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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

TOWER 31, LLC; ATLANTIC 31ST, LLC;
COSTAS KONDYLLIS & PARTNERS, LLP; and
ALAN L. GOLDSTEIN,

Defendants.

CONSENT DECREE

14 Civ. 6066 (AJN)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the “United States”) and Defendants Costas Kondylis & Partners, LLP; and Alan L. Goldstein (collectively, the “Architect Defendants”).

WHEREAS, the United States brought this action (the “Action”) to enforce provisions of the Fair Housing Act (“FHA”), codified at 42 U.S.C. §§ 3601–3619. Specifically, the United States’ complaint in this Action, filed on August 4, 2014, alleges that the Defendants Tower 31, LLC; Atlantic 31st, LLC; Costas Kondylis & Partners, LLP; and Alan L. Goldstein (collectively, the “Defendants”) have engaged in a pattern or practice of discrimination, and have denied rights to a group of persons in a manner raising an issue of general public importance, including by failing to design and/or construct Tower 31, a residential apartment complex in Manhattan (“Tower 31”), with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C) (“Accessible Design Requirements”) (the “Complaint”);

WHEREAS, Tower 31 is subject to the Accessible Design Requirements;

B. Architect Defendants

WHEREAS, Costas Kondylis & Partners, LLP, a New York limited liability partnership, was the architect of record for Tower 31 and, in that capacity, participated in the design of Tower 31;

WHEREAS, Alan L. Goldstein, a former partner at Costas Kondylis, was the Principal Partner involved with Tower 31, and, in that capacity, participated in the design of Tower 31;

C. Relevant Requirements of the Fair Housing Act

WHEREAS, the FHA provides that residential buildings with four or more dwelling units, and one or more elevators, designed and constructed for first occupancy after March 13, 1991, are “Covered Multifamily Dwellings” and must include certain basic features of accessible and adaptive design to make such units accessible to or adaptable for use by a person who has or develops a disability, 42 U.S.C. §§ 3604(f)(3)(C) and (f)(7)(A);

WHEREAS, the accessible and adaptive design provisions of the FHA require that for Covered Multifamily Dwellings: (i) the public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with a disability using wheelchairs; (iii) 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 using a wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(c) (these provisions and features are referred to herein as the “Accessible Design Requirements”);

D. Conditions at Tower 31

WHEREAS, Tower 31 is a residential apartment building located at 9 West 31st Street in New York, New York. The complex consists of a tower with elevator access and contains 283 dwelling units, as well as public and common use areas, including a leasing office, laundry facilities, outdoor terraces, a fitness center, a recreation center, and storage areas for tenants;

WHEREAS, the United States has inspected Tower 31 and specifically identified, among other things, the following conditions at Tower 31 which the United States alleges fail to meet the Accessible Design Requirements:

- The opening force required to operate the main entrance doors interferes with accessibility for persons with certain disabilities;
- The counter at the main lobby desk is too high to accommodate persons who use wheelchairs;
- The excessively high threshold at the entrance to the leasing office interferes with accessibility for persons who use wheelchairs;
- The sign for the leasing office lacks raised-letter Braille for persons with visual impairments;
- The location of the sink in the lobby unisex bathroom interferes with accessibility for persons who use wheelchairs;
- The mailboxes are mounted too high to accommodate persons who use wheelchairs;
- The excessively high thresholds at bathroom and kitchen entrances in individual units interfere with accessible routes for persons who use wheelchairs;
- There is insufficient clear opening width of bedroom, bathroom, terrace, and closet doors in individual units;

- The kitchens in individual units lack sufficient width to accommodate persons who use wheelchairs;
- The kitchen sinks and refrigerators in individual units lack sufficient clearance for persons who use wheelchairs;
- There is insufficient clear floor space within bathrooms in individual units for maneuvering by persons who use wheelchairs;
- The thermostats and kitchen outlets in individual units are inaccessible to persons who use wheelchairs;
- The trash rooms lack sufficient clearance to accommodate persons who use wheelchairs;
- The entrance to the laundry room lacks sufficient clearance and presents an excessively high threshold for persons who use wheelchairs;
- The entrance doors to the common terraces are too narrow and/or too uneven for access by people who use wheelchairs;
- The opening force required to operate the entrance doors to the fitness center, the tenant storage room, and the bicycle storage room interferes with accessibility for persons with certain disabilities; and
- The entrance door to the tenants' entertainment lounge and to the media room in that lounge lacks sufficient clearance for persons who use wheelchairs.

