

The Chuckwagon

a quarterly production by

MONTANA FAIR HOUSING

Volume 35/August 2003

In true Montana spirit, the Chuckwagon . . . the newsletter to fill your fair housing appetite.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This synopsis is not necessarily all inclusive . . .

MFH vs. Sylvia Osterbauer and Terrace Apartments in Hamilton, Montana. In August 2003 Montana Fair Housing filed administrative complaints with the Department of Housing and Urban Development against the Respondents alleging discrimination against persons with disabilities. While conducting an investigation of allegations received, MFH found evidence indicating the Respondents made inquiries regarding the nature of a potential applicant's disability, set weight limits for service animals, and required a "pet" deposit from applicants with service animals.

MFH vs. Barbara Liss, Cardinal Properties Management, Inc., and Coast Real Estate of Hamilton, Montana. Following receipt of an allegation of discrimination against persons with disabilities, in August 2003, MFH filed administrative complaints with the Department of Housing and Urban Development against the above-named Respondents. The investigation suggested that the Respondents allowed individuals with disabilities having service animals to reside in only certain units. In addition, inquiries were made about the nature of the disability of the individual, and the breed and weight of the service animal.

MFH vs. Marlene Dye and Burnt Fork Development Partnership of Hamilton, Montana. Administrative complaints were filed with the Department of Housing and Urban Development in August against the Respondents based on allegations of discrimination in housing against persons with disabilities. Allegations state that the Respondents discriminate against persons with disabilities by requiring a "pet" deposit for service animals and by making illegal inquiries about the nature of a person's disability.

MFH vs. Willow Court Limited Partnership in Hamilton, Montana. Administrative complaints against the Respondents were filed with the Department of Housing and Urban Development alleging discriminatory practices in housing against persons with disabilities. The complaint alleges that the Respondents impose weight limits for service animals, require a "pet" deposit for service animals, and steer individuals with disabilities

to ground floor units despite having an elevator in the building that provides access to all units.

MFH vs. Cornerstone Realty of the Bitterroot Valley, Inc., Cora Pigman, Pigman Builders, Inc., and Ronald C. Pigman. In August 2003 Montana Fair Housing filed administrative complaints with the Department of Housing and Urban Development against the Respondents alleging discrimination against persons with disabilities by charging "pet" deposits for service animals and steering individuals with disabilities having service animals to specific rental units.

MFH vs. Daily Interlake, Hagadone Professional Management, Hagadone Corporation, Hagadone Printing, et. al. Montana Fair Housing filed administrative complaints with the Department of Housing and Urban Development against the Respondents for allegedly violating the advertising provisions of the Federal Fair Housing Amendments Act. Montana Fair Housing alleges that the Respondents printed and distributed advertising indicating preferences based on Familial Status, Marital Status and Religion.

MFH, et al. vs. Donna Dombrosky, the Apartment Store, and Maris Mills & Edwin Kowachek, owners of Lakeview Village located in Polson, Montana. Montana Fair Housing and an individual filed administrative complaints with the Department of Housing and Urban Development against the Respondents for allegedly failing to provide a reasonable accommodation for an individual with a disability. The complaint alleges that the resident had requested, on numerous occasions, that he be allowed a parking spot closer to his unit because of disability related mobility limitations. Allegedly, on several occasions, this request was denied.

Roundin' 'em up - Local and National Updates and Articles

United States and Martinez/Avalos v. Tamarack Property Management Co., et al. USDC CV-02-79-BLG-RWA. - HOUSING DISCRIMINATION BASED ON DISABILITY: Consent Decree, denial of reasonable accommodation, refusal to permit modification, interference with exercise of fair housing rights at Riverview Villa in Forsyth, Montana. Parties agreed to consent decree, with no admission of liability, after neutral evaluation conducted under local rules. \$98,000 to resolve all outstanding

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YES I want to support the efforts of Montana Fair Housing toward reducing the occurrence of housing discrimination in Montana. Enclosed is my tax-deductible membership contribution:

- limited income - \$10
- individual membership-\$25
- family membership - \$35
- nonprofits - \$50
- individual sponsor - \$200
- corporate friend - \$250
- corporate sponsor - \$500
- other: _____

Name: _____

Address: _____

City: _____

State/Zip: _____

HUD disclaimer notice: The work that provided the basis for this publication was supported in part by funding under a grant awarded by the US Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The authors and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication.

claims of intervening plaintiffs, independent of \$15,070 received in connection with Rule 68 Judgment. Judge Cebull.

