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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

LARKSPUR, LLC, LARKSPUR
MANAGERS LLC, and LARSEN SHEIN
GINSBERG SNYDER LLP,

Defendants.
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ECF CASE

CONSENT DECREE

11 Civ. 6321 (DAB)

INTRODUCTION

A. Background

This Consent Decree is entered into between the United States of America (the "United States") and Defendant Larsen Shein Ginsberg Snyder LLP.

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 September 14, 2011, 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, by failing to design and/or construct The Larkspur ("The Larkspur"), a residential apartment complex located at 304 West 117th Street, New York, New York, with the features of accessible and adaptive design and construction required by the FHA, 42 U.S.C. § 3604(f)(3)(C);

WHEREAS, Larsen Shein Ginsberg Snyder LLP denies the allegations of the United States' complaint and enters into this Consent Decree for settlement purposes only, without admitting any issue of fact or law or any liability;

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

B. Architect Defendant

WHEREAS, Larsen Shein Ginsberg Snyder LLP was, at all relevant times, a New York registered limited liability partnership that prepared the architectural plans for The Larkspur and, in that capacity, designed The Larkspur, but is now dissolved and no longer conducts business;

WHEREAS, Robert G. Larsen ("Larsen"), was, at all relevant times, the architect of record for The Larkspur and a principal partner of Larsen Shein Ginsberg Snyder LLP;

WHEREAS, the term "Architect Defendant" as used in this Consent Decree refers to Larsen Shein Ginsberg Snyder LLP and its former employee and principal partner Larsen;

C. Relevant Requirements of the Fair Housing Act

WHEREAS, the FHA provides that Covered Multifamily Dwellings 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 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. Alleged Violations at The Larkspur

WHEREAS, The Larkspur is a residential rental apartment building located at 304 West 117th Street in New York, New York. The complex consists of a tower with elevator access, 115 rental apartment units, a superintendent's apartment, and public and common use areas, including a fitness center and laundry facilities;

WHEREAS, the United States has inspected The Larkspur and specifically identified, *inter alia*, the following alleged failures to meet the Accessible Design Requirements at The Larkspur, which the Architect Defendant denies:

- Excessively high thresholds at unit, bathroom, terrace, and kitchen entrances interfering with accessible routes for persons in wheelchairs;
- Insufficient clear opening width of terrace and closet doors;
- Insufficient clear floor space within bathrooms for maneuvering by persons in wheelchairs;
- Kitchens lacking sufficient clearance to accommodate persons in wheelchairs;
- Thermostats inaccessible to persons in wheelchairs;
- Kitchen and bathroom electrical outlets inaccessible to persons in wheelchairs;

- Kitchen sinks and ranges not usable by persons in wheelchairs;
- Kitchens lacking sufficient space between appliances and/or countertops to be usable by persons in wheelchairs;
- Bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by 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;
- Excessively high thresholds at common area doors interfering with accessible routes for persons in wheelchairs;
- Running slope of building ramp excessively steep to accommodate persons in wheelchairs;
- Ramp handrails excessively high for persons in wheelchairs;
- Mailboxes inaccessible to persons in wheelchairs;
- Signs for common areas lacking raised-letter Braille;
- Features within the fitness room and laundry room inaccessible to persons in wheelchairs;
- Trash chute access doors requiring excessive force for persons with certain disabilities;
- Insufficient clear floor space within trash room for maneuvering by persons in wheelchairs;
- Insufficient clear floor space within basement storage room for maneuvering by persons in wheelchairs;

- Protruding objects in common areas, not detectable by canes of visually impaired persons; and
- Common area bathrooms lacking sufficient space between sidewalls and/or fixtures to be usable by persons in wheelchairs.

E. 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 case pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a). The Parties further agree that this controversy 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, if any, 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. For the duration of this Consent Decree, the Architect Defendant 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 it or by any entities in which it has a position of control as an officer, director, member, or manager, or has a ten-percent (10%) or larger ownership share:

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

3. If the architectural plans referred to in paragraph 2 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 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 architectural plans, as pertinent, comply with the requirements of the Fair Housing Act and the Guidelines.

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. CIVIL PENALTY

6. The Architect Defendant shall pay a civil penalty of TWENTY THOUSAND DOLLARS (\$20,000) pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest. Said sum shall be paid in two installments by submitting a check made payable to the "United States of America" to counsel for the United States, with the first payment of ten thousand dollars (\$10,000) due within 30 days of the date of the entry of this Consent Decree, and the second payment of ten thousand dollars (\$10,000) due within 120 days of the date of the entry of this Consent Decree.

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 former employees involved in the design of The Larkspur, as well as to all other entities (*e.g.*, firms) that were involved in the design of The Larkspur as the Architect Defendant's agent, and secure the signed statement from each employee and other entity acknowledging that he, she, or it 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 of the Architect Defendant who will be involved in the design of Covered Multifamily Dwellings, as well as any entities (*e.g.*, firms) acting as the Architect Defendant's agent that will be involved in the design of Covered Multifamily Dwellings, shall, within 30 days after the date he or she commences an agency or employment 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 entity to sign a statement, acknowledging that he, she, or it 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. In lieu of providing employees, entities or the agents listed in paragraphs 7 through 8 with copies of the Consent Decree as required therein, the Architect Defendant may provide employees or agents with a summary of the Consent Decree, designed to provide personnel with information relevant to their positions. The Architect Defendant may only

provide such summaries in lieu of copies of the Consent Decree with the United States' advance written approval of the form and content of any proposed summary.