WHEREAS, the United States alleges in its Complaint that the above conditions are failures to meet the Accessible Design Requirements;

E. Consent of the Parties to Entry of this Decree

WHEREAS, the Architect Defendants and the United States (together, the "Parties") agree that this Court has jurisdiction over the subject matter of this Action pursuant to 28 U.S.C.

§§ 1331 and 1345, and 42 U.S.C. § 3614(a), and further agree that this Action should be resolved without further proceedings and without an evidentiary hearing or a trial; and,

WHEREAS, the parties agree to the entry of this Consent Decree.

It is hereby ORDERED, ADJUDGED, and DECREED:

I. GENERAL INJUNCTION

1. The Architect Defendants and each of their officers, employees, agents, successors, and assigns, 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. § 3604.

II. ACKNOWLEDGMENTS

2. With regard to their design of Tower 31, the Architect Defendants admit and acknowledge the following facts:
- a. From November 2002 to January 2006, the Architect Defendants provided design services to the developer of Tower 31. Specifically, the Architect Defendants prepared architectural drawings for the dwelling units and supplied specifications for the dwelling units that were used by the construction contractors to construct the Tower 31 building.
 - b. As built, certain features of Tower 31 did not satisfy the accessibility standards established under the Fair Housing Act Guidelines promulgated by the U.S. Department of Housing and Urban Development.

III. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

3. For the duration of this Consent Decree, if the Architect Defendants prepare any architectural or site plans, drawing, or blueprints for covered multi-family housing, as defined in the FHA, the Architect Defendants shall include on such plans, drawing, or blueprints a

statement attesting to compliance with the FHA and one of the following standards (each a “Standard”), where such a single Standard has been used in its entirety (*i.e.*, where every design feature within the Additional Property in question complies with all of the provisions in the particular selected Standard that addresses the FHA requirements): (i) the Guidelines; (ii) a standard designated as an FHA safe harbor by the Department of Housing and Urban Development; or (iii) a recognized, comparable, objective standard of accessibility that has been found by this district court or the Second Circuit to incorporate the requirements of the Fair Housing Act; and the Architect Defendants shall maintain and provide such plans, drawing, or blueprints to the United States upon request.

4. During the term of this Consent Decree, the Architect Defendants shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwellings intended to be designed, in whole or in part, by them or by any entities in which they have a position of control as an officer, director, member, or manager, or have a ten-percent (10%) or larger ownership share:

- a. the name and address of the project;
- b. a description of the project and the individual units;
- c. the name, address and telephone number of the architect(s) who are employed or retained by the Architect Defendants and are involved with the project;
- d. a statement from each architect who is employed or retained by the Architect Defendants and are involved with the project, acknowledging and describing his/her knowledge of and training in the requirements of the Fair Housing Act and the Guidelines, and in the field of accessible site design, and certifying that he/she has reviewed the architectural plans for the project and that the

design specifications therein fully comply with the requirements of the Fair Housing Act and the Guidelines.

5. If the architectural plans referred to in Paragraph 4 above are revised, and the revisions could have any impact on whether the dwellings or complex comply with the Fair Housing Act and/or the Guidelines, the Architect Defendants shall obtain, maintain, and provide to the United States upon request, a statement from the architect(s) who are employed or retained by the Architect Defendants and are involved with the project, as applicable, that all specifications in the revised architectural plans, as pertinent, comply with the requirements of the Fair Housing Act and the Guidelines.

6. The Architect Defendants will make their designs for all new construction of Covered Multifamily Dwellings fully compliant with the Accessible Design Requirements, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Standards to the extent applicable to Covered Multifamily Dwellings. Moreover, with respect to all new construction of Covered Multifamily Dwellings, the Architect Defendants shall make their design(s) for all such construction fully compliant with the Guidelines or any other safe harbor recognized by HUD where every design feature of the project in question complies with all of the provisions in the particular selected safe harbor that address FHA requirements.

IV. CIVIL PENALTY

7. Without admitting liability, within 30 days of the date of the entry of this Consent Decree, the Architect Defendants through their professional malpractice carrier shall pay a civil penalty of THIRTY THOUSAND DOLLARS (\$30,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. The Architect Defendants shall pay said sum by submitting a check made payable to the "United States of America" to counsel for the United States.

