STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HP29MW-66085

S.S.,	)	
	)	Administrative Action
Complainant,	)	
	)	**FINDING OF PROBABLE CAUSE**
v.	)	
	)	
Knoll Manor Associates,	)	
	)	
Respondent.	)	

On August 25, 2016, Morris County resident S.S. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that his landlord, Knoll Manor Associates (Respondent), refused his request for a reasonable disability accommodation, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent, located at 820 Morris Turnpike, Short Hills, owns and operates a 1,108-unit apartment complex in Lake Hiawatha called the Knoll Gardens. On January 7, 2015, Respondent entered into a one-year lease agreement to rent a one-bedroom apartment to Complainant and his girlfriend, A.M., for $975/month. The lease agreement contains a no-pet clause (i.e., "NO PETS ARE ALLOWED IN THE APARTMENT OR ON THE COMPLEX GROUNDS.")

In August 2015, Complainant and A.M. moved to a two-bedroom apartment in the same complex and signed a new one-year lease that contained the same no-pets clause. Complainant and A.M. have no pets.

Complainant told DCR that he has received on-going treatment from a psychiatrist for depression and anxiety.

On or about July 21, 2016, Complainant submitted a handwritten note from his doctor that stated, "[Complainant] is under my care and requires a service dog as part of his treatment." See Jan. M. Chrobok, D.O., Prescription, Jul 15, 2016. The prescription pad identifies the doctor as being Board-certified in psychiatry and neurology.

Complainant also submitted a typewritten letter from the same doctor recommending that he be allowed to have a dog to treat his anxiety and depression. The letter stated: "[Complainant] is under my care and will require the need [*sic*] for service dog to help with his condition. He is being treated for anxiety and depression." See Letter from Jan M. Chrobok, D.O., to "To Whom it May Concern," Jul. 18, 2016.

On or about July 21, 2016, Respondent told Complainant by telephone that his request was denied. Later that same day, Respondent's attorney spoke to Complainant via telephone and told him that based on the documentation he submitted, it was counsel's position that he did not qualify for a "service animal." See Respondent's Answer & Affirmative Defenses, Oct. 17, 2016, at ¶11. Counsel claims that Complainant "proceeded to ask [the attorney] what his paperwork needed to say in order to qualify." Ibid.

On or about August 5, 2016, Complainant sent another doctor's note to Respondent's attorney that said:

> [Complainant] is under my care for anxiety and depression. In the past when he had a dog which was an important part of his life and helped him a great deal with his anxiety and also his depression. The dog reduced his severe anxiety and was part of his therapy needs. I am therefore requesting that he be permitted to have a dog in his home.
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> [See Note from Jan M. Chrobok, D.O., to "To Whom it May Concern," Jul. 18, 2016.]

Respondent did not respond to that third note. Complainant does not currently have an emotional support animal (ESA) and contends that Respondent's refusal to accept the three notes from his doctor amounts to disability discrimination.

Respondent denied the allegations of discrimination in their entirety. It argues that at best, Complainant failed to meet his burden of establishing that he has a disability and, at worst, he concocted the claim "as a means of extorting Respondent into giving him a job." See Respondent's Answer, supra, at ¶26.

As to the first point, Respondent "does not dispute that Dr. Chrobok has diagnosed [Complainant] with some level of anxiety and depression," but argues that the content of the notes was insufficient to establish a disability. Id. at 25. In particular, Respondent found it significant that Dr. Chrobok never characterized the condition as a "disability," and never claimed that Complainant's condition "substantially limited one or more of his major life activities." See Respondent's Answer, supra, at ¶10.

