

JUDGE SEIBEL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

00280

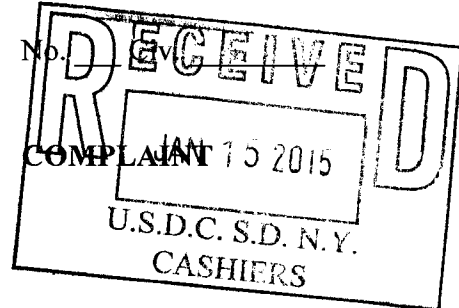
WESTCHESTER RESIDENTIAL
OPPORTUNITIES, INC.,

Plaintiff,

v.

VILLAGE OF BRONXVILLE, and
GATEWAY KENSINGTON LLC,

Defendants.



Plaintiff Westchester Residential Opportunities, Inc. (“WRO”), by its attorneys, Emery Celli Brinckerhoff & Abady, LLP, for its Complaint alleges as follows:

INTRODUCTION

1. This is a housing discrimination case, brought to stop the Village of Bronxville, as well as its private developer partner Gateway Kensington LLC, from discriminating against families with children in the design and marketing of condominium units in the heart of Bronxville.
2. The Village of Bronxville is a small, highly exclusive suburb in Westchester County, just fifteen miles north of Manhattan. The Village boasts on its website that Bronxville is “a suburb endlessly copied and never matched.”
3. The Village is particularly known for its “outstanding school system,” which is restricted to residents of the one square mile that is Bronxville, and which residents view as a draw for people to move to Bronxville.
4. The Village (and its chosen developer) are currently attempting to discourage families with children from moving into Bronxville’s planned new

condominiums, in order to avoid new children joining—and, in the Village’s view, burdening—the prestigious Bronxville school system.

5. The condominiums in question will be located in downtown Bronxville, on Kensington Road, next to the Village’s Metro-North Station (one of the last parcels of undeveloped land in Bronxville). The development will include fifty-four (54) condominium apartments and a parking garage; it is known as the Kensington Road Project (hereinafter the “Project” or the “Kensington Road Project”).

6. In conceiving of this development, the Village has sought to reap the benefits of adding new taxpayers to its rolls, without adding new children to the school system. To accomplish those goals, the Village amended its zoning code to allow for construction of an “age-targeted” development. This amendment is deliberately discriminatory and explicitly provides that the applicant for a permit for such a development must demonstrate “that the proposed residence facility has been designed to appeal primarily to individuals and couples *without children.*” Bronxville Code § 310-42 (3)(b) (emphasis added).

7. In addition, the Village, in particular Mayor Mary Marvin, has actively promoted the Project to so-called “empty-nesters” (*i.e.* households without children) and touted the Project as a place where it is unlikely families with children will live.

8. While the Village could, legally, have built *age-restricted* housing for seniors, sale of the condominiums would then have been restricted to those aged 55 or 62 and older. Avoiding these lawful options, Bronxville, and its selected developer Gateway Kensington LLC, deliberately chose instead to create housing that can theoretically be sold to anyone, but is designed and marketed so as to discourage families with children

from buying. That they cannot do.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 42 U.S.C. § 3613, and 28 U.S.C. § 2201(a) (the Declaratory Judgment Act). This Court has supplemental jurisdiction over the New York State claims pursuant to 28 U.S.C. § 1367.

10. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b)(2).

THE PARTIES

Westchester Residential Opportunities, Inc.

11. Plaintiff Westchester Residential Opportunities, Inc. (“WRO”) is a private non-profit organization serving Westchester County, New York and adjacent counties and organized under the laws of New York, with its principal place of business in White Plains in the Southern District of New York.

12. WRO’s mission is to promote equal, affordable, and accessible housing opportunities for all residents of the region in which it operates, including the Southern District of New York. Among other things, WRO is a federally-approved Housing Counseling Agency.