Defendant property management company, on site managers and nonprofit organization that operates site as housing for the elderly agree to adopt policies and procedures to assure equal housing to persons with disabilities, to provide notice of fair housing rights to employees and tenants, to arrange fair housing training for all current employees connected with the site, and report to US Department of Justice on compliance for three years.

All defendants (including city owner of property) agree to pay \$98,000 in settlement of all remaining claims of intervening plaintiffs. Settlement does not include \$5,000 Rule 68 judgment previously paid or \$10,070 in additional fees and costs for intervening plaintiffs.

After HUD investigated and found reasonable cause to support the intervening plaintiffs' administrative complaint, US Department Of Justice filed complaint alleging that 90 year old George Avalos (deceased, April 2003) had polymyalgia rheumatica, hydrocephalus and pulmonary fibrosis. Avalos qualified as a handicapped person (or person with a disability) as defined by 42 USC §§ 3601 et seq. He used a wheelchair and was severely restricted in his ability to care for himself. US Department Of Justice alleged that defendants (Tamarack Property Mgmt, on site managers, and operating foundation violated federal Fair Housing Act, 42 USC §§ 3601 et seq. by first, refusing to permit, at the expense of Mr. Avalos, reasonable modification of his dwelling at Riverview Villa when reasonable modifications were necessary to afford Mr. Avalos full enjoyment of the premises, in violation of 42 USC § 3604(f)(3)(A), and refusing to permit Mr. Avalos to install a permanent wheelchair ramp at his dwelling; and by refusing to make reasonable accommodations in Riverview Villa's rules, polices, practices, or services when such reasonable accommodation was necessary to afford Mr. Avalos equal opportunity to use and enjoy his dwelling, in violation of 42 USC § 3604(f)(3)(B). Specifically, US Department Of Justice alleged defendants refused to allow Mr. Avalos to install a portable hot tub in his dwelling, which was prescribed as assistive equipment to alleviate significant pain associated with his disabilities. Avalos and his care giver (Martinez) filed a complaint in intervention under 42 USC §3612(o)(1) and joined former chair of foundation and owner of property (City of Forsyth), who were both named as responsible parties in the HUD investigative report.

Intervening plaintiffs accepted \$5,000 offer of judgment tendered only by defendant Forsythe Development Foundation in December 2002. They petitioned for fees and costs through date of Rule 68 offer against foundation. In March 2003 order, court awarded additional \$6,861 for related fees and costs. As part of settlement, parties agreed to pay additional \$3,209 for fees and costs of litigating the fee petition. Intervening plaintiffs reserved separate from consent decree the right to appeal use of \$150/hour rate in calculating the lodestar.

Erin Meehan Richmond, AUSA, DOJ-Housing and Civil Rights Section (Washington DC) for United States; Timothy Kelly (Emigrant) for intervening plaintiffs Martinez and Avalos; Gary Ryder (Forsyth) for Forsyth Development Foundation and Waneeta Farris; Harlan Krogh, Moulton Law Firm (Billings) for City of Forsyth; Steve Lehman (Crowley Law Firm) for Tamarack Property Management Co. (Billings), Ed and Linda Jones, and Kathy Kingman.

HOUSING DISCRIMINATION BASED ON DISABILITY - Settlement of HUD and Federal Court Claims To Protect Right to Provide Adult Foster Care Services at Flathead Area Subdivision: Conciliation Agreement

resolving HUD administrative and federal court claims alleging housing discrimination based on disability, denial of opportunity to rent home with option to buy because of, among other things, intended use as adult foster care home for persons with disabilities in violation of restrictive covenant prohibiting "for profit" commercial activity.