As to the second point, Respondent found it significant that after Complainant filed the instant complaint with DCR, he sent a text message to Trina Greenzweig, who is a part-time employee and tenant, offering to drop the matter if Respondent would give him a job. Respondent produced a screenshot of the text exchange:

Greenzweig:	I doubt he will hire you. Yossie won't let him. He also just found out your suing knoll gardens so I really don't think that's gonna happen. Lol
Complainant:	He found out how u know???
Complainant:	Hahaha tell him I drop the lawsuit if he gets me a job hahahahahaa
Complainant:	How did he find out
Greenzweig:	I guess the lawyer sent him a letter
Complainant:	Oooo well ya it's basically all now going into action
Greenzweig:	Good luck, I hope all goes wee!
Greenzweig:	Well!
Complainant:	Thanks ma

Greenzweig told DCR that she and Complainant are long-time family friends. She said that she has known Complainant since he was a child and she treats him like a son. Greenzweig acknowledged that she forwarded the exchange to her supervisor, Property Manager John Coronado. Complainant and Greenzweig told DCR that there was no job opening and the text exchange was a joke between them.

Respondent claims that it contacted Dr. Chrobok during the course of the DCR investigation but he "refused to provide any additional information outside of what was provided in his letter and would not elaborate on his relationship with Complainant." See Respondent's Answer, supra, at ¶15. Respondent argues:

> Respondent accepted and evaluated all proofs submitted by Complainant. Respondent even took an extra step, upon advice of the DCR investigator, and reached out to Complainant's physician who would not provide information outside of what was included in the letters. Therefore, the only facts upon which Respondent can base its analysis of Complainant's accommodation request are (1) deficient doctor's notes, and (2) Complainant's attempt to use this Complaint to extort Respondent into giving him a job.
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> [See Respondent's Answer, supra, at ¶23]

Dr. Chrobok acknowledged writing the letters in support of Complainant's accommodation request, but told DCR that he had no recollection of anyone from the landlord's office or an attorney representing the landlord, ever calling him to discuss the letters. When asked if it was possible that he spoke to someone but simply forgot, Dr. Chrobok replied that he will note in a patient's records when someone calls him to discuss that patient. He said that if someone calls about one of his letters, he will confirm writing the letter but will not elaborate on his patient's medical condition or treatment because of HIPAA laws.

Complainant told DCR that if Respondent were to approve his request for an ESA, he would adopt a small dog.

Analysis

At the conclusion of an investigation, the DCR 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. It is merely an initial "culling-out process" whereby the Director 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.

The LAD bans housing discrimination based on disability. N.J.S.A. 10:5-12(g); N.J.S.A. 10:5-4.1. Disability discrimination includes a refusal 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." N.J.A.C. 13:13-3.4(f)(2).

A request to relax a no-pets policy is a request for a reasonable accommodation. Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 315 (App. Div. 2004) ("Whether a pet is of sufficient assistance to a tenant to require a landlord to relax its pet policy so as to reasonably accommodate the tenant's disability requires a fact-sensitive examination."). Appropriate considerations include whether the occupant has a disability-related need for the animal, whether the animal would alleviate one or more identified symptoms, and whether granting the request would result in an undue financial burden or fundamentally alter the nature of the housing provider's operations. Id. at 315-16 (citing Janush v. Charities Housing Devel. Corp., 169 F. Supp. 1133 (N.D. Cal. 2000) (discussing request for birds and cats that provide companionship)).

The U.S. Department of Housing and Urban Development (HUD) has declared that "emotional support animals provide very private functions for persons with mental and emotional

disabilities. Specifically, emotional support animals by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress." See 24 CFR Part 5, Federal Register, Vol. 73, No. 208, response to comments, (Oct. 27, 2008). [1]

A landlord who contends that a complainant has waived his or her right to an accommodation by signing a lease containing a no-pets provision, runs afoul of Oras, supra, where the Court stated, "A landlord may not relieve itself of [its legal] responsibilities by having a tenant waive his right to a reasonable accommodation of his disability in a lease." Oras, supra, 373 N.J. Super. at 315.

In this case, Respondent argues that Complainant is not entitled to an accommodation because he has not established, or even alleged, that his mental condition "substantially limits one or more major life activity," as required by the Americans with Disabilities Act (ADA). See Respondent's Answer, supra, at ¶¶ 10 & 17. However, the governing statute is the LAD, which unlike the ADA, imposes no such requirement. See N.J.S.A. 10:5-5(q); see also Viscik v. Fowler Equipment Co., 173 N.J. 1, 15-17 (2002) (explaining that "disability" is more broadly defined in the LAD than the ADA). The LAD defines "disability" as follows:

> "Disability" means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

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[1] HUD is charged with enforcing the federal Fair Housing Act, which is the substantial equivalent to the LAD in terms of prohibiting housing discrimination. Although the final rule cited above was issued in regards to HUD-assisted public housing and multifamily housing projects, the rationale is equally persuasive in this instance. See Warren v. Delvista Towers Condo. Assoc., 49 F. Supp.3d 1082, 1087 (S.D. Fla. 2014) (citing Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp.2d 850, 860 (S.D. Ohio 2009) aff'd on other grounds, 415 Fed. Appx. 617 (6th Cir. 2011)).

N.J.S.A. 10:5-5(q); see also Gimello v. Agency Rent-A-Car Systems, 250 N.J. Super. 338, 358 (App. Div. 1991) (noting that the LAD has "no such major life activities handicap requirement."); see also Clowes v. Terminix Int'l, 109 N.J. 575, 593 (1988) (LAD's definition of "disability" is "very broad in its scope.").

The present case is not one in which a complainant relies on a form letter from an out-of-state non-medical source that has never met the tenant but nonetheless swears that the tenant suffers from some undefined disability. Instead, Respondent received three letters from a Board-certified psychiatrist/Board-certified neurologist practicing in New Jersey who stated quite clearly that he is Complainant's treating physician and that in his expert medical opinion, his patient should be permitted to have a dog to alleviate identified symptoms, i.e., depression and "severe anxiety." Indeed, Respondent challenges neither Dr. Chrobok's expertise, nor the authenticity of the letters, nor his professional relationship with Complainant.

Given these circumstances, the fact that Dr. Chrobok did not expressly use the word "disability" is not dispositive. New Jersey courts have warned against standing on ceremony when assessing disability accommodation requests. See e.g., Victor v. State, 203 N.J. 383, 414 (2010) ("[N]either a specific request nor the use of any magic words is needed in order for an employee to be entitled to an interactive process focused on creating or accessing an accommodation."). "Because the purpose of the LAD is to secure to handicapped individuals full and equal access to society, bounded only by the actual physical limits that they cannot surmount, the Act besides being quite broad must also be liberally construed." Tynan v. Vicinage 13, 351 Super. 385, 398 (App. Div. 2002) (citing Andersen v. Exxon Co., 89 N.J. 483, 495 (1982)).

There is a dispute as to whether Respondent's attorney spoke with Dr. Chrobok. Defense counsel claims that she called Dr. Chrobok who acknowledged writing the letters but refused to offer any additional medical information about his patient. Dr. Chrobok told DCR that

he has no record or recollection of that conversation. However, he stated that if he were to receive such a call, he would have responded in that fashion. What is undisputed is that Dr. Chrobok, a Board-certified psychiatrist and neurologist with a history of treating Complainant for stress and anxiety, purposely wrote the letters in support of Complainant's request for a disability accommodation. The Director is satisfied that the letters provided sufficient notice to Respondent that Complainant was claiming a mental disability that was supported by medical documentation from what appeared to be a reliable source.

The Director finds Respondent's reliance on the text message exchange to be somewhat misplaced. At the time the exchange occurred, Respondent had already viewed the three doctor's notes and found them to be insufficient. It had already denied the accommodation requests. Thus, Respondent did not rely on the text messages when reaching the decision at issue. But perhaps the more fundamental point is that Complainant phrased the text message in a way that conveyed that he was merely joking. He wrote, "Hahaha tell him I drop the lawsuit if he gets me a job hahahahahaa."

In view of the above, the Director is satisfied at this threshold stage of the process that the evidence supports a "reasonable ground of suspicion" to warrant a cautious person in the belief that Respondent failed to make "reasonable accommodations in rules, policies, practices, or services . . . necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2). Therefore, the matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

DATE: 6-23-17

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS