

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

Assistant Secretary for FHEO )  
Department of Housing and Urban )  
Development )  
 )  
and )  
 )  
The Secretary, United States )  
Department of Housing and Urban Development, )  
on behalf of Complainants **NAME REDACTED** )  
and **NAME REDACTED**, )  
 )  
 )  
Charging Parties, )  
 )  
v. )  
 )  
QMC Property, LLC, )  
SCF Arquitectos, )  
F&R Construction Group, Inc., )  
Quantum Metrocenter Corporation, )  
Robert Arthur, )  
Roberto Avila, and )  
Quantum Metrocenter Homeowners' Association, )  
 )  
 )  
Respondents. )  
\_\_\_\_\_ )

HUD OHA No: \_\_\_\_\_

**FHEO Nos: 02-15-0244-8  
02-16-4060-8**

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

On February 18, 2015, the Assistant Secretary for Fair Housing and Equal Opportunity (“FHEO”), on behalf of the Secretary of the U.S. Department of Housing and Urban Development (“HUD” or the “Department”), filed a Secretary-initiated complaint under 42 U.S.C. § 3610(a)(1)(A)(i) alleging that Respondents QMC Property LLC, Quantum Metrocenter Corporation discriminated because of disability by failing to design and construct dwellings in compliance with the Fair Housing Act, 42 U.S.C. §§ 3601-19 (the “Act”). On May 24, 2016, the complaint was amended to add Robert Arthur, CJMS Engineering Service Group, and F&R Construction Group, Inc. as parties. The most recent discriminatory act addressed by this complaint is alleged to have occurred on November 10, 2014, and is continuing.

On January 11, 2016, Complainants **NAME REDACTED** and **NAME REDACTED** filed a complaint with the Department alleging that Respondents QMC Property LLC, Quantum Metrocenter Corporation, Roberto Avila, SCF Arquitectos, and F&R Construction Group, Inc. discriminated against them by failing to grant their requests for a reasonable accommodation and by failing to design and construct dwellings in compliance with the Act. The most recent discriminatory act addressed by this complaint is alleged to have occurred on December 11, 2015, and is continuing.<sup>1</sup>

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1)-(2); 24 C.F.R. § 103.400(a). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42,462, 42,465 (July 18, 2011).

The Assistant Secretary for Fair Housing and Equal Opportunity has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case and has authorized and directed the issuance of this Charge. *See* 42 U.S.C. § 3610(g)(1) and (2)(A); 24 C.F.R. § 103.400(a).

## **II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE**

Based on the Department’s investigation of the allegations contained in the aforementioned complaints and the determination of reasonable cause, Respondents are charged with violating the Act as follows:

### **A. Legal Authority**

1. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to a person because of a disability of that buyer or renter, a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of facilities in connection with such a dwelling, because of a disability of that person, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

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<sup>1</sup> The complaints also listed one additional party who has reached a settlement and is therefore no longer a Respondent in this matter and one other additional party regarding whom the Department issued a finding of no reasonable cause.

3. For purposes of subsections 804(f)(1) and (2), subsection 804(f)(3)(B) of the Act defines discrimination as including a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
4. For purposes of subsections 804(f)(1) and (2), subsection 804(f)(3)(C) of the Act defines discrimination as including a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
  - a. *the public use and common-use portions of such dwellings are readily accessible to and usable by persons with disabilities;*
  - b. *all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities using wheelchairs; and*
  - c. *all premises within such dwellings contain the following features of adaptive design: an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.*
5. As used in 42 U.S.C. § 3604(f)(3)(C), “covered multifamily dwellings” includes all buildings that consist of four or more dwelling units and have one or more elevators. 42 U.S.C. § 3604(f)(7)(B); 24 C.F.R. § 100.201.
6. The Fair Housing Accessibility Guidelines (“Guidelines”) specify a safe harbor for compliance with the Act’s design and construction requirements. 24 C.F.R. § 100.205; *see also* HUD, Fair Housing Accessibility Guidelines: Design Guidelines for Accessible/Adaptable Dwellings (Mar. 6, 1991), 56 Fed. Reg. 9472-9515; U.S. Dep’t of Hous. & Urban Dev., Office of Fair Hous. & Equal Opportunity, Fair Housing Act Design Manual, Intro. 1 (1998) (“Design Manual”).

