UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:98-CV-630-H

FAIR HOUSING COUNCIL, INC., ET AL. PLAINTIFFS

V.

VILLAGE OF OLDE ST. ANDREWS, INC., ET AL. DEFENDANTS

MEMORANDUM OPINION

This case involves an interpretation of the Fair Housing Act (the "Act"). The parties have tentatively agreed that Defendants will send a survey letter to the owners of all "covered" condominiums to determine the owner's interest in various retrofits. Each side now requests that this Court determine whether single-story units attached to multi-story units are "covered". Defendants seem to concede that the Act generally covers the single-story condominiums in question. They argue, however, that these units should be excluded from the Act's mandates in this instance on estoppel grounds.[1] The Court concludes that estoppel is not warranted.

The facts of this case are fairly straightforward. Defendants are in the business of building condominiums. In 1991, Defendants met with two HUD officials. These officials

[1]Even if the Defendants have not conceded this, the Court concludes that it is so. The Act defines "covered multifamily dwellings" in Section 3604(f)(7):

"(7) As used in this subsection, the term "covered multifamily dwellings" means-

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units."

Under this definition, the single-story condominiums found in each four-plex are covered. The single-story condominiums fit within Section 3604(f)(7)(B) as ground floor units in a non-elevator building consisting of 4 units.

inspected some of Defendants' completed units and presumably examined the documents Defendants' submitted certifying compliance with state and local laws as well as HUD's guidelines and regulations. One or both of these HUD officials then allegedly told Defendants that if one unit in a four-plex had steps, all units in that four-plex were excluded from coverage under the Act. HUD also sent Defendants a letter stating "This review and an inspection of the project show that the condominium regime and the project are acceptable to HUD." Defendants say that they relied on HUD's statement in their subsequent construction.

Based on these facts, Defendants argue that Plaintiffs are estopped from requiring Defendants to remodel the single-story units which are attached to multi-story units. There are several problems with this argument. First, Congress clearly intended to place the burden of determining compliance on builders and architects not government officials. *See* § 3604(f)(5)(D) (HUD is not required to review or approve plans or dwellings to determine compliance); § 3604(f)(6)(B) (any determination of compliance by state or local government is not conclusive). These statutory provisions alone would make it difficult for any builder to prove reasonable reliance, as required for estoppel. However, Defendants' reliance argument is even weaker because Defendants submitted paperwork to the HUD officials certifying their compliance with all regulations before the HUD letter was sent. Obviously, Defendants cannot certify their compliance to an official, then rely on that official's statement that they have satisfied HUD's requirements. After all, the official's statement may have been made in reliance on Defendants' stated compliance.

Even if Defendants were able to prove that their reliance was reasonable, "the United States is not estopped by acts of individual officers and agents." *United States v. River Coal Co.,*

Inc., 748 F.2d 1103, 1108 (6th Cir. 1984).[2] "Those who deal with the government are expected to know the law and may not rely on the conduct of government agents contrary to the law." *United States v. Guy*, 978 F.2d 934 (6th Cir. 1992)(*quoting Heckler v. Community Health Services*, 467 U.S. 51, 63 (1984)). Therefore, Plaintiffs are not estopped from enforcing the Act even if HUD officials did tell Defendants that the attached single-story units were in compliance.

Defendants attempt to distinguish their case from this line of precedents on the ground that Plaintiffs are not the government.[3] The Court does not believe that this makes for any difference. Courts have disfavored estoppel based on the actions of government agents to prevent the conduct of government agents from waiving or revising the laws enacted by Congress. This reasoning would seem to apply when interested parties act as enforcers for the government. Legislation like the Fair Housing Act is designed to protect people with disabilities. Disabled people should not lose their rights because a government official provided erroneous advise. Moreover, federal laws should apply equally to all. If the conduct of government officials led to estoppel, then laws would end up applying to some but not others.

The Court has sympathy for Defendants' position. Some of the Act's provisions are

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[2]If a government agent engages in affirmative misconduct, it may create an exception to this general rule, but Defendants cannot allege misconduct in this case. *See id.*

[3]Defendants cite *United States v. Pennsylvania Industrial Chemical Corp*., 411 U.S. 655 (1973) to support their position. The Court does not believe that it is so supportive. *Pennsylvania Industrial* involved reliance on regulations promulgated by the responsible agency and whether a corporate criminal defendant could present evidence at trial of their being affirmatively misled. In contrast, the statements at issue in this case were made orally by a local HUD official. *Pennsylvania Industrial* was a fair warning case under criminal law. At issue was the defendant's right to fair notice that certain conduct may be a criminal violation. Our case is a statutory interpretation case under civil law which is approached in a different manner entirely.

Defendants also focus on the fact that estoppel would not cause the government to pay any money in this case. This fact is not dispositive. The Supreme Court has held that no money will be paid by the government based on estoppel, absent statutory mandate. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, 424-26 (1990). This does not change the fact, however, that even in case that do not require the government to pay money, courts have required, at minimum, affirmative misconduct before granting estoppel claims.

difficult to interpret and apply. Defendants did make a good faith effort to comply with the law. At the time, they did what seemed to be reasonable in attempting to comply with the Act. However, that is not enough to change the provisions of the Act or create an estoppel. The strong policy reasons for not applying estoppel based on the actions of government officials cause the Court to conclude that these single story units are covered as set forth in the Act.

The Court will enter an order consistent with this Memorandum Opinion.

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JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

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ORDER

Having read , and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the four unit buildings containing two multi-story units and two single-story ground units at Graystone Manor are covered by the design and construction requirements of the Fair Housing Act, as amended (1988).

This ___ day of July, 2000.

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JOHN G. HEYBURN II
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record