

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. DESIGN BUILDERS, INC., Defendant.	Case No.: 2019 CA 005865 B Judge Jason Park
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CONSENT ORDER

This Consent Order (Order) is entered into between plaintiff District of Columbia (the District) and defendant Design Builders, Inc. (Design Builders) to resolve the above-captioned case. The District and Design Builders (collectively, the Parties) agree to the entry of this Order.

I. THE PARTIES

1. Plaintiff the District of Columbia, a municipal corporation, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Office of the Attorney General for the District of Columbia is authorized to investigate, file and resolve legal actions seeking injunctive relief, restitution, civil penalties, attorney's fees and costs for violations of the District of Columbia's laws, including the District of Columbia Human Rights Act (HRA), D.C. Code §§ 2-1401.01, *et seq.*

2. Design Builders is a licensed, bonded and insured home-improvement contractor that provides services in the Washington metropolitan area.

II. THE DISTRICT'S ALLEGATIONS

3. The District alleges as follows:

a. The HRA provides that “it shall be an unlawful discriminatory practice to ... for a discriminatory reason based on ... place of residence or business of any individual ... deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations.” *Id.* § 2-1402.31(a)(1). “Place[s] of public accommodation” include “establishments dealing with goods or services of any kind.” *Id.* § 2-1402.02(24). The HRA prohibits such establishments from providing fewer services based on the location of potential customers’ residences unless justified by a business necessity. *See Mitchell v. DCX, Inc.*, 274 F. Supp. 2d 33 (D.D.C. 2003) (holding that defendant taxicab service (a public conveyance) had discriminated against the plaintiffs based on their place of residence because of lower pickup rates in the Anacostia neighborhood of the District that were not justified by some business necessity); D.C. Code § 2-1401.03 (business necessity exception applies only where defendant can show “that, without such exception, such business

cannot be conducted;" "increased cost to business" and "business efficiency" do not merit application of the exception).

- b. Design Builders offers design and building services, primarily specializing in unique deck designs and other exterior living spaces such as patios, outdoor kitchens and screened-in porches in portions of Virginia, Maryland and the District of Columbia.
- c. Design Builders' service area excludes portions of the District, including areas east of the Anacostia River.
- d. The District identified two instances of Design Builders' unlawful place-of-residence discrimination. When responding to two separate requests for services east of the Anacostia River—one by a District resident and the other by the District's investigator—Design Builders refused to service the area. Design Builders stated to the resident in a text message that it does not "work over the Anacostia," and confirmed to the investigator over the phone that its "easternmost territory ends at the Anacostia River."
- e. Design Builders is a "place of public accommodation" under the HRA.
- f. Design Builders' exclusion of these areas violates the HRA's prohibition on place-of-residence discrimination and is not justified by a business necessity exception.

III. DESIGN BUILDERS' POSITION

- 4. Design Builders states as follows:

- a. Design Builders does not operate from any place within the District of Columbia, and it does not have any office, store or other establishment located in the District of Columbia.
- b. Design Builders' services are not public in nature.
- c. Since 2014, the owner, manager and sole project designer and salesperson of Design Builders has maintained a home office and managed the work of the company out of his home in Bethesda, Maryland. This home address has been the relevant place from which the owner measures his ability to manage jobs in a way that produces quality results and satisfied customers and, therefore, allows him to operate a viable business.
- d. Design Builders does not have now, has never had, and would not tolerate among its employees, any intent to discriminate on the basis of a specific geographic location, or on the basis of the people that live in any specific geographic location, in regards to the provision of services. Design Builders has never had any intent to discriminate against the Anacostia neighborhood of Washington, D.C., and would not allow anyone employed by Design Builders to discriminate against the Anacostia neighborhood or the residents of Anacostia. Design Builders absolutely and unequivocally denies the allegation of discrimination against Anacostia residents and denies that it has in any way violated the HRA.

- e. Design Builders is a small company. The sole salesperson and designer for the company visits homeowners who are interested in Design Builders' services to see and evaluate the potential project site, learn what the homeowners' goals are and develop a design for the potential project. It is feasible for him to perform that sales and design function, manage the administrative work of the business, and visit and manage projects when they are in progress, only if the transportation time is limited to an approximately 30-minute driving distance from his home office in Bethesda, Maryland. If Design Builders' project sites and potential project sites were not limited with respect to transportation time from the home office, they could be spread hours of transportation time apart, and Design Builders could not conduct business under such circumstances.
- f. Design Builders regularly declines requests from people who inquire about Design Builders' services. The company has declined inquiries from numerous locations in Maryland, Virginia, Washington, D.C., and beyond that cannot be reached within approximately 30 minutes from the owner's home in Bethesda, Maryland. Design Builders' decision to decline those inquiries has nothing to do with the character of the locations themselves or any animus or discriminatory intent or reason toward those locations. Instead,

these are business decisions based on the owner's business judgment about what is necessary for his ability to conduct business.

- g. The foregoing explanation of Design Builders' service area was provided by the owner of Design Builders to the District investigator that "requested an estimate for service to a front porch and rear deck on a house located in the 20020 zip code" as referenced in paragraph 26 of the District's complaint; however, that correspondence was not included in either the statement of facts or as an exhibit to the complaint filed by the District. Indeed, contrary to the allegation in paragraph 18 of the District's complaint that Design Builders' service area "is not based on a neutral policy of, for example, distance from the company's headquarters," that is precisely the nature of Design Builders' service area that was conveyed to the District's investigator before the complaint was filed.
- h. Design Builders does not base its service area on crime statistics.
- i. Design Builders is not a "place of public accommodation" under the HRA.
- j. Even if Design Builders were a "place of public accommodation" under the HRA, Design Builders' establishment of a service area based on driving distance from the sole owner and salesperson's home business address and functional headquarters does not violate the HRA, with or without the business necessity exception.

IV. THE DISTRICT'S REBUTTAL

5. The District disagrees with Design Builders' position to the extent that Design Builders contends that it is not a place of public accommodation under the HRA. The District further disagrees with Design Builders' position to the extent that it asserts it maintains a neutral service area based on a fixed radius. Design Builders' owner's statement stating as such, made after Design Builders denied service to residents because they lived east of the River, does not negate the District's claims.

V. THE PARTIES' AGREEMENT

6. The Parties disagree as to the facts of this case, but, in an effort to resolve this case without further litigation, agree to settle this matter without acknowledgment of wrongdoing. The Parties voluntarily agree to the entry of this Order without trial or adjudication of any issue of fact or law as a full and final compromise settlement of all claims that the District has brought or could have brought in this case, and the District will take no further enforcement action against Design Builders as a result of the facts alleged in Case No. 2019 CA 005865.

VI. APPLICATION

7. The provisions of this Order shall apply to Design Builders and its principals, officers, directors and employees operating in the normal course of their employment with Design Builders. The provisions of this Order shall also apply to contractors who provide services to Design Builders when such contractors are offering services in the District on behalf of Design Builders.

8. The provisions of this Order, including all terms of injunctive relief set forth herein, shall apply to Design Builders for so long as Design Builders offers services in Washington, D.C.

VII. INJUNCTIVE TERMS

9. Design Builders shall not engage in any practice with respect to its offering of services or transaction of business in the District that violates the HRA, D.C. Code § 2-1402.31.

10. If Design Builders continues to offer services in the District, Design Builders shall offer services to all parts of the District on even terms. Design Builders shall not exclude any portion of the District from its service area while offering services in another portion of the District. Design Builders is free to cease offering services in the District and exit the District market at any time.

11. For so long as Design Builders continues to offer services in the District, Design Builders shall maintain written policies that reflect the District of Columbia's laws regarding discrimination based on place of residence or business and other protected categories under Section 2-1402.31. Design Builders shall provide the policies required under this paragraph to all current employees, management and corporate officers, as well as contractors who provide services to Design Builders when such contractors are offering services in the District on behalf of Design Builders, within 30 days of the date of this Order. Within the first 14 days of an individual's employment, Design Builders shall provide the policies as required under this paragraph to all new employees hired after the date of this Order. Within the

first 14 days of hiring or selecting a new contractor, Design Builders shall provide the policies as required under this paragraph to any contractor who first does business for Design Builders in the District after the date of this Order. Design Builders shall also provide the policies required under this paragraph to the District within 30 days of this Order.

12. For so long as Design Builders continues to offer services in the District, Design Builders shall provide training to all employees and management on Section 2-1402.31 of the HRA regarding discrimination based on place of residence or business and other protected categories within 60 days of this Order.

13. For a period of two years after entry of this Order, on an annual basis, Design Builders shall submit to the District a sworn statement identifying any complaints received by Design Builders alleging a violation, either formally or informally in writing or orally, of the HRA. The statement shall include: (i) the date of the complaint and alleged incident; (ii) a summary of the complaint and alleged incident; and (iii) the remedial measures taken by Design Builders with respect to the complaint and alleged incident.

VIII. MONETARY PROVISIONS

14. Within 30 days of the date of the entry of this Order, Design Builders shall pay the District a total of \$15,000.00 (Fifteen Thousand Dollars) to resolve all claims related to the claims that the District has brought or could have brought in

this case. Payment under this paragraph shall be by check, made payable to the D.C. Treasurer and delivered to the District.

IX. ADDITIONAL TERMS

15. This Consent Order represents the full and complete terms of the settlement entered by the Parties.

16. The Parties will file a stipulation of dismissal with prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Superior Court Rules of Civil Procedure upon delivery of the payment to the District identified in paragraph 14 of this Order and the policies identified in paragraph 11.

17. The Parties may apply to the Court to modify this Consent Order by agreement at any time.

18. This Order does not constitute an admission by Design Builders: (i) of any wrongdoing or any violation of the HRA, or (ii) that the amount paid constitutes a fine or penalty. The District shall not state, represent, or imply in any format that Design Builders admitted any wrongdoing or any violation of the HRA, and in all public communications relating to this Order the District shall make clear that Design Builders denied any wrongdoing and that this Order represents the settlement of disputed claims.

19. Design Builders shall deliver a copy of this Order to all corporate officers and management within 30 days of the date of this Order.

20. This Order shall be considered effective and fully executed on the date that the Court enters this Order. This Order may be executed in counterparts, and

copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

21. All notices under this Order shall be provided to the following address by first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District:

James Anthony Towns
Assistant Attorney General
Public Interest Division
Civil Rights Section
400 Sixth Street, N.W.
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For Design Builders:

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1301 K Street, NW
Suite 500 - East
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FOR THE DISTRICT OF COLUMBIA:

KARLA A. RACINE
Attorney General for the District of Columbia

Toni Michelle Jackson
TONI MICHELLE JACKSON
Deputy Attorney General
Public Interest Division

Dated: January 29, 2021

FOR DESIGN BUILDERS:

James Moylan
James Moylan
Owner, Design Builders

Dated: 2-28-21

IT IS SO ORDERED, ADJUDGED AND DECREED.

2/1/2021
Date

Jason Park
The Honorable Jason Park
Judge, The Superior Court of the
District of Columbia