

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

JOSEPH EHMAN, KRISTIN McINTOSH AND WILLIAM JOE BEAVER,

Plaintiffs,

v.

THE HOME BUILDERS ASSOCIATION OF METROPOLITAN DENVER,

Defendant.

COMPLAINT

Plaintiffs Joseph Ehman, Kristin McIntosh, and William Joe Beaver, by and through their attorneys, Fox & Robertson, P.C., and Kevin W. Williams, hereby bring this Complaint against Defendant Home Builders Association of Metropolitan Denver (“Home Builders Association”) for violation of the Americans with Disabilities Act (“ADA”).

Introduction

1. On July 26, 1990, President George H. W. Bush signed the ADA, thereby establishing the most important civil rights law for persons with disabilities in our country’s history. One of the principal goals of the ADA was the integration of people with disabilities into our economic and social life.

2. Each year, Defendant Home Builders Association operates the Parade of Homes, an exhibition of custom houses that is open to the public for an admission fee. The Home Builders Association describes the 2001 Parade of Homes as “a tour of six custom homes featuring unique architecture, the latest home technologies, impeccable designs, lavish furnishings and

brehtaking views.” The Official Program of the 2001 Parade of Homes states, in a passage accompanying the name and photograph of the President of the Home Builders Association, that

Each year, the Parade of Homes is the premier showcase that our industry puts in front of the public. Even though the vast majority of people who will tour this year’s Parade will never be able to afford the type of homes they will be seeing, it is the chance for each of them to go back in time to when we were the small kid with our noses pressed up against the glass in the candy case. We will look, we will fantasize, and we will tell ourselves that some day we, too, will live in one of these palatial edifices.

Not only is the ownership of our very own individual home the Great American Dream, but this amazing example of the finest that our industry has to offer gives us all the opportunity to dream at a whole new level.

1. This year, like last year, a number of the houses on display at the Parade of Homes are inaccessible to people who use wheelchairs. This frustrates the purpose of the ADA and sends the message that the Home Builders Association does not welcome people with disabilities to view these custom houses. Far from embracing the universal design that would permit people who use wheelchairs full access to the Great American Dream, the Home Builders Association does not even permit them access to the candy case against which they might press their noses.

Jurisdiction

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

3.

Parties

1. Plaintiff Joseph Ehman is and was at all times material hereto a resident of Colorado. As a result of muscular dystrophy and a spinal cord injury, Mr. Ehman is substantially impaired in several major life activities including but not limited to walking and requires manual a wheelchair for mobility.

2. Plaintiff Kristin McIntosh is and was at all times material hereto a resident of Colorado. As a result of a spinal cord injury, Ms. McIntosh is substantially impaired in several major life activities including but not limited to walking and requires a manual wheelchair for mobility.

3. Plaintiff William Joe Beaver is and was at all times material hereto a resident of Colorado. As a result of post polio syndrome, Mr. Beaver is substantially impaired in several major life activities including but not limited to walking and requires a power wheelchair for mobility.

4. Defendant Home Builders Association is a nonprofit corporation incorporated in Colorado. It is a trade association serving contractors involved in residential construction. The Home Builders Association does business under the trade name "The Parade of Homes" and operates The Parade of Homes as more fully described below.

Facts

1. Each year, the Home Builders Association places on display an exhibition of newly-constructed houses and charges admission to the general public to view the houses, their interior decor, exterior landscaping and other accouterments. This exhibition is called the Parade of Homes.

2. The 2001 Parade of Homes includes six houses on display in Parker, Colorado: "The Homecoming;" "Renaissance;" "Avalon;" "Prairie Hawk;" "Mount Tabeguache;" and "The Parade House."

3. The Homecoming has steps at all of its entrances.

4. Renaissance has steps at its front entrance and a temporary portable ramp leading up to the door from the garage to the house. This portable ramp has a slope of approximately 14% and has no handrails. There is no directional signage at the inaccessible front entrance of the house indicating the door with the ramp. The door from the garage to the house -- through which people who use wheelchair must enter -- is marked "exit" on the inside. On the outside of this

door, there is a sign that reads, “NO ENTRY. Only those who are working in the house will be allowed entry. Absolutely no muddy shoes allowed. If the shoes are muddy they must be removed. There will be a \$200 fine for anyone tracking dirt through the house. Thank you for your cooperation. Orchard Homes, LLC.” The Renaissance has several doors on the main floor that are too narrow. The deck is one step down from the interior of the house.

5. Avalon has steps at all of its entrances.

6. The Prairie Hawk has steps at its front entrance and a ramp leading into the main level that is accessible through the garage. The door from the garage to the house -- through which people who use wheelchair must enter -- is marked “exit” on the inside. The deck is one step down from the interior of the house.

7. Mount Tabeguache has steps at all of its entrances.

8. The Parade House has steps at its front entrance and a ramp leading into the main level that is accessible through the garage. Inside the house, a sign reads, “please exit through garage.” The Parade House also has several interior doors on the main floor that are too narrow and a step down to the deck.

9. The individual houses exhibited at the Parade of Homes also offer sales literature on the houses themselves and other products and services on display.

10. The Parade of Homes provides parking for patrons. This includes a large gravel parking lot that does not have any accessible or van accessible spaces. This parking lot can accommodate at least 315 cars.

11. The path from this main parking area to the entrance of the Parade of Homes is steep and covered with loose gravel.

12. At a separate location near the entrance to the exhibition, there are approximately four parking spaces indicated as reserved for persons with disabilities. The signs for these parking

spaces do not include the international symbol of accessibility. There is no indication of space for access aisles or for van accessible spaces.

13. There is no directional signage to these separate spaces indicated as reserved for persons with disabilities either from the road or from the main parking area.

14. The Parade of Homes is only accessible from the parking spaces that are marked as reserved for persons with disabilities by a bridge that has lips of at least one inch at either end or by a gravel path.

15. The Home Builders Association provides golf carts to drive patrons from the main parking lot to the entrance to the Parade of Homes and to and from various points within the Parade of Homes. These golf carts are not accessible to people who use wheelchairs. There is a sign at the bottom of the hill at the end of the road on which the houses are displayed that reads, "Transportation to Entrance Available at the Bottom of the Hill."

16. The Parade of Homes also provides a refreshment area that sells food and beverages, free-standing tents displaying home-building and other products, and restrooms for the general public.

17. The portion of the Parade of Homes that sells food and beverages is only accessible across a gravel surface and its counters are too high.

18. The areas of the Parade of Homes displaying home-building and other products are mounted on platforms that are at approximately three inches in height. Some of these areas are accessible by a bridge that has lips of over one inch at either end.

19. Although the Parade of Homes has restrooms that have the international symbol of accessibility, they can only be accessed across surfaces that include steps, are uneven or are covered with loose gravel.

20. On or about July 31, 2001, Plaintiff Kristin McIntosh attempted to patronize the Parade of Homes.

21. When she arrived at the Parade of Homes, she parked in the parking lot. That lot did not have any accessible spaces. There was no directional signage indicating any other accessible spaces.

22. It was difficult for Ms. McIntosh to push her wheelchair up the hill from the main parking area to the entrance to the Parade of Homes and she eventually had to ask for assistance from a passing stranger. Nondisabled patrons were able to ride a golf cart from the parking area to the entrance. The Parade of Homes did not have any golf carts that were accessible to people using wheelchairs.

23. Ms. McIntosh purchased a ticket and entered the exhibition but was unable to enter The Homecoming or Avalon. She was able to enter Mount Tabeguache by propelling her manual chair up one step at a side entrance.

24. Renaissance has a ramp in the garage but the slope of the ramp is steep. Ms. McIntosh required the assistance of a passing stranger to get up the ramp. In addition, she was forced to go in the garage entrance of Renaissance, Prairie Hawk and The Parade House while nondisabled patrons entered through the front door.

25. The slope of the road from the Prairie House to the rest of the exhibition was very steep and Ms. McIntosh required assistance to climb it. Nondisabled patrons were able to ride a golf cart from the Prairie House to the rest of the exhibition. The Parade of Homes did not have any golf carts that were accessible to people using wheelchairs.

26. On or about August 2, 2001, Plaintiff Joseph Ehman attempted to patronize the Parade of Homes.

27. When he arrived at the Parade of Homes, he parked in the parking lot. That lot did not have any accessible spaces. There was no directional signage indicating any other accessible spaces.

