

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

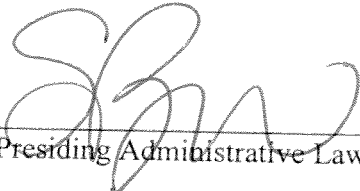
The Secretary, United States)
Department of Housing and Urban)
Development,)
)
Charging Party,)
)
)
v.)
)
Hector Castillo Architects, Inc.,)
914 W. Hubbard, Inc., and)
Hector Castillo,)
)
Respondents.)
)

HUDALJ: 10-M-171-FH-20

APPROVAL OF INITIAL DECISION AND CONSENT ORDER

By motion dated Jan. 5, 2011, ^{correction by Fortin 1/7/11} ^{Adrienne Fortin per phone conversation with HUD attorney Sol Kim} counsel for the Charging Party, on behalf of the Secretary, Hector Castillo and Hector Castillo Architects, Inc., moved for issuance of a proposed INITIAL DECISION AND CONSENT ORDER (attached), which bears signatures of those with authority to execute on behalf of the Charging Party and Respondents Hector Castillo and Hector Castillo Architects, Inc. and, by its terms, settles the issues between the Secretary and Respondents Hector Castillo and Hector Castillo Architects, Inc. in the above-captioned case. The proposed order, incorporating those parties' settlement agreement, appears to be in the public interest.

Accordingly, the proposed INITIAL DECISION AND CONSENT ORDER is approved. It is issued this date by signature of the presiding Administrative Law Judge.


Presiding Administrative Law Judge

UNITED STATES OF AMERICA
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HUDALJ: 10-M-171-FH-20
FHEO Nos: 05-09-0142-8
05-09-0143-8

INITIAL DECISION AND CONSENT ORDER

I. JURISDICTION

This matter arose when the Assistant Secretary for Fair Housing and Equal Opportunity of the United States Department of Housing and Urban Development ("Charging Party") filed a Secretary-initiated fair housing discrimination complaint on October 30, 2008, alleging that Hector Castillo Architects, Inc. ("Respondent Castillo Architects, Inc.") and 914 W. Hubbard, Inc. ("Respondent Hubbard") failed to design and construct a 22 unit multi-family building located at 914 W. Hubbard Street in Chicago, Illinois ("subject property") in compliance with the accessibility requirements of section 3604(f) of the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.* ("Act"). The complaint was subsequently amended on June 2, 2010 to personally name Hector Castillo ("Respondent Castillo"), the architect of record.

II. BACKGROUND

On or about July 26, 2010, the Charging Party commenced this action pursuant to Section 810(g)(1) and (2) of the Act, as amended, 42 U.S.C. § 3610(g)(1) & (2). In its Charge, the Charging Party alleges that Respondents designed and constructed the subject property in a manner that fails to meet the accessibility standards of Section 3604(f)(3)(C) of the Act. According to the Charge, the subject property fails to meet the accessibility standards in Section 3604(f)(3)(C) in a variety of ways, including, but not limited to, narrow doorways, inadequate turning radii, insufficient bathroom maneuvering space and excessive door opening force. The Charging Party alleges that Respondents violated Section 3604(f)(1) and 3604(f)(2) of the Act because "discrimination," as used in Section 3604(f)(1) and 3604(f)(2) of the Act, includes a failure to design and construct multifamily dwellings in the manner described in Section 3604(f)(3)(C).

The Charging Party alleges that Respondents by their discriminatory acts inflicted public injury for which the Charging Party seeks remedy. Specifically, the Charging Party alleges that the subject property "is not and will not ever, without retrofit, be available to persons with mobility disabilities"; that "individuals with mobility disabilities, particularly those who use wheelchairs, will be discouraged from renting at the property"; that "people who become physically disabled while living at the subject property will likely have to move"; and that "persons with disabilities, particularly those who use wheelchairs, will find it difficult or impossible to visit the subject property to view units or visit with friends and family."

To avoid uncertain, protracted and costly litigation, the Charging Party, Respondent Castillo and Respondent Castillo Architects, Inc. have agreed to resolve the above-captioned case without the need for a hearing or adjudication on the merits. The Charging Party, Respondent Castillo Architects, Inc. and Respondent Castillo and have accordingly consented to the entry of this Initial Decision and Consent Order (hereinafter "Consent Order"), as indicated by the signatures of the parties and counsel below. Respondent Hubbard, however, has entered into a separate consent order independent of this Consent Order. Accordingly, this Consent Order is not binding upon Respondent Hubbard.

III. GENERAL INJUNCTION

It is hereby ORDERED that during the effective period of this Consent Order, Respondents Hector Castillo and Hector Castillo Architects, Inc., their heirs, executors, assigns, agents, employees, and successors, and all other persons engaged with them in the design and construction of covered dwellings under the Act are permanently enjoined from designing or constructing any covered multifamily dwelling in a manner that is not readily accessible to persons with disabilities as required under Section 3604(f)(3)(C) of the Act. Respondents Hector Castillo and Hector Castillo Architects, Inc. hereinafter promise and agree to comply with all the provisions of the Act relevant to the subject property and any other properties they design or build.

Respondents acknowledge that the Act makes it unlawful to design and construct covered multifamily dwellings in such a manner that fails to incorporate the following elements of accessible design:

- a. the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
- b. all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; 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 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 in a wheelchair can maneuver about the space.

IV. GENERAL PROVISIONS

- a. The parties to this Consent Order acknowledge that this Consent Order is a voluntary and full settlement of the Charge. No party has been coerced, intimidated, threatened or in any way forced to become a party to the Consent Order. The parties have read and fully understand the significance of all the terms set forth herein.
- b. The parties to this Consent Order and their counsel agree that, in the interest of prompt conclusion of this matter, the execution of this Consent Order by the parties may be accomplished by separate execution of consents (the original executed Consent and Signature Pages) to be attached to the body of this Consent Order to constitute one document.
- c. By signing this Consent Order, Respondent Castillo and Respondent Hector Castillo Architects, Inc. do not admit any violation of the Fair Housing Act or wrongdoing. It is expressly understood that neither the entering into this Consent Order, nor any other action taken by Respondents Hector Castillo or Hector Castillo Architects, Inc. pursuant to this Consent Order, shall be construed as an admission of liability.
- d. The signatures of the parties to this Consent Order may be executed by way of facsimile transmission and shall be deemed to be an executed and admissible Consent Order for all purposes as may be necessary under the terms of this Consent Order.
- e. The parties to this Consent Order and their counsel agree that if the situation arises where a party to this Consent Order needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained by mutual agreement of the parties and all signatories or their successors in writing.
- f. This Consent Order shall govern the conduct of the parties to it for a period of three (3) years following the date this Consent Order becomes final pursuant to 42 U.S.C. §3612(h), as specifically set forth in Section X of this Consent Order, below. However, if any extension of time that goes beyond the three year period is agreed upon under Section V, below, the duration of the Consent Order will be extended correspondingly.
- g. The Consent Order is binding upon the Charging Party, Respondent Castillo, Respondent Hector Castillo Architects, Inc. and any employees, officers, heirs, successors, assigns of Respondents.

- h. This Consent Order does not in any way limit or restrict the Charging Party's authority to investigate, charge or seek remedy in any other complaint involving Respondent Castillo, Respondent Hector Castillo Architects, Inc. or their employees, officers, heirs, successors, assigns and any other affiliated entities made pursuant to the Act, or any other complaint within the Charging Party's jurisdiction.
- i. It is understood that, according to 42 U.S.C. §3610(b)(4) of the Act, the Consent Order shall be a public document.
- j. Except as provided herein, the signatures of the parties to this Consent Order further constitute a waiver of any right to apply for additional attorney's fees or costs pursuant to 42 U.S.C. § 3612 (p) and 24 C.F.R. § 180.705 (2009).
- k. Various provisions of this Consent Order require Respondents Hector Castillo and Hector Castillo Architects, Inc. to submit certifications, documents or other information to the Charging Party. In each such place where the Consent Order requires Respondents to submit documents or other information to the Charging Party, such submissions shall be addressed and directed to the Charging Party's Office of the Regional Counsel for Region V, as follows:

Mr. Courtney Minor, Regional Counsel
Office of the Regional Counsel, Region V
U.S. Department of Housing and Urban Development
77 W. Jackson Boulevard, 26th Floor
Chicago, Illinois 60604

V. SPECIFIC RELIEF

In exchange for the Charging Party's agreement to dismiss this Charge, Respondents Hector Castillo and Hector Castillo Architects, Inc. shall:

- a. Within one (1) year of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order, Respondent Castillo agrees to volunteer forty (40) hours of architectural and/or construction-related services to building homes for Habitat for Humanity.¹
- b. Within one (1) year of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order, Respondent Castillo shall participate in two accessibility training programs, the cost of which are to be borne by him. Specifically, Respondent Castillo shall:

¹Local affiliates of Habitat for Humanity are available at <http://www.habitat.org/cd/local/affiliate.aspx?zip=60604>.

