

| | | |
|--|---|-------------------------------------|
| |) | |
| The Secretary, United States Department of |) | |
| Housing and Urban Development, |) | |
| |) | |
| Charging Party, |) | |
| |) | |
| on behalf of Nancy D. Méndez-Gonzalez |) | |
| |) | HUDOHA No. 24-JM-0273-FH-013 |
| Complainant, |) | |
| |) | FHEO No. 02-22-9867-8 |
| |) | |
| v. |) | |
| |) | |
| Consejo de Titulares del Condominio Italia 2027, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Respondent denies all allegations of discrimination. However, in order to avoid the additional expense and uncertainty of litigation, the Parties 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 on the part of Respondent.

II. GENERAL PROVISIONS

1. The Parties acknowledge that this Consent Order is voluntarily entered into in full resolution of the disputed complaint. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Consent Order. The Parties 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 a Motion for Entry of an Initial Decision and Consent Order, attaching this Consent Order as an exhibit, with the Office of Hearings and Appeals promptly upon execution of this Consent Order by all Parties.

3. This Consent Order is binding upon Respondent, its current and future members, principals, owners, employees, successors, agents, assignees, and all others in active concert with them in the management of the Subject Property, as defined herein. In the event the Subject Property is transferred or sold prior to full performance of all the provisions of this Consent Order, Respondent will remain liable for the financial compensation described herein, in Section IV.

4. Pursuant to 24 C.F.R. § 180.680(a), the Parties understand that this Consent Order is a public document.

III. MUTUAL RELEASE

5. In consideration of the execution of this Consent Order, the Charging Party and Complainant, her successors, assignees, agents, employees, representatives, and attorneys hereby forever waive, release, and covenant not to sue Respondent, its successors, members, principals, executors, assignees, 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 subject matter the Charge and the Determination of Reasonable Cause in FHEO No. 02-22-9867-8, or any and all claims which could have been filed in any action or suit arising from said subject matter, except where necessary to enforce this Consent Order. Nothing in this release will be construed to prevent HUD from investigating other complaints filed against Respondent or taking appropriate enforcement action thereon.

6. In consideration of the execution of this Consent Order, Respondent, its successors, members, principals, assignees, agents, employees, representatives, and attorneys hereby forever waive, release, and covenant not to sue HUD, its agents, employees, or attorneys, or Complainant, Complainant's heirs, executors, assignees, agents, employees, representatives, or 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 the Charge and the Determination of Reasonable Cause in FHEO No. 02-22-9867-8, or any and all claims which could have been filed in any action or suit arising from said subject matter, except where necessary to enforce this Consent Order.

IV. RELIEF FOR COMPLAINANT

7. The Parties acknowledge that the injunction Respondent sought against

Complainant preventing her from operating her generator has been lifted per an order of the Superior Court of Puerto Rico, San Juan Part, dated June 18, 2024. Respondent agrees not to pursue any future injunctions against Complainant, Complainant's heirs, executors, assignees, agents, employees, representatives, or attorneys regarding the use of a generator.

8. The Parties agree that the elevator installed in Apartment E at the Subject Property and the generator connected to said elevator are reasonable modifications to the Subject Property that are necessary for Complainant to use and enjoy her home.

- a. The purpose and use of the generator shall be for the benefit of Complainant only. The generator shall be used as a backup for the elevator electrical system only in the event of an electrical power outage.
- b. Complainant shall maintain all necessary permits as required to own and operate a generator. The Parties acknowledge that Complainant will continue to engage a service company to perform regular maintenance on the generator. Once per year, beginning twelve (12) months from the execution of this Consent Order, Complainant shall submit proof to Respondent that her generator has been serviced and is in proper working order. Such proof shall include, but not be limited to, a copy of the receipt Complainant receives from the generator servicer. Proof will be sent via email to Respondent only at the following email address(es):

hugosalazar@msn.com

steveh921@yahoo.com

gustavo.r.aparicio@gmail.com

acboccalato@gmail.com

kheinzer81@gmail.com

janetsalazar@msn.com

This obligation shall cease in the event that Complainant sells Apartment E or upon her death, whichever event occurs first.