10. 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 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).

11. Within 90 days of the date of entry of this Consent Decree, the Architect Defendant and all of its employees whose duties, in whole or in part, involve or will involve supervision over the design of Covered Multifamily Dwellings, as well as any entities (*e.g.*, firms) acting as the Architect Defendant's agent that will be involved in the design of Covered Multifamily Dwellings, shall undergo training on the design and construction requirements of the Fair Housing Act. The training shall be conducted by a qualified third-party individual, not associated with the Architect Defendant or its counsel, and approved by the Department of Justice, which approval shall not be unreasonably withheld or delayed; 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, 30 days

after the training, certifications executed by all covered employees and entities confirming their attendance, in a form substantially equivalent to Appendix B.

V. NOTIFICATION AND DOCUMENT RETENTION REQUIREMENTS

12. Within 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 11 of this Consent Decree.

13. 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.

14. 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 property designed by them, or against any employees of the Architect Defendant 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 in its possession 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.

15. For the term of this Consent Decree, the Architect Defendant is required to preserve all records in its possession related to this Consent Decree, for The Larkspur, and any other Covered Multifamily Dwellings designed by it 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 or inspect any

developments or residential units designed 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. RESOLUTION, WAIVER, 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 Defendant engages in any future conduct occurring after entry of this Consent Decree that is determined by a Court to be a violation of the Fair Housing Act, 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 without prejudice as to the Architect Defendant subject to reinstatement in accordance with paragraph 18.

18. The Complaint in this Action shall be reinstated at any time during the duration of this Consent Decree against the Architect Defendant if the Court determines the Architect Defendant has 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 Defendant reserves and shall retain, without limitation, any and all available legal remedies and defenses in law and in equity.

19. This Consent Decree hereby releases the Architect Defendant, and each of its principals, officers, employees, agents, directors, managers, partners, members, shareholders, parents, subsidiaries, affiliates, related parties, 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 The Larkspur pursuant 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 Defendant is not released from any claims by the United States concerning any Covered Multifamily Dwellings other than The Larkspur, including any claims regarding previously designed dwellings and any claims regarding current or future designed dwellings. Nor is the Architect Defendant released from any claims regarding FHA violations at The Larkspur other than failures to design those properties as of the Effective Date of this Consent Decree as required by the FHA.

20. 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 Architect Defendant reserves its right to object to any such extension and to oppose any such motion.

21. 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.

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

VII. SCOPE OF CONSENT DECREE

23. The obligations in this Consent Decree shall not extend to subsequent employers of former principals and/or employees of the Architect Defendant solely on account of that employment relationship.

VIII. TIME FOR PERFORMANCE

24. 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.

IX. COSTS OF LITIGATION

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

X. RESERVATION OF RIGHTS AND DEFENSES

25. All obligations agreed to by the Architect Defendant in this Consent Decree are without prejudice to the Architect Defendant's claims, and any and all available rights, remedies and defenses against the other Defendants and/or any other person or entity, including, without limitation, claims, rights and remedies concerning negligence, malpractice, contribution, indemnity, and successor liability, all of which claims, rights and remedies are expressly reserved. Nothing in this Consent Decree shall be used as evidence of the liability, or lack thereof, of the Architect Defendant or any person or entity not a party to the Consent Decree.

XI. NOTICES TO PARTIES

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

If to the United States: 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 by fax to (212) 637-2717.

If to the Architect Defendant: by first-class mail addressed to Michael T. Rogers, Wasserman Grubin & Rogers, LLP, 1700 Broadway, 42nd Floor, New York, New York 10019, and by fax to (212) 956-5255.

If to Larsen: by first-class mail addressed to Michael T. Rogers, Wasserman Grubin & Rogers, LLP, 1700 Broadway, 42nd Floor, New York, New York 10019, and by fax to (212) 956-5255.

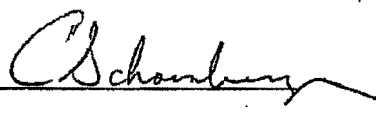
The undersigned apply for and consent to be bound upon the entry of this Consent

Decree:

For the United States:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

PREET BHARARA
United States Attorney

By: 

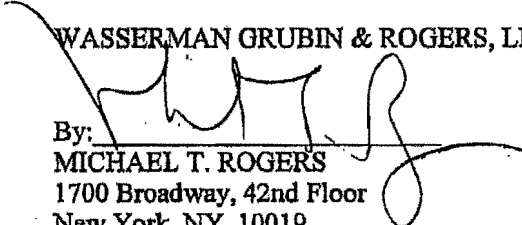
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*For Defendant Larsen Shein Ginsberg Snyder
LLP:*

WASSERMAN GRUBIN & ROGERS, LLP

By: 

MICHAEL T. ROGERS
1700 Broadway, 42nd Floor
New York, NY 10019
Tel. (212) 581-3320
Fax (212) 956-5255
mrogers@wgrlaw.com

For Robert G. Larsen:

By: 

ROBERT G. LARSEN

SO ORDERED:


UNITED STATES DISTRICT JUDGE

01/25/12

APPENDIX A

ACKNOWLEDGMENT OF RECEIPT OF CONSENT ORDER

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. Larkspur, LLC, et al.*, 11 Civ. 6321 (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 _____, 20__, 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 questions concerning the Fair Housing Act answered to my satisfaction.

Employee Signature

Print Name

Date