## **B. Parties and Subject Property**

7. Complainant Assistant Secretary for Fair Housing and Equal Opportunity, on behalf of the Secretary of the U.S. Department of Housing and Urban Development, is authorized to file this complaint by Section 810(a)(1)(A)(i) of the Act, 42 U.S.C. § 3610(a)(1)(A)(i).
8. Complainants **NAME REDACTED** (“**NAME REDACTED**”) and **NAME REDACTED** (“**NAME REDACTED**”) (collectively, “Individual Complainants”) are “aggrieved persons” as defined by subsection 802(i) of the Act. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
9. Respondent Quantum Metrocenter Corporation (“Quantum”), which is incorporated in Puerto Rico, was the original owner of record and developer of the Subject Property.

10. Respondent QMC Property, LLC (“QMC”), which is incorporated in Puerto Rico, acquired the Subject Property in 2012 from Quantum Metrocenter Corporation and has been the owner of record since then.
11. Respondent SCF Arquitectos (“SCF Arquitectos”), which is incorporated in Puerto Rico, prepared the architectural drawings for the Subject Property on behalf of Respondent Quantum.
12. Respondent F&R Construction Group, Inc. (“F&R”), which is incorporated in Puerto Rico, was hired by Quantum to be the general contractor for the Subject Property.
13. Respondent Robert Arthur (“Arthur”) is the former owner of Quantum Metrocenter Corporation and subsequently served as Respondent QMC Property LLC’s representative at the property.
14. Respondent Roberto Avila (“Avila”) was hired by Respondent QMC Property LLC to work as site manager at the Subject Property.
15. Quantum Metrocenter Homeowners’ Association currently operates and maintains the common areas of the Subject Property and has done so since at least July 14, 2014, and is currently named only as a necessary party for relief.
16. The Subject Property is a condominium complex, consisting of two 26-floor mixed use condominium towers (the “North Tower” and the “South Tower”), each of which contains 80 residential units, located at **ADDRESS REDACTED**, San Juan, Puerto Rico 00918. All residential units can be reached by elevator and are covered dwelling units, as defined by the Act.

### **C. Factual Allegations**

17. Quantum hired SCF Arquitectos to create the architectural and engineering plans for the Subject Property. Those plans were submitted to local agencies for their approval on November 1, 2010.
18. Subsequently, Quantum contracted F&R to build the Subject Property. Quantum completed construction of the Subject Property in or around 2012. In January and October of 2012, the City of San Juan issued occupancy permits for each the two towers respectively.
19. Quantum transferred ownership of the Subject Property to QMC on or about June 28, 2012. Construction was not completed on the South Tower until after QMC acquired ownership from Quantum, and numerous units within the Subject Property were sold after ownership of the Subject Property was transferred to QMC.

20. The covered dwelling units have four different primary designs, designated as “A,” “B,” “C,” and “D”, all of which are two-bedroom convertible to three-bedroom units, with two bathrooms and a balcony in each. In addition, there are “sky penthouses” designated as “PH” that are two-floor, four-bedroom units with a terrace, in which both floors can be accessed by elevator. Each primary design also has various modifications to the design that can be made, designated by a number after the unit letter (e.g., “A1,” “B1,” “C1,” “D1,” “PH1,” etc.).
21. All of the units in the Subject Property are designed to be sold as individual condominiums. The public and common-use areas at the Subject Property include building entrances, sidewalks, parking areas, an outdoor pool and pool deck, trash closets, and mailbox kiosks.
22. Starting on or around August or September of 2013, Individual Complainants began contacting Mr. Avila and Mr. Arthur with a reasonable accommodation request for an accessible parking spot near an accessible entrance to the property. They also requested the widening of two doors in unit, modifications that would not have been necessary had the design and construction of the Subject Property complied with the requirements of the Act.
23. Mr. Arthur and Mr. Avila, on behalf of QMC, denied the Individual Complainants’ multiple requests for an accessible parking space.
24. HUD conducted site visits, during which HUD inspected public and common use areas and a sampling of units. HUD also reviewed copies of the Subject Property’s master deed and design plans (site and unit drawings), dated March 2011, as filed with the Puerto Rico Registry of Deeds.
25. Pursuant to its investigation, HUD found that the Subject Property failed to meet the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).
26. The Subject Properties' public use and common use portions are not readily accessible to and usable by persons with disabilities, as required by 42 U.S.C. § 3604(f)(3)(C)(i). For example:
  - a. An accessible pedestrian route must be provided connecting all covered units to site arrival points and public and common use facilities; roads and driveways are not accessible routes. Guidelines Req. 1 ¶ 5. Accessible routes must have curb ramps that comply with accessibility requirements, with a slope that does not exceed the required maximum slope of 10%. Guidelines Req. 1 ¶ 5. The curb ramp providing entry onto the site from **ADDRESS REDACTED** has side flares that significantly exceed the required maximum slope of 1:10.
  - b. Public and common use facilities serving covered dwelling units, e.g., mailboxes and door entry systems, must be mounted no higher than 54 inches above the floor for a parallel approach (side reach) or 48 inches above the floor for a forward approach. Guidelines Req. 2. Multiple rows of mailboxes and associated operable parts at the Subject Property are located above the required 54 inches maximum permitted for a side reach over an obstruction. Many mailboxes are located as high as 81 inches above the floor surface.