13. One of the primary objectives of WRO is to promote the expansion of non-discriminatory housing opportunities in Westchester County. It accomplishes this objective through a variety of means, including providing education about fair housing rights and responsibilities, conducting investigations of allegations of housing discrimination, and undertaking studies and issuing reports about fair housing.

14. WRO diverted its limited resources to investigate and attempt to remedy the Village's discriminatory zoning code and the Defendants' plans to design, develop, and sell condominium units in the Village that discriminate on the basis of familial status and age in violation of federal and state fair housing laws. These resources include staff time to obtain and review public records; research and review newsletters, blogs, news articles, and other media statements by Defendants; prepare written summaries and analyses; meet with WRO executive staff, Board members and legal counsel; and communicate with the Village.

15. In addition to causing a diversion of WRO's resources, Defendants' conduct as described below has frustrated WRO's stated mission to promote equal, affordable, and accessible housing opportunities for all residents of the region by facilitating the development and sale of housing that is not being made available on an equal or non-discriminatory basis due to familial status and age.

Village of Bronxville

16. Defendant Village of Bronxville is a village within the Town of Eastchester, organized under the laws of the State of New York, with its principal offices at 200 Pondfield Road, Bronxville, New York 10708. It is located in Westchester County within the Southern District of New York.

17. At least through September 8, 2014, the Village owned the land and/or controlled the sale or disposition of the land on Kensington Road that will be used to construct the Project. On information and belief, the Village is the current owner of the land and/or retains control over the sale or disposition of the land, as the contract to sell the land to Defendant Gateway Kensington LLC has not yet closed.

18. The Village of Bronxville is governed by a five member Board of Trustees. The Board consists of a Mayor and four Trustees. The Mayor is the Chief Executive of the Village and is responsible for the conduct of public meetings and certain appointments. The Mayor and Trustees all have one equal vote for the adoption of resolutions. The Board of Trustees has the authority to enact amendments to the Village’s zoning code.¹ The Village also has a Planning Board, which reviews plans for development, monitors and prepares updates to the Village Master Plan every five years, and grants special permit requests. A Village Administrator is hired by the Board of Trustees to manage the day-to-day operations of Bronxville.

Gateway Kensington LLC

19. Defendant Gateway Kensington LLC (“Gateway”) is a limited liability corporation incorporated in the State of New York and doing business in the Southern District of New York. On information and belief, Gateway is in contract with the Village of Bronxville to purchase the land upon which the Kensington Road Project is being constructed. The site currently has a special use permit for “age-targeted” residential development.

FACTUAL ALLEGATIONS

The History of the Kensington Road Site

20. The site for the Kensington Road Project is 1.63 acres, consisting of three lots, and is located in downtown Bronxville next to the Metro-North rail station.

21. In the early part of the twentieth century, the site was home to the Hotel Gramatan Power & Light Plant and the South Bronxville Garage.

¹ All references to Defendant Village of Bronxville include any individual acting on behalf of, or under authority derived from, the Village.

22. Between 1970 and 1980, the site was used as a gas station.

23. In the early 1980s, the Village acquired all three lots. The power plant and garage were subsequently demolished and the Village has used the site as a parking lot ever since.

24. As a result of the site's past usage, environmental remediation was necessary before construction of the Project could begin.

Bronxville Seeks to Develop the Kensington Road Site, While Minimizing the Number of Families With Children

25. By 2003, the Village was interested in developing the Kensington Road site.

26. From very early in the process, according to Board of Trustees' meeting minutes, the Village focused on the idea of using the site for condominiums aimed at "empty nester" households without children.

27. On November 10, 2003, after considering proposals by nine developers, the Board of Trustees voted in favor of Spectrum Communities, which had proposed a plan "to construct condominiums designed for 'empty-nesters' along with a 200 car garage for the Village."

The Village Amends Its Zoning Code to Permit "Age-Targeted" Residential Developments

28. At a Board of Trustees meeting held on June 12, 2004, Spectrum Kensington LLC (a subsidiary of Spectrum Communities) (hereinafter "Spectrum") petitioned the Board of Trustees to make certain zoning amendments to the Code of the Village of Bronxville, Chapter 310, Zoning, creating a new special use permit in the Residence D zoning district. The Board of Trustees referred the matter to the Village Planning Board for review and recommendation.

