades removed;
4. Awards such damages pursuant to 42 U.S.C. §3612(g) (3) as will fully compensate Complainants for emotional distress, including embarrassment and humiliation, inconvenience, and economic loss caused by Respondents' discriminatory conduct;
5. Awards a civil penalty against Respondents for violation of the Act, pursuant to 42 U.S.C. §3612(g) (3); and
6. Awards such additional relief as may be appropriate under 42 U.S.C. §3612(g) (3).

Respectfully submitted,



John J. Cahill  
Regional Counsel for  
New York/New Jersey



Henry Schoenfeld  
Associate Regional Counsel  
for Program Enforcement and Litigation



Lorena Alvarado  
Attorney Advisor

Office of Regional Counsel  
U.S. Department of Housing and  
Urban Development  
26 Federal Plaza, Room 3500  
New York, New York 10278-0068  
(212) 542-7734

Date: June 16, 2008