

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

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The Secretary, United States Department of))	
Housing and Urban Development,))	
on behalf of Complainant,))	
))	
Halleh Hakimian,))	ALJ No. 18-AF-0209-FH-009
))	
Charging Party))	
))	
v.))	
))	
Toll Brothers Real Estate, Inc.,))	
5-01-5-17 48th Avenue LLC,))	
Sordoni Construction Co., and))	
Henry T. O’Hara Jr.))	
))	
Respondents.))	
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INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On June 29, 2018, the U.S. Department of Housing and Urban Development (“Charging Party” or “HUD”) filed a Charge of Discrimination (“Charge”) against Toll Brothers Real Estate, Inc., 5-01-5-17 48th Avenue LLC, Sordoni Construction Co., and Henry T. O’Hara Jr. (collectively, “Respondents”). The Charge alleges that Respondent violated Section 804(f) of the Fair Housing Act, 42 U.S.C. § 3604, as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act” or the “Act”), by discriminating against Complainant Halleh Hakimian (“Complainant”) and all persons with disabilities because of their disabilities by failing to design and construct accessible multifamily housing at 5th Street Lofts (“Subject Property”).

The Subject Property consists of two residential condominium buildings located at 5-09 48th Avenue, Long Island City, New York 11101. Respondent 5-01-5-18 48th Avenue LLC was the sponsor and owner of the Subject Property during its development, design, and construction. Respondent Sordoni Construction Co. was the second construction manager on the project and was retained when construction of the Subject Property was partially completed. Respondent Henry T. O’Hara Jr. is an architect formerly with H. Thomas O’Hara Architect, PLLC, which was the architectural firm hired by 5-01-5-18 48th Avenue LLC to design the Subject Property. The Subject Property is owned by 5th Street Lofts Condominium, Inc.

None of the Respondents have an ownership interest in the Subject Property.

Respondents deny that they committed any of the statutory or regulatory violations alleged in the Charge, and those allegations remain disputed. However, to avoid the additional expense and uncertainty of litigation, the Charging Party, Complainant, and Respondents (hereinafter referred to collectively as “the Parties” or individually as a “Party”) agree to settle the claims in the Charge by entering into this Initial Decision and Consent Order (“Consent Order”). The entry of this Consent Order shall not be deemed an admission or finding of any fault or liability by Respondents.

I. GENERAL PROVISIONS

1. The Parties acknowledge that this Consent Order is a voluntary and full resolution of the Charge. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it. The Parties, by their signatures below, acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations under it.

2. The Parties agree that the Charging Party shall file with the Office of Hearings and Appeals a Motion for Entry of an Initial Decision and Consent Order, along with this Consent Order, after this document is executed by all Parties.

3. This Consent Order is binding upon Respondents, their members, principals, owners, employees, successors, agents, assignees and all others in active concert with them. This Consent Order is also binding upon the Charging Party and the Complainant.

4. Pursuant to 24 C.F.R. § 180.680(a), the Parties understand that this Consent Order is a public document. The Parties agree that no Party shall disparage or ridicule the other, their employees, or agents with respect to the accessibility of the Subject Property, the Charge, or in regard to the terms of this Consent Order. The Parties reserve the right to enforce this provision of the Consent Order in the event of a breach. The Parties may state that the matter was resolved without any admission of liability to the satisfaction of all Parties and may reference the allegations made by HUD in any public documents filed by HUD with this Court in this action, including the Charge.

II. MUTUAL RELEASE

5. In consideration of the execution of this Consent Order, the Charging Party and Complainant, hereby forever waive, release, and covenant not to sue Respondents, and, as applicable, their respective owners, partners, members, officers, directors, employees, agents, attorneys, parents, subsidiaries, affiliates, successors, and heirs of any named Respondents, with respect to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of the Charge or Complainant’s complaint to HUD, FHEO Case No. 02-12-0393-8, or which could have been filed in any action or suit arising from said subject matter, and the Subject Property except where

necessary to enforce this Consent Order. Nothing in this release will be construed to prevent HUD from investigating other complaints filed by third-parties against Respondents relating to other properties or taking appropriate enforcement action thereon.