29. On information and belief, this proposal included a request for a new special permit for construction of an “age-targeted” multiple residence facility.

30. Just a few days later, the Village entered into a contract to sell the Kensington Road site to Spectrum.

31. Over the course of the next year, Spectrum and its consultants worked to prepare a Draft Environmental Impact Statement (the “DEIS”) for the Project.

32. The Planning Board accepted the DEIS on September 14, 2005, and opened it for public comment.

33. Over the course of subsequent Board of Trustees and Planning Board meetings, Village Trustees and residents expressed concern that the Project would negatively affect the school system and the desire to emphasize that the Project would be “age-targeted” to minimize such effects.

34. For example, at a Board of Trustees meeting on November 14, 2005, then-Trustee Sica reported that the Board was “hopeful that the taxes for the school from this project will exceed the costs for the number of children coming from this development...It is an age targeted project and essentially a development that will allow people to sell their homes and stay in Bronxville.”

35. The Final Environmental Impact Statement (“FEIS”) for the Project was accepted by the Planning Board on April 12, 2006.

36. The FEIS stated, in pertinent part, that: “The condominiums, by design and pricing, will be marketed to empty nesters from Bronxville and other surrounding Westchester towns.”

37. The FEIS included an analysis of the potential for school-age children to

reside in the Project, concluding that in “the likely scenario where 100 percent of the units at The Kensington would be occupied by empty-nesters,” zero children would be added to the school system and, explaining “the worst-case scenario being if non-empty nesters occupied 50 percent of the proposed units,” in which case it was projected that the Project would add only four new children to the Bronxville schools.

38. Despite this study, over the ensuing months, Bronxville residents continued to express concerns about the Project’s impact on the Village school system, noting, for example, that “despite the Project being an age-targeted development, given the reputation of the Bronxville school system, many young families with school-age children may wish to reside within the school district and may choose to reside at the Project despite its age-targeted characteristics.”

39. The FEIS emphasized that the Project apartments were designed to deter families with children from purchasing them, explaining that, in those units with dens, the dens would not be used as third bedrooms because they “would not have doors or closets and would not be located near a bathroom.”

40. The FEIS explicitly described the Project as “age-targeted,” which it defined to mean: “homes that, by their design and marketing, are aimed at attracting empty nesters.”

41. The FEIS further explained that, in order to make the Project “age-targeted,” the Bronxville zoning code would have to be amended to include “a definition for an Age-Targeted Multiple Residence Facility.”

42. On May 10, 2006, the Bronxville Planning Board met to discuss the amendment to the Village zoning law necessary to effectuate this goal. At this meeting,

James Staudt (then the Planning Board's outside counsel, now Bronxville's Village Attorney), explained that the new law was not a replacement for an existing law, but rather "a new category for age-targeted housing."

43. Following this presentation, the Planning Board voted unanimously to recommend to the Board of Trustees that it adopt the proposed zoning amendment.

44. On September 18, 2006, the Board of Trustees unanimously voted to adopt a local law to modify Bronxville's zoning law to create a new special use permit for "age-targeted multiple residence facilities."

45. The age-targeted multiple residence facility use permit was codified in section 310-42 of the Bronxville Code, which currently provides, *inter alia*, that to receive such a permit, "[t]he applicant must demonstrate, to the satisfaction of the Planning Board, that the proposed residence facility has been designed to appeal primarily to individuals and couples *without children*." Bronxville Code § 310-42(3)(b) (emphasis added).

46. Still, concerns continued that the Project would burden the school system. For example, the Board of Trustees' consultant submitted a letter for the Planning Board's December 13, 2006 meeting, expressing concern because "the designs of certain units have changed on the newly revised plans. Units D1, D2, D3 and D4 all include an additional room with a door that, in at least two units, is near bathrooms. Such units, with the minor addition of a closet could be used as third bedrooms."