9. The Parties agree that the cables connecting the generator to the elevator are a reasonable modification to the common elements of the Subject Property. The cables should be placed in a safe matter in the common areas and, to the extent reasonably practical, should avoid creating a nuisance to the Respondent.

10. The Parties recognize that Complainant has taken action to mitigate the generator noise heard by other units at the Subject Property by erecting a Plycem wall. Complainant will maintain the Plycem wall. Nonetheless, the Parties recognize that a generator will emit noise while it is operated. To the extent that the noise emitted by Complainant's generator would otherwise violate Respondent's noise policy, Respondent agrees to waive said policy as to Complainant's operation of the generator as a reasonable accommodation.

11. Respondent shall not interfere with, challenge, or otherwise prevent Complainant's ability to use, maintain, service, repair, and replace the elevator, generator, and cables as needed.

12. Unless expressly provided otherwise, Respondent's non-monetary obligations

described herein (i) are expressly non-transferable and will not extend to Complainant's heirs, successors, or assigns and (ii) shall cease in the event that Complainant sells Apartment E or upon her death, whichever event occurs first. Respondent's non-monetary obligations described herein are personal to Complainant and are founded on the specific accommodations assessed for her individual needs.

13. Within thirty (30) days from the date this Consent Order is fully executed, Respondent will pay to Complainant the sum of twenty-five thousand dollars (\$25,000.00) by certified check as specified below.

- a. Within thirty (30) days from the date this Consent Order is fully executed, Respondent shall send the certified check for \$25,000.00 to the Charging Party at:

U.S. Department of HUD
Office of Regional Counsel for New York/New Jersey
Attention: Kathryn R. Upton, Trial Attorney
26 Federal Plaza, Room 3500
New York, New York 10278

- b. The Parties agree that the owners of Apartment A, Apartment B, and Apartment D of the Subject Property are jointly and severally responsible for paying the \$25,000.00. The obligation to effectuate such payment shall pass to all heirs, successors, and assigns of the owners of Apartments A, B, and D. The owners of Apartment C and Apartment E shall not be responsible, in whole or in part, for the payment of \$25,000.00.
- c. Upon issuance of this Consent Order by the Administrative Law Judge, Counsel for HUD will send the check to the Complainant.
- d. If the Administrative Law Judge does not approve this Consent Order, HUD will mail the certified check to Respondent within ten (10) business days of the triggering event.
- e. Complainant acknowledges that she has not relied on any representations by HUD as to the tax consequences of this agreement or any payments made hereunder. Complainant will be responsible for all applicable taxes, if any, on the foregoing payments.

14. Within thirty (30) days from the date this Consent Order is fully executed, Respondent will send Complainant a letter acknowledging Complainant's disability and the adverse effects Complainant suffered from not being able to live at the Subject Property because of Respondent's actions. Respondent shall send the letter via email to Complainant at nancydmendez@hotmail.com and shall copy kathryn.r.upton@hud.gov and lauren.r.kainwhaley@hud.gov.

V. ACTIONS IN THE PUBLIC INTEREST

15. Injunction from Discrimination. Respondent, its agents, employees, successors, members, principals, representatives and assignees, and all other persons in active concert or participation with any of them, are hereby enjoined from:

- a. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability, as prohibited by the Act, 42 U.S.C. § 3604(f)(2).
- b. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling, as prohibited by the Act, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(B).
- c. Refusing to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, as prohibited by the Act, 42 U.S.C. §§ 3604(f)(1), (f)(2), and (f)(3)(A).