- c. Public and common use facilities serving covered dwelling units, e.g., mailboxes and door entry systems, must be mounted no higher than 54 inches above the floor for a parallel approach (side reach) or 48 inches above the floor for a forward approach. Guidelines Req. 2. The tele-entry system for the main entrance of the Subject Property has multiple controls located 57 inches or more above the ground surface, exceeding the permitted maximum high side reach of 54 inches.
- d. Public and common use facilities serving covered dwelling units, e.g., mailboxes and door entry systems, must be mounted no higher than 54 inches above the floor for a parallel approach (side reach) or 48 inches above the floor for a forward approach. Guidelines Req. 2. Multiple wall-mounted fire extinguisher cabinets at the Subject Property protrude 10½ inches from the wall surface, more than 4 inches into circulation paths with leading edges above the permitted 27-inch height from the finished floor posing a hazardous condition for people who are blind or have low vision. Mailboxes on the property are obstructed by shelves projecting 11 ½ inches from the face of the mailbox units with the leading edge of the shelves above the permitted 27-inch height from the finished floor.
- e. Parking spaces serving at least 2% of the dwelling units must be accessible and located on an accessible route to accessible pedestrian entrances serving the parking facility. Guidelines Req. 2. The Subject Property contains a garage with 347 parking spaces for use by residents, three for use by visitors, five commercial spaces and two accessible parking spaces. No parking spots reserved for residents are configured or designated as accessible. Symbols of accessibility painted on the surfaces of the two accessible visitor parking spaces are obscured when vehicles are parked in these locations and do not constitute the required signs designating the parking as reserved for use by individuals with disabilities.
- f. Common use doors must operate with easily graspable hardware mounted no higher than 48" for a forward approach. Guidelines Req. 2. All doorways within covered dwelling units must have a minimum clear opening of 32 inches nominal width when the door is open 90 degrees. Guidelines Req. 3. All doors at the Subject Property from the elevator lobbies to the parking garage (2nd through 8th floor levels) provide less than the required minimum clear width of 32 inches. Many doors at the Subject Property also do not provide compliant handle hardware, but instead have knob handles that require tight grasping and twisting of the wrist to operate.
- g. Signs should be easy-to-read and contain tactile characters. Design Manual, 3.4. Entry doors to common use areas must have threshold no higher than 3/4 inch. Guidelines Req. 4 ¶ 4. The sign identifying the Activity Room lacks the tactile feature of raised characters. The Activity Room entry door threshold height of 1 inch exceeds the permissible 1/2 inch maximum required for swinging doors.