47. Nevertheless, on January 10, 2007, the Planning Board granted Spectrum a special permit to build an "age-targeted" development on the Kensington Road site, finding that Spectrum "has demonstrated that the design of the Project, and specifically

the design of the individual units, is such that the Project will appeal primarily to individuals and couples without children. Among other things, the units are designed with large master bedrooms and smaller second bedrooms, there are no playgrounds, play equipment or other child based amenities proposed, and the marketing type descriptions and pricing of the units which have been put forth are targeted to older individuals and couples.”

Gateway Assumes Development of The Project

48. Shortly after the Village approved the special permit, Spectrum assigned its interest in the project to another entity, WCI Homes Northeast, Inc. (“WCI”).

49. But, in 2008, WCI went bankrupt.

50. Because the contract for sale of the Kensington Road site had never closed, the Village retained ownership of the land and, for a while, the Project lay dormant.

51. The Village’s priority continued to be an age-targeted development, which would minimize the impact on the Bronxville school system.

52. In March 2009, the Board of Trustees adopted a new Community Plan prepared by the Planning Board, which was “intended to guide future development” in the Village, with the stated hope that the Plan would “preserve and enhance the special qualities of Bronxville for future generations.” The new Community Plan left the discriminatory age-targeted zoning provision in place.

53. In 2009, the Village issued a new Request for Proposal for the Kensington Road project which explained that the “project will be designed for and marketed to empty nesters and is expected to have little or no impact on the Bronxville School District. However, a worst-case assessment analysis was completed to estimate a range

of potential impacts that could hypothetically occur were non-empty nesters to move to The Kensington.”

54. In March 2013, Mayor Marvin published a column in the Westchester Guardian entitled “Reviving Age Targeted Housing Development.” The article, which promoted the Kensington Road Project and the Village’s renewed attempts to find a developer for the Project, explained that “the approved design was ‘age-targeted’ and envisioned owner-occupied units designed for the empty-nester, i.e., large open formal dining rooms, alcove offices, and few bedrooms.”

55. Following this article, on or about March 15, 2013, WRO’s Executive Director Geoffrey Anderson left a voicemail message for Mayor Marvin, expressing WRO’s concern that the Mayor’s statement, and the Village’s plan for the Project, were in violation of fair housing laws. Mr. Anderson asked Mayor Marvin to contact him. His phone call was never returned.

56. Instead, in June 2013, the Village issued a new Request for Proposal for the Kensington Road Project for proposals to proceed with the site’s purchase and development in accordance with the previously approved, “age-targeted” design.

57. The 2013 Request for Proposal described the Project as an “age-targeted residential condominium development, aimed at attracting empty nesters” and emphasized that “[t]he special permit for age-targeted use would only be allowed for developments, which, by design, are intended for occupancy by *families without children.*” (emphasis added).

58. Mayor Marvin then published a new article in the Bronxville Daily Voice, entitled “Bronxville Mayor: Seeking Proposals for Kensington Road Project,” in which

she reassured Village residents that the Project's impact on the school system would be minimal because: "The previous developer also hired a professional demographer who estimated five to seven school age children would be added to our educational system."

59. On December 23, 2013, the Village selected Fareri Associates' proposal, noting the Project would provide "[a]n empty-nester home option."

60. In January 2014, according to an article published in the Bronxville Daily Voice, Mayor Marvin responded to ongoing concerns from Bronxville residents "that there is no way to know how many school-aged children would potentially move into the complex. [Mayor Marvin] said that the previous developer did an environmental impact study, which concluded that the 'worst case' scenario would bring in up to six new students."

61. On January 8, 2014, the Planning Board confirmed that the Special Permit and the Final Site Approval granted for the Kensington Road Project remained in full force and effect and would not expire.