1. Participate in the City of Chicago's Self-Certification Permit Program Training Class, provided at 120 N. Racine, 1st Floor, Chicago, IL 60607, either by completing or auditing the entire 3 day self-certification program, or by auditing the 1.5 hour accessibility session.² Respondent Castillo shall register for this course within thirty (30) of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order;
 2. Participate in a complete session of accessibility training offered by Fair Housing Accessibility First, a housing accessibility training course sponsored by the U.S. Department of Housing and Urban Development. Respondent Castillo shall register for the next course offered by Fair Housing Accessibility First in Illinois. If no such course is available within one (1) year of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order, then Respondent Castillo shall take the next course offered by Fair Housing Accessibility First in the Midwest. Whatever the location, Respondent Castillo shall complete a Fair Housing Accessibility First training within one (1) year of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order³; and
 3. Within thirty (30) days of completing the trainings required in Section V(b)(1)&(2), above, Respondent Castillo shall provide certification of his attendance at those trainings to the Charging party, in compliance with Section IV(k), above. See Attachments "A" & "B".
- c. For all future HUD investigation and litigation activities concerning the subject property, Respondents Hector Castillo and Hector Castillo Architects, Inc. agree to provide their full cooperation to the Charging Party, including providing testimony and documents, if and when requested. This provision covers any ongoing and possible future litigation against Respondent Hubbard, as well as Mark Fisher, the president of Respondent Hubbard.
- d. Throughout the duration of this Consent Order, Respondents Hector Castillo and Hector Castillo Architects, Inc. will notify the Charging Party, in compliance with Section IV(k), above, if Respondent Castillo Architects, Inc. is

²Registration forms are available at http://www.cityofchicago.org/city/en/depts/bldgs/supp_info/self-certificationtraining.html. The City of Chicago anticipates that the next course will be offered in the spring or summer of 2011. Costs for the course are: \$2500 for self-certification; \$1200 for auditing the entire course with no certification; or no cost for simply auditing the 1.5 hour accessibility session.

³Fair Housing Accessibility First course offerings are available at <http://www.fairhousingfirst.org/index.asp>. There is a delay in course offerings as HUD is in the process of negotiating a new contract, but Respondent Castillo will be expected to attend the first offered training in the Midwest. If no training is available in Illinois within one year of the date on which this Consent Order becomes final, by operation of Section X of this Consent Order, Charging Party reserves the right to require Respondent Hector Castillo to take a comparable training from another provider or to require him to travel to another state in the Midwest to take equivalent training courses, with costs borne by him.

retained to design or construct any multifamily housing covered by the Act, or if Respondent Castillo obtains a position or engages in any business where he is in the position to review, approve, or create an architectural design for multifamily housing covered by the Act. Such notice to the Charging Party shall contain: the name of the company, project or contracting parties; description of responsibilities; the contact information for the business, contracting parties, or employer; and location of project and architectural drawings. If the Charging Party determines that such projects or architectural drawings fail to meet the accessibility standards of the Act, it may require Respondent Castillo to receive additional training at his expense and to take corrective actions regarding those projects or activities.

- e. The terms of this Consent Order are based on Respondent Castillo's representation that his work on the design for the subject property was not covered by any insurance policy containing "errors and omissions" coverage. If any insurance claim has been made, or insurance payment has been or is received by Respondent Castillo or Hector Castillo Architects, Inc. with respect to the subject property, such payment constitutes evidence of a breach of this Consent Order for which the Charging Party may take enforcement actions, and Respondents agree to surrender any insurance payment received with respect to the subject property to the Charging Party immediately within five (5) days upon receipt or demand of such funds. For purposes of this Section, Respondents Hector Castillo and Hector Castillo Architects, Inc. agree to waive any defense based on statute of limitations or equity.

VI. MUTUAL RELEASE

- a. In consideration of Respondents Hector Castillo and Hector Castillo Architects, Inc.'s compliance with the conditions and terms of this Consent Order and with all orders of this tribunal described herein, and for other good and valuable consideration, the Charging Party, its successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to initiate a proceeding against Respondents Hector Castillo and Hector Castillo Architects, Inc., their successors, heirs, executors, assigns, agents, employees, officers, and attorneys, with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD ALJ No. 10-M-171-FH-20, FHEO No. 05-09-0143-8 or which could have been filed in any action or suit arising from said subject matter.
- b. Notwithstanding the previous paragraph, however, the Charging Party is under a statutory mandate to investigate and enforce the Fair Housing Act with respect to any and all fair housing complaints filed by a person or an entity other than the Charging Party. Accordingly, the Consent Order will have no impact on the Charging Party's right to investigate, to charge, and to seek remedies and/or damages against Respondents Hector Castillo and Hector

Castillo Architects, Inc., their successors, heirs, executors, assigns, agents, employees, and officers, in connection with a violation of any provision of the Act, including claims concerning facts or allegations settled under this Consent Order, based on a fair housing complaint filed by a person or an entity other than the Charging Party. In addition, this Consent Order does not waive or remove the Charging Party's power to investigate or charge Respondents Hector Castillo or Hector Castillo Architects, Inc. in connection with any other architectural drawings rendered by Respondents or with respect to any other multi-family properties covered by the Act that were designed or constructed based on the work of Respondents.