V. EDUCATIONAL PROGRAM

8. Within 30 days of the entry of this Consent Decree, the Architect Defendants shall provide a copy of this Consent Decree to all of their agents and employees personally involved in the design or construction of Tower 31 and secure the signed statement from each agent or employee acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix A.

9. During the duration of this Consent Decree, any new agent or supervisor of an Architect Defendant who will have any supervisory authority in the design or construction of Covered Multifamily Dwellings shall, within 30 days after the date he or she commences an agency or employment relationship with any Architect Defendant be given a copy of this Consent Decree by such Architect Defendant, and such Architect Defendant shall require each such new agent or employee to sign a statement, acknowledging that he or she has received and read the Consent Decree, and has had an opportunity to have questions about the Consent Decree answered. This statement shall be substantially similar to the form of Appendix A.

10. In lieu of providing individuals or entities with copies of the Consent Decree as required by the preceding paragraphs of Part V, an Architect Defendant may instead provide a summary of the Consent Decree, with the United States' advance written approval of the form and content of any proposed summary. Copies of the Consent Decree (or approved summary) may be provided in hard copy, electronically, or by a link to a website where a copy of the Consent Decree (or approved summary) may be found.

11. The Architect Defendants shall also ensure that they and their architect employees, as well as any entities (e.g., firms) acting as their agent, who are involved in the design of any Covered Multifamily Dwellings have a copy of, are familiar with, and personally

have reviewed, the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991), and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act (August 1996, Rev. April 1998).

12. Within 90 days of the date of entry of this Consent Decree, the Architect Defendants and all of their employees whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of Covered Multifamily Dwellings shall ensure that they and their employees and agents who have such duties, in whole or in part, shall undergo training on the design and construction requirements of the FHA. The training shall be conducted by a qualified third-party individual, not associated with any Architect Defendant or any counsel for each of them, and approved by the Department of Justice; and any expenses associated with this training shall be paid by the Architect Defendants. The Architect Defendants shall provide to the United States, 30 days before the training, the name(s), address(es) and telephone number(s) of the trainer(s); and copies of the training outlines and any materials to be distributed by the trainers. The Architect Defendants shall provide to the United States, 30 days after the training, certifications executed by all Architect Defendants and covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix B. The United States may waive the training requirements in the foregoing paragraph for such employees or agents who received training from a qualified trainer on the design and construction requirements or the accessibility requirements of the FHA in the six months prior to the entry of this Consent Decree upon the provision of executed certifications from each such employee or agent.

VI. NOTICE OF DEFENDANTS' NON-DISCRIMINATION POLICY

13. 180 days after the date of entry of this Consent Decree, the Architect Defendants shall submit to the United States an initial report regarding the signed statements of the employees and agents who have completed the training program specified in paragraph 12 of this Consent Decree. Thereafter, during the duration of this Consent Decree, the Architect Defendants shall, on the anniversary of the entry of this Consent Decree, submit to the United States a report containing the signed statements of new employees and agents that, in accordance with paragraphs 8 and 9 of this Consent Decree, they have received and read the Consent Decree, and had an opportunity to have questions about the Consent Decree answered, except that the last report shall be due 60 days prior to the anniversary.

14. For the duration of this Consent Decree, the Architect Defendants shall advise the United States in writing within 15 days of receipt of any written administrative or judicial fair housing complaint regarding any property owned, managed, and/or designed or constructed by them, or against any employees or agents of the Architect Defendants working at or for any such property, alleging discrimination on the basis of disability in housing. Upon reasonable notice, the Architect Defendants shall also provide the United States all non-privileged information it may request concerning any such complaint. The Architect Defendants shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

15. For the duration of this Consent Decree, the Architect Defendants are required to preserve all records related to this Consent Decree for Tower 31 or the Additional Property and any other Covered Multifamily Dwellings designed, constructed, owned, operated, or acquired by them during the duration of this Consent Decree. Upon reasonable notice to the Architect Defendants, representatives of the United States shall be permitted to inspect and copy any non-privileged records of the Architect Defendants or inspect any developments or residential units

under the control of Architect Defendants bearing on compliance with this Consent Decree at any and all reasonable times, provided, however, that the United States shall endeavor to minimize any inconvenience to the Architect Defendants.