62. On February 19, 2014, the Board of Trustees passed a resolution authorizing the Village to enter into a Purchase and Sale Development Agreement with Fareri Associates ("Fareri").

63. Fareri and the Village signed a contract for sale of the Kensington Road property on March 13, 2014.

64. Subsequently, on September 8, 2014, Fareri assigned its interest in the contract of sale to Gateway.

65. Following the contract signing with Fareri, Mayor Marvin wrote in another of her columns: "The units ... are designed to attract the empty nester with formal dining

rooms for family holidays as well as small office alcoves...Based on the design, amenities and pricing, studies estimate that the project could generate four to six school age children.”

The Village’s Resistance to Fair Housing

66. In Westchester County, the Westchester Urban County Council (“Consortium”) is a consortium of local towns and villages that work cooperatively to administer housing and community development funds received by the towns and villages from the federal government. As members of the Consortium and as recipients of federal funds from the U.S. Department of Housing and Urban Development (“HUD”), each town and village is required to both comply with the anti-discrimination requirements of the Fair Housing Act (42 U.S.C. §§ 3604, 3605, and 3517) and the obligation to “affirmatively further fair housing” (42 U.S.C. § 3608).

67. For a number of years, the Village of Bronxville was a member of the Consortium. However, in 2012, after Westchester County entered into a settlement agreement with HUD to implement certain housing policies and activities to “affirmatively further fair housing” in Westchester County, including reviewing zoning codes and other local government practices to identify impediments to fair housing, the Village withdrew from the Consortium.

68. On August 20, 2014, WRO sent a letter to Mayor Marvin noting its previously expressed concern that the “age-targeted” nature of the Kensington Road Project violated fair housing laws and asking that the Village Code and the design and marketing of the Project be modified to comply with fair housing laws.

69. Notwithstanding WRO’s letter, the Village and Gateway have proceeded

with the Project.

70. Recently, even after receiving WRO's letter, Village Trustees and residents have expressed similar concerns with the number of school children in connection with another proposed Bronxville residential development at 100 Pondfield Road. Planning Board minutes from as recently as October 2014 reveal that the Village is contemplating imposing conditions on the developer to design and construct the proposed units in such a way as to discourage families with school-age children from buying them.

FIRST CAUSE OF ACTION
(Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)
Against Defendant Village of Bronxville

71. Plaintiff repeats and realleges the foregoing paragraphs of the complaint as though fully set forth herein.

72. The Project's units will be "dwellings," as defined by the Fair Housing Act, 42 U.S.C. § 3602(b), because they are "designed or intended for occupancy as, a residence by one or more families."

73. The Village's statements that the Project is "age-targeted," designed for "empty nesters," intended for occupancy by "families without children," and that "the 'worst case' scenario would bring in up to six new students," and similar statements, as described above, constitute the making, printing, or publishing of a notice, statement, or advertisement with respect to the sale of a dwelling that indicates a preference, limitation, and discrimination because of familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3604(c).

74. Plaintiff WRO is an aggrieved person as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), because Plaintiff has "been injured by a discriminatory housing

practice” and “will be injured by a discriminatory housing practice that is about to occur.”

75. Defendant Village of Bronxville’s conduct is intentional, willful, and done in reckless disregard for the rights of others.

76. Accordingly, under 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

SECOND CAUSE OF ACTION
(Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*)
Against All Defendants

77. Plaintiff repeats and realleges the foregoing paragraphs of the complaint as though fully set forth herein.

78. Defendants’ conduct as described above otherwise makes dwellings unavailable because of familial status in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

79. Plaintiff WRO is an aggrieved person as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), because Plaintiff has “been injured by a discriminatory housing practice” and “will be injured by a discriminatory housing practice that is about to occur.”

80. Defendants’ conduct is intentional, willful, and done in reckless disregard for the rights of others.

81. Accordingly, under 42 U.S.C. § 3613(c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

THIRD CAUSE OF ACTION

(New York State Human Rights Act, New York Executive Law §§ 290 *et seq.*)
Against Defendant Village of Bronxville

82. Plaintiff repeats and re-alleges the foregoing paragraphs of the complaint as though fully set forth herein.

83. The Project's units will be "housing accommodations," as defined by New York Executive Law § 292(10), because they are "intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings."