28. It was difficult for Mr. Ehman to push his wheelchair up the hill from the parking area to the entrance to the Parade of Homes and he eventually had to ask for assistance from a companion. Nondisabled patrons were able to ride a golf cart from the parking area to the entrance. The Parade of Homes did not have any golf carts that were accessible to people using wheelchairs.

29. Near the entrance, Mr. Ehman asked a representative of the Parade of Homes about parking for people who use wheelchairs. He was told that the person using a wheelchair could be dropped off at the entrance to the Parade of Homes. He was not told about allegedly accessible parking spaces near the entrance to the Parade of Homes and there was no directional signage suggesting the existence of such spaces.

30. Mr. Ehman purchased a ticket and entered the exhibition but was unable to enter The Homecoming, Mount Tabeguache or Avalon.

31. Mr. Ehman was able to get into Renaissance, Prairie Hawk and The Parade House but was unable to access the entire main floor of those facilities. In addition, he was forced to go in the garage entrance while nondisabled patrons entered through the front door. In one case, at Prairie Hawk, the flow of foot traffic coming out the door from the house into the garage was so great that he had to back down the ramp in his wheelchair to permit the nondisabled patrons to pass and then wheel back up the ramp to get in the house.

32. Mr. Ehman was unable to use the restrooms at the Parade of Homes because he was unable to get to them.

33. Mr. Ehman was unable to patronize the food and beverage sales area at the Parade of Homes because he was unable to traverse the gravel surface on which it was situated. Had he been able to traverse this surface, he would have encountered sales counters that were too high.

34. On or about August 5, 2001, Plaintiff William Joe Beaver attempted to patronize the Parade of Homes.

35. Because there was no directional signage, Mr. Beaver drove to the main parking lot searching for a parking space. When he learned that there was parking for people with disabilities near the front entrance, he had to drive back through the main parking lot and back up the hill to that entrance. He parked his lift-equipped van in the spaces marked for parking for people with disabilities. However, because there was no indication of a van accessible space or access aisle, he was concerned that another car might park too close and block his lift.
36. Mr. Beaver purchased a ticket and entered the exhibition but was unable to enter The Homecoming, Mount Tabeguache or Avalon.
37. Mr. Beaver was able to get into Renaissance, Prairie Hawk and The Parade House but was unable to access the entire main floor of those facilities. In addition, he was forced to go in the garage entrance while nondisabled patrons entered through the front door.
38. Mr. Beaver was unable to access the vendors' displays because they were mounted on platforms.
39. In the garage of The Homecoming, he was unable to access all of the tables displaying merchandise and sales literature because the aisles were too narrow.
40. The 2000 Parade of Homes included eight houses, only one of which had an accessible entrance. The remainder were completely inaccessible to people who use wheelchairs. The one accessible house had only a ramp in the garage; its front entrance was inaccessible.
41. The Parade of Homes is put on annually by the Home Builders Association. Plaintiffs would like to attend the Parade of Homes in 2001 if it is made accessible to them. They intend to patronize the Parade of Homes in future years.

Claim For Relief: Violation of The Americans With Disabilities Act

1. The Parade of Homes is a place of public exhibition or entertainment, a place of recreation, a place of public display or collection and/or other place of public accommodation as defined in 42 U.S.C. § 12181(7).

2. Defendant Home Builders Association operates the Parade of Homes.
3. On information and belief, the facilities at the Parade of Homes were constructed after January 26, 1993.
4. The facilities at the Parade of Homes are in violation of the ADA and its implementing regulations as described more fully above.
5. As such, the Home Builders Association discriminates and, in the absence of the injunction requested herein, will continue in the future to discriminate against Plaintiffs on the basis of their disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the Parade of Homes in violation of 42 U.S.C. §§ 12182 and 12183.
6. Plaintiffs have been damaged and will continue to be damaged by this discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring the Home Builders Association to be in violation of the Americans with Disabilities Act;
3. That this Court issue an injunction ordering the Home Builders Association to bring the Parade of Homes into compliance with the Americans with Disabilities Act this year and in future years;
4. That this Court award Plaintiffs their reasonable attorneys' fees and costs; and
5. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

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