- h. An accessible pedestrian route must be provided connecting all covered units to site arrival points and public and common use facilities; roads and driveways are not accessible routes. Guidelines Req. 1 ¶ 5. Accessible routes must have curb ramps that comply with accessibility requirements, with a slope that does not exceed the required maximum slope of 8.33%. Guidelines Req. 1 ¶ 5. The walkway in the pool and playground area of the Subject Property has a slope that is greater than 5% and is therefore a ramp. Handrails are not provided on both sides of the ramp as required.
- i. The location of the center of a toilet to a side wall or partition cannot exceed 18 inches and toilet must include a grab bar. Design Manual, 6.5. Piping in a bathroom must be insulated to prevent sharp edges and hot water supply lines from harming individuals who may be using a wheelchair. Design Manual, 7.49. In the common use women's bathroom on the 8th floor of the South Tower none of the lavatory drainpipes are insulated or otherwise protected as required for an accessible fixture permitting a forward approach. In the accessible toilet stall, the water closet centerline is 23 inches from the side partition, exceeding the required 18-inch standard. All grab bars in the accessible toilet stall have 1¾ inches of space between the wall and the bar, exceeding the required 1 1/2 inches. In the common use men's bathroom on the 8th floor of the South Tower, none of the lavatory drainpipes are insulated or otherwise protected as required for an accessible fixture permitting a forward approach. In the accessible toilet stall, the water closet centerline is 19 inches from the side partition, exceeding the required 18-inch dimension. All grab bars in the accessible toilet stall have 1 3/4 inches of space between the wall and the bar exceeding the required 1 1/2 inches.
- j. Signs should be easy-to-read and contain tactile characters. Design Manual, 3.4. Entry doors to common use areas must have threshold no higher than 3/4 inch. Guidelines Req. 4 ¶ 4. The sign identifying the Administrative Office lacks the tactile feature of raised characters. There are no grab bars provided in the Administration Office toilet and the location of the toilet is 20 ½ inches from the side, exceeding the required 18 inch maximum.
- k. There must be sufficient turning space at public and common-use facilities for a wheelchair to make a 180-degree turn; this can be a clear space of 60 inches diameter or a T-shaped space with a minimum clear space width of 36 inches on each arm of the T-shaped space. Guidelines Req. 2. The toilet room near the elevator lobby for the South Tower on the ground level floor serves a sales and service office area for the residential portions of the building. This toilet room layout is non-compliant because it fails to allow sufficient clear floor space for a wheelchair to make a 180-degree turn.

27. Some of the Subject Properties lack an accessible route into and through some dwelling units, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(I). For example:

- a. All doors designed to allow passage into and within covered dwelling units must be sufficiently wide to allow passage by persons with disabilities using wheelchairs. Guidelines Req. 3. Doors on accessible routes in public and common use areas and primary entry doors to covered units must be accessible. Id. All doorways within covered dwelling units must have a minimum clear opening of 32 inches nominal width when the door is open 90 degrees. Id. Openings more than 24 inches in depth are not considered doorways. Id. Doors on accessible routes in public and common use areas, including primary entry doors to covered units, must have hardware with a shape that is easy to use with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Id. Minimum maneuvering clearances must be at least 18 inches and preferably at least 24 inches at doors on accessible routes in public and common-use areas and primary entry doors to covered units. Id. Hundreds of doors at the Subject Property designed to allow passage into and within covered dwelling units provide a clear width opening of less than the minimum 32 inches nominal width required. These include walk-in closet doors whose nominal width is less than 24 inches, terrace doors with nominal width of less than 24 inches, bathroom doors with nominal widths of under 28 inches, and many other doors throughout the units that are under the required 32-inch nominal clear width standard.
  - b. A clear floor space of at least 30 by 48 inches must be provided to allow a parallel approach by a person using a wheelchair at the range or cooktop and sink, and either a parallel or forward approach must be provided at the oven, dishwasher, refrigerator/freezer, or trash compactor. Guidelines Req. 7. A clearance must be provided between counters and all opposing base cabinets, countertops, appliances, or walls of at least 40 inches. Id. In U-shaped kitchens with sink or range or cooktop at the base of the “U,” a 60-inch turning radius must be provided to allow parallel approach, or base cabinets must be removable at that location to allow knee space for a forward approach. Id. In unit types “A” and “A1” at the Subject Property, the kitchen’s “U”-shape layout provides approximately 52 inches for a turning radius between counter tops for a turning radius, less than the 60 inches required. In apartment types “PH1” and “PH2” at the Subject Property, there is 36 inches of clearance between two countertops, less than the required minimum 40 inches. There is also less than 48 inches of clear floor space in front of the refrigerator.
28. Many dwelling units at the Subject Properties lack accessible light switches, electrical outlets, thermostats and/or other environmental controls, as required by 42 U.S.C. § 3604(f)(3)(C)(iii)(II). *See also* Guidelines Requirement 5, 56 Fed. Reg. 9507. The Subject Property lacks thermostats in accessible locations in all covered dwelling units. Thermostat operable parts are located 54 1/4 inches above the floor, above the maximum height of 48 inches above the floor.



29. Many dwelling units at the Subject Property lack required reinforcements in bathroom walls to allow for later installation of grab bars around toilets, tubs, shower stalls, and shower seats, where such facilities are provided. 42 U.S.C. § 3604(f)(3)(C)(iii)(III). *See also* Guidelines Req. 6.
30. An accessible route is required into and through covered dwelling units. Guidelines Req. 4. Doors along an accessible route must have a width of at least 32" because a "32" opening leaves room for [the] hands and elbows [of a wheelchair user]." Design Manual, 3.5. Under the Guidelines, the accessible routes into and through covered dwelling units must have a clear width of at least 36 inches. Guidelines Req. 4. In the "PH1" layout at the Subject Property, there is less than 36 inches of clear width between the lavatory counter/adjacent wing wall and the opposing wall allowing no accessible route from the entry doors to the 2nd level bathroom.
31. The Subject Property fails to meet the requirements of the Guidelines, which provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act. *See* 59 Fed. Reg. 9472-9515; 24 C.F.R. § 100.205(e)(2)(i). Respondents have not asserted to HUD that the Subject Property complies with any other HUD-recognized accessibility safe harbor or comparable accessibility standard under the Act.
32. Because of the discriminatory conduct of Respondents in developing, constructing, and maintaining the Subject Property, Individual Complainants suffered actual damages.
33. In addition, Respondents' discriminatory conduct caused actual damages to residents or potential residents of the Subject Property who may have been denied accessible housing.

#### **D. Legal Allegations**

34. As described above, Respondents Quantum, QMC, SCF Arquitectos, and F&R discriminated in the sale of, or otherwise made unavailable or denied, dwellings to persons with disabilities and others by failing to design and construct the Subject Property in accordance with subsection 804(f)(3) of the Act, 42 U.S.C. § 3604(f)(3), in violation of subsection 804(f)(1) of the Act, 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
35. As described above, Respondents Quantum, QMC, SCF Arquitectos, and F&R discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such a dwelling because of disability by failing to design and construct the Subject Properties in accordance with subsection 804(f)(3) of the Act, 42 U.S.C. § 3604(f)(3), in violation of subsection 804(f)(2) of the Act, 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
36. As described above, Respondents QMC Property, LLC, Roberto Avila, and Robert Arthur discriminated in the terms, conditions, or privileges of sale or rental of dwellings, or in the provision of services or facilities in connection with such a dwelling because of disability by denying Individual Complainant's requests for reasonable accommodation in violation of subsection 804(f)(2) of the Act. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

### III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to section 810(g)(2)(A) of the Act, 42 U.S.C. § 3610, hereby charges Respondents with engaging in discriminatory housing practices in violation of subsections 804(f)(1) and (f)(2), 42 U.S.C. §§ 3604(f)(1)-(2), and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate subsections 804(f)(1) and (f)(2) of the Act, 42 U.S.C. §§ 3604(f)(1)-(2);
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of disability against any person in the sale or rental of a dwelling;
3. Directs Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, to retrofit the covered dwelling units and public use and common use areas in the Subject Property to bring them into compliance with 42 U.S.C. § 3604(f)(3), including providing reasonable compensation to the residents of the Subject Property for inconvenience caused by, and other expenses related to, such retrofitting;
4. Mandates that Respondents, their agents, employees, officers, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
5. Awards such actual damages as will fully compensate Individual Complainants and any other individuals who resided, or sought to reside, at the Subject Property for any and all injuries caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
6. Assesses the maximum civil penalty against Respondents for each discriminatory housing practice, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a)(1); and
7. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Date: April XX, 2024

Respectfully submitted,

/s/ Jeanine M. Worden

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