**VII. DURATION OF CONSENT DECREE AND
TERMINATION OF LEGAL ACTION**

16. This Consent Decree shall remain in effect for three years following entry of this Consent Decree by the Court. By consenting to entry of this Consent Decree, the Parties agree that in the event that the Architect Defendants engage in any future conduct occurring after entry of this Consent Decree that leads to a determination of a violation of the FHA, such conduct shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

17. The Complaint in this action is hereby dismissed as to the Architect Defendants without prejudice to reinstatement in accordance with the next paragraph.

18. The Complaint in this Action shall be reinstated at any time during the duration of this Consent Decree against the Architect Defendants if the Court determines the Architect Defendants have failed to perform, in a timely manner, any act required by this Consent Decree or has otherwise failed to act in conformity with any provision of this Consent Decree. The Architect Defendants reserve and shall retain, without limitation, any and all available legal remedies and defenses in law and in equity.

19. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree. The United States may move the Court to extend the duration of the Consent Decree in the interests of justice. The duration of the Consent Decree may also be extended by the mutual written agreement of the United States and the Architect Defendants.

20. The United States and the Architect Defendants shall endeavor, in good faith, to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendants to perform, in a timely manner, any act required by this Consent Decree or otherwise for their failure to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform. The Architect Defendants may oppose such a motion.

21. Upon termination of this Consent Decree, the United States releases the Architect Defendants, and each of their employees, agents, successors, and assigns and all other persons acting in concert or participation with them, from claims by the United States regarding alleged failures, as of the date of entry of this Consent Decree, to design Tower 31 in accordance with to the FHA, including all of the claims alleged in the Action, except for matters referred by the Department of Housing and Urban Development pursuant to 42 U.S.C. § 3612(o). Provided, however, that the Architect Defendants are not released from any claims by the United States concerning any Covered Multifamily Dwellings other than Tower 31, including any claims regarding previously designed dwellings and any claims regarding current or future designed dwellings. Nor are the Architect Defendants released from claims, if any, regarding FHA violations at Tower 31 other than failures to design those properties as of the Effective Date of this Consent Decree as required by the FHA.

22. Upon expiration of the Consent Decree, the Complaint in this Action shall be dismissed with prejudice.

VIII. TIME FOR PERFORMANCE

23. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the United States and the relevant Defendants without Court approval.

IX. NOTICES TO PARTIES

24. All notices under or relating to this Consent Decree shall be in writing and shall be deemed given when sent as follows:

- a. If to the United States: (i) by first-class mail addressed to Chief, Civil Rights Unit, Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007; and (ii) by e-mail to the undersigned attorneys representing the United States.
- b. If to the Architect Defendants: by first-class mail addressed to Christopher Albanese, Esq., Milber Makris Plousadis & Seiden, LLP, 3 Barker Avenue, White Plains, New York 10601.

X. MISCELLANEOUS

25. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

26. The Parties understand and agree that this Consent Decree contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiation, oral or otherwise, between the Parties or their counsel that are not included herein shall be of no force or effect.

The undersigned apply for and consent to the entry of this Consent Decree:

For the United States:

PREET BHARARA
United States Attorney

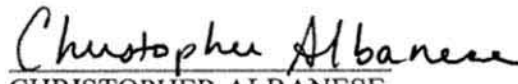
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By:


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SO ORDERED:


HONORABLE ALLISON J. NATHAN
UNITED STATES DISTRICT JUDGE

12/11/14

APPENDIX A

ACKNOWLEDGMENT OF RECEIPT OF CONSENT DECREE

I _____, am an employee of _____ and my duties include _____. I have received and read a copy of the Consent Decree in *United States of America v. Tower 31, LLC, et al.*, 14 Civ. 6006 (AJN) (S.D.N.Y.), and have been given instruction on (1) the terms of this Consent Decree, (2) the requirements of the Fair Housing Act, particularly related to the Act's design and construction requirements, and (3) my responsibilities and obligations under the Consent Decree and the Fair Housing Act. I have had all of my questions concerning the Consent Decree answered to my satisfaction.

_____, 20__

Employee Signature

APPENDIX B

CERTIFICATION OF FAIR HOUSING TRAINING

On _____, I attended training on the federal Fair Housing Act, including its requirements concerning physical accessibility for persons with disabilities. I was also instructed as to the rental policies and procedures, including the nondiscrimination, complaint, and reasonable accommodation policies of the Fair Housing Act. I have had all of my question concerning the Fair Housing Act answered to my satisfaction.

Employee Signature

Print Name

Date