16. Mandatory Education and Training.

- a. Within one hundred eighty (180) days of the effective date of this Consent Order, the owners of Apartment A, Apartment B, and Apartment D of the Subject Property, as representatives of Respondent, shall attend a minimum of two (2) hours of training pertaining to their obligations under the Act and applicable state and local housing non-discrimination laws. Said training may be conducted by HUD's Office of Fair Housing and Equal Opportunity ("FHEO"), either in person or virtually. Respondent may contact the FHEO Regional Director, Region II, to schedule the date, time, and location (or teleconference or video conference) of the fair housing training. Respondent may request the approval of the FHEO Regional Director to attend a fair housing training that is not conducted by HUD. If Respondent chooses to attend fair housing education training that is not conducted by HUD, Respondent agrees to provide a certification of compliance with this provision executed by the trainer to the FHEO Regional Director, Region II, Jay Golden (address in Section VII) within ten (10) days of the training. All costs of the training shall be borne by the owners of Apartment A, Apartment B, and Apartment D of the Subject Property.
- b. Within ten (10) days of the completion of the fair housing training required under this subsection, Respondent will submit evidence of attendance signed by the training provider to HUD.

17. Adoption and Implementation of Reasonable Accommodation Policy. Within sixty (60) days of the issuance of this Consent Order, Respondent agrees to adopt and implement a "Reasonable Accommodation Policy" that complies with the Fair Housing Act and is approved by HUD. Upon obtaining HUD approval, Respondent agrees to implement the Reasonable Accommodation Policy immediately.

VI. COMPLIANCE

18. HUD may review compliance with this Consent Order at any time during its term, as specified in Paragraph 20 below, subject to and in accordance with HUD regulations.

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

20. In the event of a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the First Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j).

VII. ADMINISTRATION

21. 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).

22. This Consent Order shall remain in effect for a period of three (3) years from its effective date or until compliance with all the terms and specific time periods set forth in Section IV, whichever is later.

23. All required notification and documentation of compliance must be submitted to HUD, via U.S. mail or overnight mail *and* electronic mail, unless otherwise indicated, as follows:

Jay Golden
Director, Region II
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, NY 10278
jay.golden@hud.gov

Kathryn R. Upton
Trial Attorney
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278
kathryn.r.upton@hud.gov

24. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other complaints involving Respondent made pursuant to the Act, or any other

complaints within HUD's jurisdiction.

25. The Parties agree that any party to this Consent Order seeking an extension of time to satisfy a deadline provided herein, must obtain such extension in writing from counsel for the Charging Party.

26. 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.

27. In the interest of a prompt conclusion of this matter, the Parties and counsel agree that 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 Judges. Signatures of the Parties to this Consent Order may be executed by way of facsimile or electronic transmission.

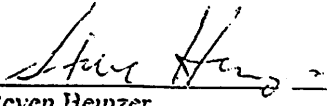
28. The signatures of the Parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30)-day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

29. Each party agrees that this Consent Order reflects the complete understanding of the Parties and supersedes any and all prior drafts of this Consent Order and any and all prior written or oral agreements, negotiations, and understandings of the Parties with respect to the subject matter herein.

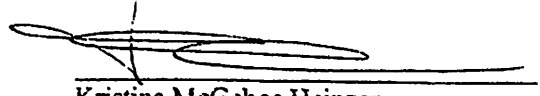
30. Respondent agrees to perform such further acts and to execute such other documents as necessary to carry out the provisions of Section IV herein.

VIII. AGREEMENT OF THE PARTIES

RESPONDENT:

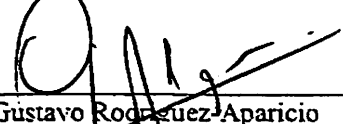

Steven Heinzer
Owner of Apartment A
Member of Condominium Italia 2027 Council of Owners

2/25/25
Date



Kristina McGehee Heinzer
Owner of Apartment A
Member of Condominium Italia 2027 Council of Owners

2/25/25
Date

RESPONDENT:



Gustavo Rodriguez Aparicio
Owner of Apartment B
Member of Condominium Italia 2027 Council of Owners

2/26/25
Date



Carolina Bocalato
Owner of Apartment B
Member of Condominium Italia 2027 Council of Owners

2/26/25
Date

RESPONDENT:

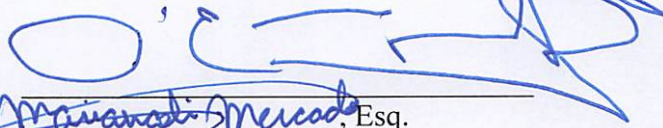

Hugo Salazar
Owner of Apartment D
Member of Condominium Italia 2027 Council of Owners

2/25/25
Date


Janet Salazar
Owner of Apartment D
Member of Condominium Italia 2027 Council of Owners

02/25/25
Date

COUNSEL FOR RESPONDENT:



Mariangeli Mercado, Esq.