In November 2000, Kathleen Grace moved into a single family home in Wakewood Acres, a subdivision near Bigfork, Montana. The home had been on the market, and Grace rented the property while negotiating for a lease with an option to buy. Grace had entered into contracts with Western Montana Mental Health Center to provide adult foster care for persons with disabilities. She did improvements to the property to make it available for four residents referred by the Health Center, who moved in by early 2001.

In February 2001, the Wakewood Acres Homeowners Association notified the sellers that the intended use of their home in the subdivision violated the restrictive covenants, advising that adult foster care was a "commercial" purpose. The sellers, on notice of the possible breach and for other reasons, ended negotiations with Grace and terminated her tenancy. The adult residents and Grace moved within the 30 day period.

After contacting Montana Fair Housing in Missoula, Grace filed an administrative complaint with HUD alleging that the homeowners association and sellers violated her rights and the rights of persons with disabilities eligible for adult foster care by "making housing unavailable" because of disability and "publishing discriminatory statements" against persons with disabilities. MFH joined the suit on its own behalf and for its members and constituents.

In March 2003, Grace and MFH, represented by Attorney Tim Kelly, filed a civil action in federal court in Missoula against the homeowners association and the sellers. The complaint alleged violations of federal fair housing laws, the fair housing provisions of the Montana's Human Rights Act, misrepresentations, interference with contract, and breach of the covenant of good faith and fair dealing.

HUD conducted efforts to resolve the claims by conciliation. Plaintiffs in the federal case agreed to hold off on serving the complaint pending those efforts. The parties entered into a conciliation agreement in June 2003, providing for a confidential payment in settlement of all claims and agreement by the homeowners' association and sellers "not to commit any act of discriminatory advertising, statements or notices that express a preference not to rent or sell a dwelling to any person, on the basis of race, color, religion, sex, handicap, familial status, or national origin" and to report on their compliance to HUD for one year. The parties also agreed that except for a summary of the conclusion of the case as published in the Montana Fair Housing newsletter, all other details about the conciliation agreement would be private and confidential.

For further information about the fair housing rights of persons with disabilities and the types of alternative housing opportunities available in Montana, contact Montana Fair Housing, at (406) 542-2611.

Tip O' The Hat - Our Acknowledgments

Montana Fair Housing would like to thank:

David Wright

for his generous donation of \$7,900 to further fair housing in the state of Montana

Tid Bits from the General Store Our Announcements

Montana Fair Housing has workshops approved for continuing education credits with the Board of Realty Regulation in Montana. These workshops are approved for one hour, two hour, three hour, four hour and six hour presentations. To schedule a presentation in your area or for your organization, contact Pam Bean or Bob Liston at (406) 542-2611 or (800) 929-2611 or via e-mail at mfhzng@montana.com.

Promoting and Preserving Equal Opportunities in Housing

a workshop cosponsored by:

Alliance Property Management of Bozeman
and Montana Fair Housing

November 13, 2003
1:00 p.m. to 5:00 p.m.
GranTree Inn
1325 North Seventh
Bozeman, Montana
Fee: \$30 per person

This workshop is approved for four mandatory credit hours through the Board of Realty Regulation, and covers the rights and obligations of housing providers and consumers in regards to the federal Fair Housing Amendments Act and the Montana Human Rights Act.

Registration is due by 5:00 p.m. on November 5, 2003.
Please make checks payable to:
Montana Fair Housing, Inc.
904A Kensington Avenue
Missoula, MT 59801
FAX: (406) 542-2235/Voice: (406) 542-2611

Name of Registrant/s:

Address: _____

Phone: _____

Should you need a reasonable accommodation, please contact Pam Bean at Montana Fair Housing.

Montana Fair Housing
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Missoula, MT 59801

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Alternative Format Available Upon Request

If you suspect unfair housing practices
and/or want to find out more about
discrimination in housing contact:

**Department of Housing
and Urban Development**

1-800-877-7353

TDD 1-800-927-9275

or

Montana Fair Housing

1-800-929-2611

1-406-542-2611

Montana Relay Service: 711



**EQUAL HOUSING
OPPORTUNITY**

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