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June 23, 2010

Mary Ann M. Russ
President and CEO
Housing Authority of the City of Dallas
3939 North Hampton Road
Dallas, TX, 75212

Re: Cliff Manor and housing the homeless

Dear Ms. Russ:

As you know and have forcefully explained to the public, the Fair Housing Amendments Act (FHAA) protects handicapped persons from housing discrimination. This includes the persons who are slated for occupancy at the Cliff Manor DHA project. The neighborhood's and elected officials' opposition to these persons' tenancy at Cliff Manor is clearly and overtly based on the future tenants' perceived status as having or having had a mental impairment. That fact is not disputable. This letter contains the basis for any action that Daniel & Beshara, P.C. would file on behalf of any of the proposed tenants who would need legal action to obtain a dwelling unit for which they are eligible and on the list to obtain. These arguments would also apply to possible tenants who may not yet be in the queue for the units but who would meet the eligibility requirements and be likely to reside in such units but for the opposition making the units unavailable. Your position has been unwavering in support of the individuals' legal right to reside in the units. This letter is to support your position and to provide you and DHA with the knowledge that if anyone else in the position to effectively refuse access to the units on the basis of the overt discrimination or a pretext for that discrimination does so, they will be breaking the law and subjecting themselves and their organizations to legal action, court orders, damages, and attorney fees. If this happens, Daniel & Beshara, P.C. is likely to represent one or more such persons. I know of at least one person slated for occupancy at Cliff Manor who has met with an attorney.

The Fair Housing Amendments Act makes it unlawful to discriminate "in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap" and discriminating "against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap." The Act defines "dwelling" as "any building, structure, or portion

thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." The term "handicap" is defined as having "a physical or mental impairment which substantially limits one or more of such person's major life activities" or having a record of such. Persons who illegally use or are addicted to controlled substances are specifically exempted from the "handicap" designation. But homeless people or others who are recovering from substance abuse have been ruled a handicapped population under the FHAA as well. 42 U.S.C. § 3604(f). While much of the case law concerns illegal government action, any landlord or seller, profit or non-profit, who refuses to rent or sell on the basis of a mental impairment or other person who interferes with the rental or sale of a unit because of mental impairment status is also violating the FHAA.

Under the FHAA, courts have held that it is illegal for a municipality to deny a use permit to a proposed group home for handicapped persons. See generally *Groome Resources L.L.C. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000) (affirming an injunction based on the FHAA forbidding a municipality from interfering in the grant of a use permit to a for-profit group home for Alzheimer patients); see also *U.S. v. City of Jackson*, 318 F.Supp. 2d 395 (S.D. Miss. 2002).

In *U.S. v. Jackson*, the city of Jackson, Mississippi was held in contempt of a consent decree after it denied a special use permit for a group shelter for abused and neglected children. The consent decree came in 1997 after the city was sued by the United States for failure to enforce the FHAA's provision for "reasonable accommodations in rules, policies, practices, or services" for handicapped persons when it refused to grant a permit for a group home for elderly women with Alzheimer's in a single-family residential district. As part of the decree, the city amended its zoning laws to comply with the consent decree, allowing single-family zoned houses to be used for group homes for up to six people, and requiring a special-use permit as a formality for using single-family zoned houses for between six and twelve people. In 1998, however, the non-profit group Christians in Action (CIA) attempted to move its emergency children's shelter to a suburban subdivision. Neighbors asserted that this was not a permit, but a "rezoning," that would alter the nature of their community, lower property values, and that the shelter was a business that would increase crime in the neighborhood. Despite expert testimony that the children sheltered by CIA had mental illnesses as a result of abuse and thus were a protected class under the FHAA, the city council denied the permit. The city declined to specify how the requested accommodation was not reasonable under the FHAA. The U.S. attempted to resolve the issue informally with the city (as mandated by the consent decree) and asked the city to provide its reasons for denying the accommodation, the evidence it relied on for deciding the children were not handicapped under the FHAA, and how the requested accommodation was not reasonable. The city did not respond, but instead took up the vote again. At the meeting, the city relied on the same evidence as before and again denied the permit. In a response to the U.S., the city merely said "the record [spoke for itself]" and that it "acted properly." After the U.S. filed for civil contempt of the consent decree, the city went back and granted CIA the permit. The court held that the city erred in denying the special-use permit, declaring that CIA easily met all the criteria required by the FHAA, and that the city's belated change of mind did not constitute a "good faith" resolution on its part and did not preclude holding it in contempt.

