

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

L&M 93RD STREET LLC and COSTAS
KONDYLIS & PARTNERS, LLP,

Defendants.

ECF CASE

**CONSENT DECREE BETWEEN THE
UNITED STATES OF AMERICA AND
DEFENDANT COSTAS KONDYLIS &
PARTNERS, LLP**

10 Civ. 7495 (RMB)

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INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the "United States") and Costas Kondylis & Partners, LLP (the "Architect Defendant"), a New York limited liability partnership that drew the architectural plans for The Melar Apartments ("The Melar"), a residential apartment building in New York, New York, and, in that capacity, designed and/or constructed The Melar;

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 alleges that 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 the Melar in accordance with the requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, The Melar is subject to the accessible design and construction requirements of the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, the Architect Defendant denies the allegations of the complaint and enters into this Consent Decree for settlement purposes only, prior to motion practice or trial, without admitting any issue of fact or law;

B. 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” (“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 persons with disabilities, 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; and (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”);

C. Violations at The Melar

WHEREAS, The Melar is a residential rental apartment building located at 250 West 93rd Street in New York, New York. The building consists of a tower with elevator access, with 143 rental apartment units, as well as public and common use areas. The building features a landscaped sun terrace, a fitness center, and a residents' lounge;

WHEREAS, the United States alleges in its complaint that it has inspected The Melar and specifically identified, *inter alia*, the following failures to meet the Accessible Design Requirements at The Melar:

- Excessively high thresholds, interfering with accessible routes for persons in wheelchairs;
- Terraces inaccessible to persons in wheelchairs;
- Insufficient clear floor space within bathrooms for maneuvering by persons in wheelchairs;
- Bathroom fixtures precluding installation of bathroom grab bars;
- Kitchen entries too narrow to accommodate persons in wheelchairs;
- Kitchen ranges not usable by persons in wheelchairs;
- Kitchen electrical outlets inaccessible to persons in wheelchairs;
- Walk-in closets inaccessible to persons in wheelchairs;
- Common area doors requiring excessive force for persons with certain disabilities;
- Common area doors closing too quickly for disabled persons to pass through;
- Common area bathrooms not usable by persons in wheelchairs;
- Mailboxes inaccessible to persons in wheelchairs;

- Protruding objects in common areas, not detectable by canes of visually impaired persons;
- Features within the fitness room inaccessible to persons in wheelchairs;
- Features within the laundry room inaccessible to persons in wheelchairs; and
- Insufficient clear floor space within basement storage room for maneuvering by persons in wheelchairs.

D. Consent of the Parties to Entry of this Order

WHEREAS, the United States and the Architect Defendant (collectively, 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). The parties 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 Defendant and each of its 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. NON-DISCRIMINATION IN OTHER DESIGN AND CONSTRUCTION

2. The Architect Defendant shall maintain, and provide to the United States upon request, the following information and statements regarding any Covered Multifamily Dwelling intended to be designed, in whole or in part, by the Architect Defendant:

- the name and address of the project;
- a description of the project and the individual units;

- the name, address, and telephone number of the civil engineer(s) involved with the project;
- the name, address and telephone number of the architect(s) who are employed or retained by the Architect Defendant and are involved with the project;
- a statement from all architect(s) who are employed or retained by the Architect Defendant 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, 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 FHA, and stating that the design specifications comply with the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent that design or construction in compliance with such building code(s) does not violate the FHA).

3. If the architectural plans referred to in paragraph 2 are revised, and the revisions would have any impact on whether the dwellings or complex complies with the Fair Housing Act and/or the Guidelines, another safe harbor recognized by the United States Department of Housing and Urban Development ("HUD"), or the accessibility specifications of an applicable State or municipal building code (to the extent that design or construction in compliance with such building code(s) does not violate the FHA), the Architect Defendant 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 Defendant and are involved with the project, as applicable, that all specifications in the revised engineering documents or architectural plans, as

pertinent, comply with the requirements of the Fair Housing Act, as well as the Guidelines, another HUD-recognized safe harbor, or the accessibility specifications of an applicable State or municipal building code (to the extent that design or construction in compliance with such building code(s) does not violate the FHA).

4. For the term of this Consent Decree, if the Architect Defendant prepares any architectural or site plans, drawing, or blueprints for covered multi-family housing, as defined in the Fair Housing Act, it shall include on such plans, drawing, or blueprints a statement attesting to compliance with the Fair Housing Act, and the Architect Defendant shall maintain and provide such plans, drawing, or blueprints to the United States upon request.

5. The Architect Defendant will make its 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 outside of New York City, the Architect Defendant shall make its design(s) for all such construction fully compliant with the Guidelines or any other safe harbor recognized by HUD. In addition, with respect to all new construction of Covered Multifamily Dwellings within New York City, the Architect Defendant shall make its designs for all such construction fully compliant with either: (a) the Guidelines or any other safe harbor recognized by HUD; or (b) the accessibility specifications of any applicable State or municipal building code (to the extent that design or construction in compliance with such building code(s) does not violate the FHA).

