

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 6676-02
DCR DOCKET NO. PD12WB-02672
Decided: February 21, 2003

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VITO ALBANESE, SR., Guardian)	
Ad Litem for VITO ALBANESE, JR.,)	
)	
Complainant,)	
)	
v.)	ADMINISTRATIVE ACTION
)	
MORNINGSIDE GROUP HOME,)	
)	FINDINGS, DETERMINATION AND ORDER
)	
Respondent.)	
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APPEARANCES:

Vito Albanese, Sr., o/b/o Vito Albanese, Jr., complainant, *pro se*

Hardin, Kundla, McKeon, Poletto & Polifroni, Attorneys At Law (Jeffrey A. Oshin, Esq., attorney) for the respondent

BY THE DIRECTOR:

I. INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by the complainant, Vito Albanese, Sr.(Complainant), Guardian Ad Litem for Vito Albanese, Jr., alleging that the respondent, Morningside Group Home (Respondent), subjected him to unlawful discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Specifically, Complainant alleges that Respondent unlawfully refused to reasonably accommodate his physical and mental handicaps.

On January 13, 2003, the Honorable Solomon A. Metzger, Administrative Law Judge (ALJ), issued an initial decision dismissing the complaint. Based on the Director's independent review of

the record, including the initial decision, pleadings, and exhibits (no exceptions or replies were submitted), the Director adopts the initial decision of the ALJ dismissing the complaint as modified herein to clarify the legal standards applicable to this matter.

II. PROCEDURAL HISTORY

This matter arose on July 30, 2001, when Complainant filed a verified complaint with the Division charging that Respondent subjected his son to unlawful discrimination by refusing to reasonably accommodate his son's disabilities in the group home in which he resided. Respondent filed an answer to the complaint denying the charges of discrimination.

Pursuant to Complainant's request dated August 28, 2002, the Division transmitted this matter to the Office of Administrative Law (OAL) for an administrative hearing. On October 8, 2002, Respondent filed a motion to dismiss the complaint, together with supporting brief, arguing that Complainant's action is barred by the LAD's statute of limitations. On October 9, 2002, Complainant requested a one month extension of time to obtain an attorney and respond to Respondent's motion. The ALJ granted Complainant's request. A second request for an extension was also granted by the ALJ. On December 18, 2002, Complainant, acting pro se, filed an answer to Respondent's motion, and on January 13, 2003, the ALJ issued an initial decision (ID) dismissing the complaint.

III. THE ALJ's FINDINGS AND DETERMINATIONS

The ALJ treated Respondent's motion as a motion for summary decision pursuant to N.J.A.C. 17:27-12.5 and, accordingly, considered the evidence in the light most favorable to Complainant (ID 1-2). Applying this standard, the ALJ found the following facts to be dispositive of Respondent's motion. Complainant's son, Vito "Billy" Albanese, Jr. (Billy), was born in December 1971 and is orthopedically and mentally impaired. From November 1993 through April 1997, he resided in facilities operated by Bancroft NeuroHealth, an organization that, among other things, provides rehabilitative services to people with disabilities. Initially, Billy resided at Bancroft's Mullica Hill

campus, which has a barrier free environment, but in August 1995 he was transferred to Bancroft's Morningside Group Home in Cherry Hill (Morningside), which failed to provide a barrier free environment. Morningside provides supervised living and Billy resided with four house mates and staff. However, it is alleged that Billy could not readily move about during the 20 months he spent at Morningside. He left Morningside in April 1997. Complainant filed his verified complaint with the Division on July 30, 2001 (ID 2).

Based on these findings, the ALJ concluded that Complainant's claim is untimely and must be dismissed (ID 3). In support of this conclusion, the ALJ found that the conduct alleged to have been discriminatory ended in April 1997, when Complainant departed Morningside, thereby terminating his relationship with Banroft NeuroHealth (ID 2). Thus, the ALJ concluded that, because Complainant filed his complaint more than four years after his last day at Morningside, his claim was filed well beyond the LAD's statute of limitations and, therefore, must be dismissed.

IV. THE DIRECTOR'S FINDINGS AND DETERMINATIONS

Summary decision may be granted if "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). To defeat a motion for summary decision, the opposing party must submit evidence demonstrating that there is a genuine issue which can only be determined in an evidentiary proceeding. Ibid. Therefore, the decision maker must determine whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995). See also Kelly v. Bally's Grand, Inc., 285 N.J. Super. 422, 434-35 (App. Div. 1995). Under this standard of review, the Director must affirm the ALJ's decision if the evidence "is so one-sided that one party must prevail as a matter of law..." Brill v. Guardian Life Ins. Co. of America, supra at 540, quoting Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1996). In deciding this matter, the Director adopts the ALJ's findings of fact as set forth in his initial decision (ID 2).

The statute of limitations for filing complaints with the Division under the LAD is 180 days. N.J.S.A. 10:5-18.¹ In general, "the statute of limitations period does not commence until the final act has occurred or the conduct has ceased." Mancini v. Township of Teaneck, 349 N.J. Super. 527, 555 (App. Div.) 2002. However, New Jersey courts have recognized the continuing violation doctrine as an equitable exception to the statute of limitations if a charging party can demonstrate that each asserted act of discrimination by a defendant is part of a pattern of discriminatory conduct. Shepherd v. Hunterdon Developmental Center, 174 N.J. 1, 6-7 (2002). Nevertheless, in order to prevail on a continuing violation theory, the plaintiff must demonstrate that at least one act of harassment or discrimination occurred within the statutory limitations period. Id. at 7, citing West v. Philadelphia Elec. Co., 45 F.3d 744, 754-55 (3d Cir. 1995).

In the present case, it is undisputed that the complaint was filed on July 30, 2001, at least four years after the last day Complainant's son was a resident at Respondent's facility. Thus, Complainant's filing was clearly beyond the 180 day statute of limitations for filing a complaint with the Division (and also beyond the two year statute of limitations for filing a complaint in the Superior Court of New Jersey). Moreover, no evidence has been submitted which, even if viewed in a light most favorable to Complainant, would support a finding that Complainant's charge would be timely under a continuing violation theory. Accordingly, the Director concludes that there is no genuine issue as to any material fact in this matter, and he therefore adopts the ALJ's determination that this claim is time barred in that it was not filed within the applicable statute of limitations period.

¹The ALJ somewhat inaccurately states that the LAD is governed by a two year statute of limitations (ID 2). While the statute of limitations for filing such claims in the Superior Court of New Jersey is two years, Montells v. Haynes, 133 N.J. 282 (1993), administrative complaints filed with the Division pursuant to the LAD must be so filed within 180 days after the alleged act of discrimination, N.J.S.A. 10:5-18.

VII. ORDER

Having conducted a thorough and independent review of the record, and for the all of the foregoing reasons, the Director adopts the ALJ's initial decision dismissing the complaint based on the ALJ's determination that the complaint was not timely filed.

DATE: _____

J. FRANK VESPA-PAPALEO, ESQ.
DIRECTOR
NEW JERSEY DIVISION ON CIVIL RIGHTS