- c. In consideration of the execution of this Consent Order, and other good and valuable consideration, Respondents Hector Castillo and Hector Castillo Architects, Inc., their successors, assigns, agents, employees, officers and attorneys, hereby forever waive, release, and covenant not to sue the Charging Party or its officers, assigns, agents, employees, officers and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD ALJ No. 10-M-171-FH-20, FHEO No. 05-09-0143-8 or which could have been filed in any action or suit arising from said subject matter.

VII. MONITORING BY HUD

- a. During the term of this Consent Order, the Charging Party may review compliance with this Consent Order. As part of such review, the Charging Party may examine witnesses, and review and/or copy pertinent records of Respondent Castillo or Respondent Hector Castillo Architects, Inc. Respondent Castillo and Respondent Hector Castillo Architects, Inc. agree to provide their full cooperation in any monitoring review undertaken by the Charging Party to ensure compliance with this Consent Order.
- b. All correspondence, notifications certifications and/or documentation required under this Consent Order are to be provided to the Charging Party in compliance with Section IV(k) of this Consent Order, above.
- c. Respondents Hector Castillo and Hector Castillo Architects, Inc. agree that they can be contacted and served at the address in this section, below. They further agree that in case their contact information changes, they will notify the Charging Party within five (5) days of such a change, in a manner consistent compliance with Section IV(k) of this Consent Order, above, with updated contact information.

Hector Castillo
2615 West 106th Place
Chicago, IL 60655
castilloarchitect@gmail.com

VIII. DISMISSAL OF CHARGE

In consideration of Respondent Castillo and Respondent Hector Castillo Architects, Inc.'s compliance with the terms and conditions of this Consent Order, and all orders contained therein, the Charging Party agrees to the dismissal, without a formal determination of the allegations that Respondent Castillo and Respondent Hector Castillo Architects, Inc. violated the Act. Therefore, the Charge against Respondent Castillo and Respondent Hector Castillo Architects, Inc. is hereby DISMISSED with prejudice. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order. Furthermore, nothing in this Consent Order should be construed as dismissing the Charge against Respondent 914 W. Hubbard, Inc.

IX. COMPLIANCE

- a. Respondent Castillo's and/or Respondent Hector Castillo Architects Inc.'s failure to satisfy the terms of this Consent Order is a breach of the Consent Order which may be enforced in the United States Court of Appeals pursuant to 42 U.S.C. §3612(j) and (m).
- b. Respondent Castillo and Respondent Hector Castillo Architects, Inc. agree to be responsible for all costs associated with enforcing this Consent Order should a legal proceeding take place as a result of his or its breach of the Consent Order.


X. ADMINISTRATION AND ORDER OF THE COURT

Handwritten note: corrections made by Christine Fortin 1/7/11 per S. Kim

The hearing in this matter was initially scheduled for November 16, 2010. But Respondent Hubbard notified the court, by a motion for extension dated August 26, 2010, that settlement discussions were underway. In response, the Court extended the deadline for all of the Respondents to file Answers to the Complaint. On Dec. 30, 2010, the parties forwarded to the Court a draft of the foregoing Order, incorporating the terms of their settlement agreement. On Dec. 30, 2010, counsel for the Charging Party, Respondent Castillo and Respondent Hector Castillo Architects, Inc. indicated that they were prepared to sign the Consent Order. Counsel had no further matters to raise and the Court indicated that the Consent Order appeared to be in the public interest. All the parties to the Consent Order having signed, their agreement (incorporated in the foregoing Initial Decision and Consent Order) is accepted.

This Consent Order is entered into pursuant to the Fair Housing Act, 42 U.S.C. §3612(g)(3), and shall become final upon the expiration of thirty (30) days or by confirmation of the Secretary within that time. See 42 U.S.C. §3612(h). The signatures of the parties to this Consent Order constitutes a waiver of any right to withdraw their consent during the thirty (30) day Secretarial review period and a waiver of any right to challenge the validity of this Consent Order at any time.

So Ordered, this 10 day of January 2011
2010.



Presiding
Administrative Law Judge