III. PAYMENT TO THE UNITED STATES

6. Within 30 days of the date of the entry of this Consent Decree, the Architect Defendant shall pay the United States FORTY THOUSAND DOLLARS (\$40,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Said sum shall be paid by submitting a check made payable to the "United States of America" to the United States.

IV. EDUCATIONAL PROGRAM

7. Within 30 days of the entry of this Consent Decree, the Architect Defendant shall provide a copy of this Consent Decree to all its agents and employees involved in the design or construction of The Mclar, and shall secure a signed statement from each such 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.

8. During the term of this Consent Decree, any new employee or agent of the Architect Defendant who will be involved in the design or construction of any Covered Multifamily Dwelling shall, within 30 days after the date on which he or she commences an employment or agency relationship with the Architect Defendant, be given a copy of this Consent Decree by the Architect Defendant, and the Architect Defendant shall require each such new employee or agent 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.

9. The Architect Defendant shall also ensure that it and its employees, as well as any entities (e.g., firms) acting as its agent, who are involved in the design or construction of any Covered Multifamily Dwelling 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).

10. Within 90 days of the date of entry of this Consent Decree, the Architect Defendant and all its employees and agents whose duties, in whole or in part, involve or will involve supervision over the development, design and/or construction of Covered Multifamily Dwellings shall undergo training on the design and construction requirements of the Fair Housing Act.¹ The training shall be conducted by a qualified third-party individual, not associated with the Architect Defendant or its counsel, and approved in advance by the Department of Justice; and any expenses associated with this training shall be borne by the Architect Defendant. The Architect Defendant 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 Defendant shall provide to the United States certifications executed by all its covered employees and agents confirming their attendance, in a form substantially equivalent to Appendix B.

V. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

11. No later than 180 days after the date of entry of this Consent Decree, the Architect Defendant shall submit to the United States the executed certifications and statements required by paragraphs 7, 8, and 10 of this Consent Decree.

¹ The educational program provided to employees not engaged in design, construction, or maintenance, such as sales and rental employees, may focus on the portions of the law that relate generally to accessibility requirements as opposed to technical design and construction requirements.

12. Thereafter, during the term of this Consent Decree, the Architect Defendant shall, on the anniversary of the entry of this Consent Decree, submit to the United States any additional signed statements required by paragraph 8 of this Consent Decree.

13. For the duration of this Consent Decree, the Architect Defendant shall advise the United States in writing within 15 days of receipt of any written administrative or legal fair housing complaint regarding any Covered Multifamily Dwelling designed or constructed by the Architect Defendant, or against any of its employees or agents of working at or for any such property, alleging discrimination on the basis of disability in housing under federal law. Upon reasonable notice, the Architect Defendant shall also provide the United States all information it may request concerning any such complaint. The Architect Defendant shall also advise counsel for the United States, in writing, within 15 days of the resolution of any complaint.

14. For the term of this Consent Decree, the Architect Defendant is required to preserve all records related to this Consent Decree for The Melar and for any other Covered Multifamily Dwelling designed or constructed, in whole or in part, by the Architect Defendant during the duration of this Consent Decree. Upon reasonable notice to the Architect Defendant, representatives of the United States shall be permitted to inspect and copy any records of the Architect Defendant 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 Defendant from such inspections.

VI. DURATION OF CONSENT DECREE AND TERMINATION OF LEGAL ACTION

15. 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 Defendant engages in any future conduct occurring after entry of this Consent Decree that leads to any judicial or administrative determination of a violation of the Fair Housing Act, any civil penalty relating to such future conduct shall be calculated as if the conduct were a "subsequent violation" pursuant to 42 U.S.C. § 3614(d)(1)(C)(ii).

16. The Court ~~shall~~ ^{may upon request} 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, and the Architect Defendant may oppose such a motion. RMB

17. The United States and the Architect Defendant 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 the Architect Defendant 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 Defendant may oppose such a motion.

18. Upon the termination of this Consent Decree, the Court shall dismiss this Action with prejudice. Such dismissal shall only release the Architect Defendant from claims by the United States regarding alleged failures to design and construct The Melar pursuant to the FHA as of the date of suit in this Action. Such a dismissal shall not release the Architect Defendant from any other claims by the United States, including but not limited to any claims regarding

other Covered Multifamily Dwellings designed and constructed by the Architect Defendant, and any claims regarding FHA violations at The Melar other than failures to design and construct The Melar as required by the FHA.

VII. TIME FOR PERFORMANCE

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

VIII. COSTS OF LITIGATION

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

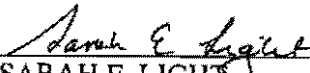
The undersigned apply for and consent to the entry of this Consent Decree:

For the United States:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

PREET BHARARA
United States Attorney

By:


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Facsimile No. (914) 681-8709
CAlbanese@milbermarkis.com

SO ORDERED this 22d day of July, 2011.
RMB

HON.

UNITED STATES DISTRICT COURT JUDGE

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #: ()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

Ruby J. Krajick, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
-V-
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____.
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
-V-
-----X

MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

FORM 2

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
-V-
-----X

NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____ - _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-----X
-V-
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)