

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



Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

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 summary is not all inclusive . . .

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION
CONSENT ORDER AND JUDGMENT
Case No. 6:16-cv-00094**

UNITED STATES OF AMERICA, Plaintiff,

vs.

GABRIEL NISTLER, SOMMER NISTLER, ROSS W. ROYLANCE, PATRICIA ROYLANCE, ROYLANCE & NISTLER PROPERTIES, LLC; WERNER-NISTLER PROPERTIES, LLC; DEREK BROWN, AND DEREK BROWN CONSULTING, INC.; Defendants.

In July 2012, Montana Fair Housing, Inc. (MFH), received information that multi-family units were being constructed at 175 and 195 Silsbee Avenue, in Helena, Montana. MFH mailed information to Nistler Electric, LLC and Nistler Construction as developer, and G. Nistler as the agent for the developer and owner of the subject property, advising of the design and construction accessibility requirements contained in the Fair Housing Amendments Act

(FHAA or the Act). Information identified Derek John Brown, Engineer, of Derek Brown Consulting, Inc., designed the units.

In November 2012, Montana Fair Housing filed a complaint with the Department of Housing and Urban Development (HUD) alleging violations based on disability for failure to design and construct the units in a manner required by the Act. HUD, in June of 2013, following investigation and attempts to conciliate the complaint, issued a charge of discrimination. The case was referred to the Justice Department and a complaint was filed in Federal Court. MFH intervened as a Plaintiff, and in October 2014 a Consent Order and Judgment was issued.

In October of 2016 the Justice Department filed an additional action against the defendants.

DOJ, in this complaint, alleged the Defendants, had:

1. discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to buyers or renters because of a disability;
2. discriminated against persons in the terms, conditions, or privileges of the sale or rental of a dwelling, because of disability; and
3. failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C).

DOJ alleged the conduct of Defendants constituted:

1. a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act; and/or
2. a denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance.

This complaint identified 64 units not meeting the accessibility and adaptability requirements, and violations in the design and construction of public or common use areas at each site. The violations included the following:

1. the public and common use portions of the dwellings are not readily accessible to and usable by individuals with disabilities; and/or
2. not all premises within the 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; and/or (iii) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

The properties involved are located at:

- 1604 & 1608 Warehouse Avenue in Helena;
- 307 & 335 South Warren Street in Helena;
- 801 East Riggs Street in Helena;
- 105 East Lewis Street in East Helena;
- 114 East King Street in East Helena;
- 802, 806, 900 & 906 East Main Street (Old Highway 12) in East Helena;
- 106, 110, 111, 114 & 118 East Dudley Street in East Helena;
- 3752, 3760, 3768, 3774, 3782, 3790, 3802, 3810, 3818, 3826, 3836 & 3838 East Old Highway 12 in East Helena;
- 3791 Beechnut Street in East Helena; and
- 1053 & 1125 Orion Road in East Helena.

According to the Consent Order and Judgment, which remains in effect for five years, Defendants are required to complete retrofits described within the order for the above listed sites, construct 16 new units in Helena and/or East Helena meeting the accessibility and adaptability features identified, and provide certification by December 30, 2019, from a neutral firm and at Defendants' cost, verifying these terms have been met.

Defendants must also pay any resident of a unit scheduled to undergo a retrofit who will be dislocated from the unit for more than twenty-four hours. The resident will receive the applicable government per diem rate for food and lodging for each day of undue inconvenience or hardship for the resident(s). Payment to the household will be made

prior to the commencement of any retrofit work on the resident's unit, so that the resident can obtain alternative living accommodations and food while dislocated.

Defendants are required to deposit in an interest-bearing account \$20,000.00 for the purpose of compensating any aggrieved persons who have been harmed as a result of the alleged discriminatory housing practices by Defendants at any of the above-named complexes.

Households may be qualified to recover from the Settlement Fund if a household alleges that it:

1. was discouraged from living at any of the above-named complexes because of the lack of accessible features of the apartment or the complex;
2. rented an apartment but was unable to use, or had difficulties using portions of the apartment or the complex because it was not accessible (including the inability to have visitors who have disabilities);
3. paid to have any portion of the apartment or the complex modified to be more accessible;
4. was not informed about, or offered, all available apartment units because of a household member's disability; or
5. requested and was denied a reasonable accommodation for the disability of a household member.

If you believe you have been harmed because of your disability at any of the above-named apartment complexes, or if you have information about someone else who may have been harmed, please contact the United States Department of Justice at: 1-800-896-7743.

You may also write to the United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, 950 Pennsylvania Avenue, N.W. – G St., Washington, DC, 20530, Attn: DJ 175-83-17.

*** You must call or write no later than 365 days from the date of entry of the Consent Order to be eligible for compensation, and your telephone message or letter must include your name, address, and, if possible, at least two telephone numbers where you may be reached.