The homeless are considered a handicapped population under the Fair Housing Act. Courts have held that the homeless constitute a handicapped population for "reasonable accommodation" and other purposes under the FHAA. See *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941, 942 (9th Cir. 1996) (finding that a homeless population of which 75 percent have "mental impairment that affects a major life activity" is a class protected under the FHA and holding invalid city conditions for a special use permit for homeless shelter). Courts have also held the language of the FHAA to protect those receiving treatment for substance addiction by classifying them as handicapped. *City of Edmonds v. Washington State Building Code Council*, 18 F.3d 802 (9th Cir.1994). The *Edmonds* court judged that "[p]articipation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped" in reversing a lower-court ruling that a city regulation limiting the number of unrelated persons allowed to live in a single-family home was exempt from the FHAA. Id. at 804.

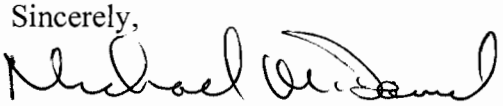
Lawsuits by private parties seeking to enjoin homeless persons from housing may give rise to liability under FHAA § 3617, but only if they do not have a reasonable basis. Action that goes beyond free-speech activity by private parties and that interferes with the right to reasonable accommodation and that seeks to make dwelling unavailable to protected classes is also actionable under the FHAA. *U.S. v. Wagner*, 940 F. Supp. 972 (N.D. Tex. 1996). In *Wagner*, a group of neighbors objected to the sale of a house by the Pine family to a local government agency, Tarrant County Mental Health and Mental Retardation (TCMHMR) which intended to use the dwelling as a group home for mentally retarded individuals. Id. The Judge ruled that the neighbors' petition to the county commissioner and their leafleting activities in the neighborhood trying to mobilize support for preventing the sale were lawful First Amendment free-speech activities, if "appalling." *U.S. v. Wagner*, 930 F. Supp. 1148, 1153 (N.D. Tex 1996) (subsequent judgment on damages). However, the neighbors also filed suit in state court seeking to enjoin the sale of the home to TCMHMR based on a deed restriction. The Judge also held that the state court lawsuit violated FHA § 3617 because the lawsuit did not have a reasonable basis in fact or law, was not protected expression under the First Amendment, and was filed with an illegal objective because it sought to interfere with the FHAA's statutory protection for handicapped people. *Wagner*, 940 F. Supp. 972 at 978-982. The district court relied on the defendants' free-speech activities as evidence of intent to interfere in holding them liable for violating the FHA. Id. at 980. The argument that Cliff Manor needs a specific use permit because a case worker will be on the premises is just such an argument without a reasonable basis in law or fact.

Conclusion

The Fair Housing Amendments Act's protects handicapped people from interference in attaining housing. 42 U.S.C. §§ 3604, 3617. Courts have held that the homeless constitute a handicapped population provided they are not addicted, or are recovering from an addiction. Turning Point, Inc. v. City of Caldwell, 74 F.3d 941, 942 (9th Cir. 1996). Under the FHAA, government may incur liability if it interferes with the right to housing of handicapped persons. *Groome Resources L.L.C. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000); *U.S. v. City of*

Jackson, 318 F.Supp. 2d 395 (S.D. Miss. 2002). Private parties may also face civil liability for interference under the FHAA if they participate in unreasonable litigation to try to enjoin handicapped persons from lawful housing. *U.S. v. Wagner*, 940 F. Supp. 972 (N.D. Tex. 1996).

Sincerely,



Michael M. Daniel

cc: Michael M. Faenza
President and CEO
Metro Dallas Homeless Alliance