Valenzuela-Alvarado, LLC

MCS Plaza

255 Ponce de Leon Avenue

Suite 825, Hato Rey

San Juan, PR 00917-1942

jeva@valenzuelalaw.net

jose.enrico.valenzuela1@gmail.com

enricovalenzuela@hotmail.com

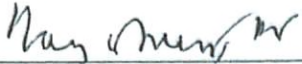
mmt@valenzuelalaw.net

lcda.marriagelimercado@gmail.com

26/feb./2025
Date
26/feb/2025

VIII. AGREEMENT OF THE PARTIES

COMPLAINANT:



Nancy D. Méndez-González

Feb. 27/2025
Date

COUNSEL FOR COMPLAINANT:


_____, Esq.
DESK Trail Lawyers & Counselours, LLC
P.O. Box 9023663
San Juan, PR 00902-3663
delacruzskerrett@desktrial.com
rrivera@desktrial.com
rpiovanetti@desktrial.com

02/28/2025
Date



José E. De La Cruz Skerrett, Esq.
delacruzskerrett@desktrial.com
Complainant Representative
Nancy D. Méndez González

February 28, 2025
Date



Rafael G. Rivera Rosario, Esq.
rrivera@desktrial.com
Complainant Representative
Nancy D. Méndez González

February 28, 2025
Date



Ricardo A. Piovanetti Döhnert, Esq.
rpiovanetti@desktrial.com
Complainant Representative
Nancy D. Méndez González

February 28, 2025
Date

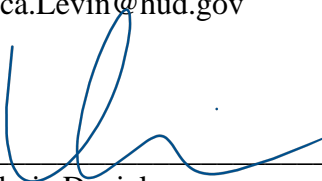
VIII. AGREEMENT OF THE PARTIES

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



Erica Levin
Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278
Erica.Levin@hud.gov

2/28/2025
Date



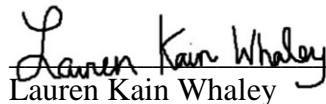
Valerie Daniele
Associate Regional Counsel for
Program Enforcement and Litigation
Office of Regional Counsel, Region II
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278
Valerie.Daniele@hud.gov

02/28/2025
Date



Kathryn R. Upton
Trial Attorney
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278
Kathryn.R.Upton@hud.gov

2/28/2025
Date



Lauren Kain Whaley
Trial Attorney
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3500
New York, NY 10278
Lauren.R.KainWhaley@hud.gov

2/28/2025
Date

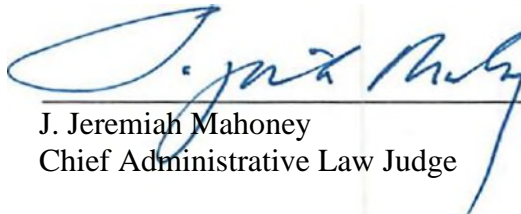
IX. ORDER OF THE COURT

The foregoing order was presented to the undersigned Administrative Law Judge (“ALJ”) for approval on February 28, 2025. In accordance with 24 C.F.R. § 180.450, the ALJ shall accept a settlement agreement if he finds the agreement in the public interest, by issuing an initial decision and consent order.

After considering the record in its entirety, the undersigned ALJ has independently determined that the agreement between the parties does not offend the public interest and it is approved. All parties have given their consent and signed the agreement incorporated in the foregoing Consent Order, which is hereby accepted and issued.

This Consent Order carries no precedential weight, as the matter has been reviewed solely to determine that the parties’ settlement does not offend the public interest. No opinion is expressed on legal or policy statements contained herein, nor the form and quantum of the agreed relief.

So **ORDERED** this 10th day of March, 2025.



J. Jeremiah Mahoney
Chief Administrative Law Judge