84. The Village's statements that the Project is "age-targeted," designed for "empty nesters," intended for occupancy by "families without children," and that "the 'worst case' scenario would bring in up to six new students," and similar statements, as described above, constitute the printing, circulating, or causing to be printed or circulated a statement "which expresses, directly or indirectly, any limitation, specification or discrimination as to . . . age [and] familial status," in violation of New York Executive Law § 296(5)(a) and (b).

85. At the time the Village made these statements, it was the owner of and/or controlled the sale or disposition of the land at Kensington Road on which the Project is being constructed.

86. Defendant Bronxville's conduct was intentional, willful, and made in reckless disregard for the rights of others.

87. Accordingly, under New York Executive Law §§ 297(9) and (10), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable

attorneys' fees and costs.

FOURTH CAUSE OF ACTION

(New York State Human Rights Act, New York Executive Law §§ 290 *et seq.*)

Against All Defendants

88. Plaintiff repeats and re-alleges the foregoing paragraphs of the complaint as though fully set forth herein.

89. The Project's units will be "housing accommodations," as defined by New York Executive Law § 292(10), because they are "intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings."

90. Defendants' conduct as described above otherwise denies or withholds a housing accommodation because of age and familial status, in violation of New York Executive Law § 296(5)(a) and (b).

91. Defendants' conduct is intentional, willful, and made in reckless disregard for the rights of others.

92. Accordingly, under New York Executive Law §§ 297(9) and (10), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION

(28 U.S.C. § 2201(a) Declaratory Judgment Act)

Against All Defendants

93. Plaintiff repeats and re-alleges the foregoing paragraphs of the complaint as though fully set forth herein.

94. Plaintiff is entitled to a declaratory judgment that the Village's "age-targeted" special use permit category, "age-targeted" special use permit for the site for

the Kensington Project, and contract with Defendant Gateway to design, build, market, and sell the Project as “age-targeted” housing violate federal and state fair housing laws.

95. As fully set forth in the preceding paragraphs, a justiciable controversy exists because Plaintiff is an aggrieved person within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i). Unless the controversy is resolved, Defendants’ pursuit of their discriminatory use permit, design, marketing, and sale of units at the Project has harmed and will continue to harm Plaintiff.

96. A declaratory action against the Defendants is necessary and useful in resolving and disposing of the question of whether Bronxville’s zoning code and the design and marketing of the Project by all Defendants constitute discrimination in violation of federal and state fair housing laws. A declaratory judgment is an effective and speedy means for finalizing the controversy between the parties as to this issue.


WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants as follows:

- a. Declaring that Defendants’ actions violate federal and state fair housing law prohibitions against discrimination on the basis of familial status and age;
- b. Permanently enjoining Defendant Village of Bronxville from utilizing an “age-targeted” category in the Village Code, zoning ordinances, site plans, and building permits;
- c. Enjoining all Defendants:
 - i. From implementing an “age-targeted” development plan at the Kensington Road Project;

- ii. To make all necessary revisions to their plans to ensure non-discrimination in the design, marketing, and sale of the units in the Project;
 - iii. To make all necessary modifications to their policies, practices, and zoning ordinances to comply with fair housing laws;
 - iv. To train all Defendants' officials, owners, principals, and employees on fair housing laws; and
 - v. To adopt and implement an affirmative marketing plan for the Kensington Road Project;
- d. Awarding damages to Plaintiff;
 - e. Awarding reasonable attorneys' fees and costs under 28 U.S.C. § 2412, 42 U.S.C. § 3613(c) and New York Exec. Law § 297(10); and
 - f. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 15, 2015

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: 
Diane L. Houk
Zoe Salzman

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiff Westchester Residential Opportunities, Inc.