6. In consideration of the execution of this Consent Order, Respondents, their successors, assignees, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue HUD or Complainant, their heirs, executors, assigns, agents, employees, or attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the Charge or Complainant's complaint to HUD, FHEO Case No. 02-12-0393-8, or which could have been filed in any action or suit arising from said subject matter, except where necessary to enforce this Consent Order.

7. In consideration of the execution of this Consent Order, Respondents, their successors, assigns, agents, employees, and attorneys hereby forever waive, release, and covenant not to sue any Respondent and, as applicable, their respective owners, partners, members, officers, directors, employees, agents, attorneys, parents, subsidiaries, affiliates, successors, and heir of any named Respondents, with respect to any claims or other matters arising from or related to the Subject Property, including any claims asserted after the execution of this Consent Order.

III. ACTIONS IN THE PUBLIC INTEREST

8. General Injunction from Discrimination. Respondents and each of their officers, employees, agents, successors, and assignees, 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. § 3601 *et seq.*

9. Common Use Area Retrofit Fund Account. Respondents shall pay FIFTY THOUSAND DOLLARS (\$50,000.00) into a Retrofit Fund. The payment shall be made into an account at a financial institution within thirty (30) days of receipt of written instructions to be provided by Complainant through HUD. Respondents shall have no further responsibility for retrofits and no obligation to pay for any retrofits beyond the payment made to the Retrofit Fund. Complainant may draw money from the Retrofit Fund to pay the costs of the following retrofits to public and common-use areas at the Subject Property:

- Add a lower work surface at the front desk, no higher than 34".
- If desired by Complainant, make trash rooms on the second floor of building A as accessible as possible: install automatic door opener, custom doors so that door that opens provides 32" clearance (overall space is 60"), lower threshold.
- Install hook in restroom by children's playroom at 54".
- Lower baby changing surface in bathroom next to children's play room to no higher than 34".
- Lower threshold at elevator lobby door that leads to garage.
- Install accessible seating at common use terraces on 2nd floor and rooftop terraces in building A.

- Lower thresholds at 2nd floor common use terrace door. If they cannot be lowered, install automatic door opener.
- Install automatic door openers at both entrances to building A roof terrace.
- Replace thresholds at both entrances to building A roof terraces.

Any tax liability that may accrue to Complainant as result of payment into the Retrofit Fund, may be paid from funds in the Retrofit Fund. If after two (2) years from the date of deposit of the \$50,000 into the Retrofit Fund, any funds remain unspent or unallocated to pay for the cost of the afore-mentioned retrofits, those funds may be released to Complainant as a supplemental to the emotional distress damages payment set forth in Paragraph 10.

IV. RELIEF FOR COMPLAINANT

10. Emotional Distress Damages. Within thirty (30) days of the effective date of this Consent Order, Respondents shall pay to Complainant the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) to settle Complainant's claims for emotional distress damages. Said sums shall be paid by submitting a check made payable to Halleh Hakimian to the following address:

Halleh Hakimian
5-09 48th Ave., Apt. 2B
Long Island City, NY 11101

11. Complainant agrees to resolve the Charge for the relief set forth in this Consent Order.

V. COMPLIANCE

12. For two years following the effective date of this Consent Order, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations.

13. The Parties shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Order.

14. Upon breach of any provision of this Consent Order, HUD shall provide notice of the alleged breach to all counsel of record. The breaching party shall have 30 days to cure the alleged breach. If no cure is made within 30 days, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Second Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. §3612(j).

VI. ADMINISTRATION

15. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. The effective date of the Consent Order shall be the date it becomes final, *i.e.*, upon the expiration of thirty (30) days from the date of its issuance, or earlier affirmance by the Secretary. 42 U.S.C. § 3612(h); 24 C.F.R. § 180.670(b)(2).

16. Except as otherwise set forth in this Consent Order, this Consent Order does not limit or restrict HUD's authority to investigate any other complaints involving Respondents made pursuant to the Act, or any other complaint within HUD's jurisdiction.

17. The Parties agree that if any Party to this Consent Order needs an extension of time to satisfy a deadline provided herein, such extension must be obtained in writing from HUD.

18. The signatures of the Parties constitute a waiver of any right to apply for attorney's fees or costs pursuant to 24 C.F.R. § 180.705. Each Party is responsible for its own attorney's fees and costs.

19. The Parties and counsel agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the Parties' signatures on separate pages of this Consent Order, with the individual signature pages to be attached to the body of the Consent Order to constitute one document to be filed with the Office of Administrative Law Judges. Signatures of the Parties to this Consent Order may be executed by way of facsimile or electronic transmission.


20. The signatures of the Parties to this Consent Order constitute a waiver of any right to withdraw their consent during the 30-day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

VII. DISMISSAL OF CHARGE

21. In consideration of Respondents' payments to Complainant as set forth above, compliance with the terms and conditions of this Consent Order, and all orders contained herein, the Charging Party agrees to the dismissal with prejudice, of the Charge and any allegations that Respondents injured the Complainant, the Charging Party or any other aggrieved parties by violating the Act. Therefore, the Charge against Respondents is hereby **DISMISSED WITH PREJUDICE** in its entirety. However, nothing in this paragraph should be construed to prevent any of the parties from taking action to enforce this Consent Order.

VIII. AGREEMENT OF THE PARTIES

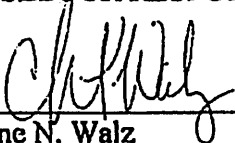
RESPONDENT:



TOLL BROTHERS REAL ESTATE, INC.

4/15/19
DATE

COUNSEL FOR RESPONDENT:



Christine N. Walz
HOLLAND & KNIGHT LLP

4/25/19
DATE

RESPONDENT:



5-01-5-17 48TH AVE, LLC

4/19/19
DATE

COUNSEL FOR RESPONDENT:



Christine N. Walz
HOLLAND & KNIGHT LLP

4/25/19
DATE

RESPONDENT:



SORDONI CONSTRUCTION CO.

4-15-19
DATE

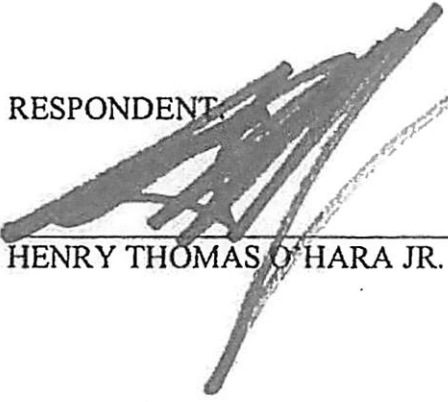
COUNSEL FOR RESPONDENT:



[NAME] Franklin Barbosa, Jr.

5/3/19
DATE

RESPONDENT


HENRY THOMAS O'HARA JR.

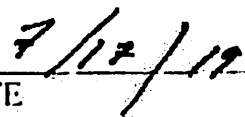
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COMPLAINANT:

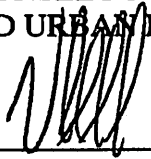


HALLEH HAKIMIAN



DATE

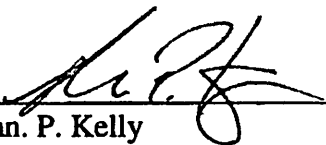
COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT:



Ventura Simmons
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8/6/19

DATE



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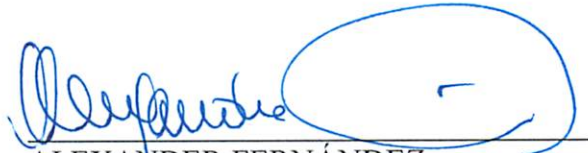
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VIII. ORDER OF THE COURT

The hearing in this matter was originally scheduled for December 10, 2018. On November 16, 2018, the Court stayed the proceedings to accommodate settlement discussions. On August 6, 2019, the Parties filed a motion for entry of this Initial Decision and Consent Order, incorporating the terms of their agreement. The Court, having read the agreement, finds that it is in the public interest. All Parties have given their consent as reflected by their signatures to the agreement incorporated in the foregoing Initial Decision and Consent Order, which is hereby accepted and issued.

So ORDERED this 7th day of August 2019.



ALEXANDER FERNÁNDEZ
Administrative Law Judge