STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HB60HW-64910
HUD FILE NO. 02-14-0688-8

Madonna Mauro,	)	
	)	
Complainant,	)	Administrative Action
	)	
v.	)	**FINDING OF PROBABLE CAUSE**
	)	
Penwal Affordable Housing Corp.,	)	
	)	
Respondent.	)	

On October 16, 2014, Garfield resident Madonna Mauro (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her housing provider, Penwal Affordable Housing Corp. (Respondent), discriminated against her based on disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR investigated the matter and now finds—for purposes of this disposition only—as follows.

Respondent operates a 36-unit affordable housing complex for senior citizens ages 62 and over, in Garfield, Bergen County, New Jersey. On September 18, 2013, Complainant and Respondent entered into a one-year lease agreement for a one-bedroom apartment for $750 per month. The complex has 24 parking spaces, two of which are designated for persons with disabilities.

On or about November 1, 2014, Complainant moved into the unit. Complainant used a walker and carried an oxygen tank with her at all times because she had mobility impairments and was oxygen dependent.

On April 8, 2014, Complainant sent a letter to Respondent's Vice President, James Walsh, asking for a reserved parking space. She wrote in part:

> I love my apartment, and for the most part, I am very happy here. However, the parking situation has become a serious concern for me do [*sic*] to my disability. On several occasions, I return [*sic*] home to find the two handicap designated spots occupied. I fully understand that anyone is entitled to use the spots providing they have a handicap license plate or placard indicating their need. However, the spot is frequently occupied by tenants who although they have a placard, clearly are not disabled. The situation creates a misuse of the original intention for the need of parking for the handicap and disabled. Due to my disability, walking any distance, even a few extra feet, from a further spot creates a dangerous and unhealthy situation for me.
>
> Therefore, I am requesting a special accommodation, for a designated parking spot, one that is adjacent to either handicap spot.

Walsh orally denied Complainant's request. There is no indication that Respondent provided a reason for the decision to Complainant. There is no indication that Respondent ever discussed with Complainant—or considered internally—the possibility of an alternate accommodation.

During the ensuing investigation, Respondent told DCR that 22 of its tenants have cars registered at the complex, and that six of those tenants have disability parking permits issued by the New Jersey Motor Vehicle Commission. Respondent argued to DCR that designating a space for Complainant's exclusive use would have caused an administrative and financial hardship. It noted in part:

> [T]his is a senior citizen affordable housing project. It has limited parking, and the reservation of any one parking space removes that space from use by the remaining tenants. The building does not have full time staff, and enforcement of reserved parking spaces is not something that is provided for in the planning or operation of any of these projects. . . . Of even greater concern, is what would happen if there were to be reserved parking spaces provided for persons who could not regularly secure a handicapped parking spot. Upon approval of one, there would most likely be requests for approval of others, and most certainly the parking situation would become more severe for all tenants who did not have a handicapped plate or a reserved space.
>
> [See Letter from Louis M. Flora, Esq., to DCR, Dec. 11, 2014.][1]

[1] In that same letter, Respondent asked DCR for "medical evidence that show that Complainant cannot walk as much as one hundred feet (100'), from one of the other parking spaces, as a consequence of her

Complainant, who became hospitalized during the course of the investigation, died on April 6, 2015.

Analysis

The LAD is "remedial legislation" designed to root out the "cancer of discrimination," Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996). In enacting the law, the New Jersey Legislature declared that "discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State." N.J.S.A. 10:5-3; see also L.W. v. Toms River, 189 N.J. 381, 399 (2007) (noting "[f]reedom from discrimination is one of the fundamental principles of our society").

Because of the LAD's remedial purpose, courts have adhered to the Legislative mandate that the statute be "liberally construed," N.J.S.A. 10:5-3, by consistently interpreting the LAD "with that high degree of liberality which comports with the preeminent social significance of its purposes and objects." Andersen v. Exxon Co., 89 N.J. 483 (1982); Zive v. Stanley Roberts, Inc., 182 N.J. 436, 446 (2005).

In New Jersey, it is "unlawful for a housing provider to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling." Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 312 (App. Div. 2004) (quoting N.J.A.C. 13:13-3.4(f)(2)) (quotations omitted); see also N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(g). The duty to provide a reasonable accommodation for a resident with a disability "does not necessarily entail the obligation to do everything possible to accommodate such a person; cost (to the defendant) and benefit (to the plaintiff) merit consideration as well." Oras, supra, 373 N.J. Super. at 315.

Guided by those principles, courts have held, for example, that it would violate the LAD for a "condominium association [to fail] to provide a reasonable parking space accommodation in the

handicap." Ibid.

parking lot common element sufficient to afford [a resident with a disability] an equal opportunity to the use and enjoyment of her condominium unit." Estate of Nicholas v. Ocean Plaza Condo. Assoc., 388 N.J. Super. 571, 591 (App. Div. 2006).

At the conclusion of an investigation, the Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial "culling-out process" whereby the DCR makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

Here, Respondent does not dispute that Complainant was a person with a disability or that she requested a parking accommodation, or that it denied her request. Instead, it argues that granting the request might have opened the floodgates to similar requests for designated parking which, in turn, might have limited parking for other tenants:

> [W]hat would happen if there were to be reserved parking spaces provided for persons who could not regularly secure a handicapped parking spot. Upon approval of one, there would most likely be requests for approval of others, and most certainly the parking situation would become more severe for all tenants who did not have a handicapped plate or a reserved space.
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> [See Letter from Flora to DCR, supra, Dec. 11, 2014.]

To survive scrutiny, an undue hardship defense must have a strong factual basis. Although a housing provider is not required to determine with mathematical certainty whether granting a

tenant's request would cause it to suffer an undue hardship, the decision cannot be based on sheer conjecture without a substantial evidential basis. The housing provider must evaluate each request on an individual basis and not merely speculate that a suggested accommodation is not feasible based on an imagined parade of horribles. There is no persuasive evidence that any such analysis occurred in this case. Ultimately, Respondent's fear that granting that single request would have inevitably mushroomed into a torrent of similar requests which, in turn, would have created an untenable situation, may be well-founded. But those circumstances have not yet been established.

Moreover, it appears that Respondent failed to engage Complainant in an interactive process to determine whether her medical need was heightened above other tenants who have disabilities and/or whether an alternative accommodation would be effective. See, e.g., Jankowski Lee & Assocs. v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996) ("If a landlord is skeptical of [its] ability to provide an accommodation, it is incumbent upon the landlord to . . . open a dialogue."); cf. Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 402-404 (App. Div. 2002).

Based on the above, the Director is satisfied at this preliminary stage of the process, that the circumstances of this case support a "reasonable ground of suspicion . . . to warrant a cautious person in the belief" that probable cause exists to support the allegations of disability discrimination based on a theory of failure to provide a reasonable accommodation. N.J.A.C. 13:4-10.2,

DATE: 9-17-15

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS