STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HR08MT-65799

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| J.S.,<br><br>Complainant,<br><br>v.<br><br>Brooks-Sloate Terrace Cooperative Association, and Colonial Mutual Housing Corporation, Inc.,<br><br>Respondents. | ) | Administrative Action<br><br>**FINDING OF PROBABLE CAUSE** |

On February 11, 2016, J.S. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her housing providers, Brooks-Sloate Terrace Cooperative Association (Brooks) and Colonial Mutual Housing Corporation, Inc. (Colonial), denied her 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

Brooks is a cooperative development located at 9 Christina Place, Paterson, consisting of 200 units owned by shareholders of the cooperative, and 40 rental units owned by the cooperative. Colonial is a property management company that administers the rental units.

Complainant is a Passaic County resident who began renting a three-bedroom apartment from Respondents on or about April 1, 2015, for $1,325 per month, with her two minor children—a daughter (identified herein as D.S.) and son.

On or about November 11, 2015, Colonial's Senior Property Manager, Wineth Stephens, entered the unit with an exterminator for what she characterized as routine pest control service. While inside the unit, Stephens saw what she described as a "white dog caged in the first

bedroom adjacent to the bathroom."[1] The next day, she issued a Notice of Violation that stated that the dog's presence in the apartment violated a no-pets provision in the lease. The notice stated in part:

> Violation of this rule may lead to eviction and**/or $75.00 daily fines after written warning unless said pet is removed promptly and permanently.** . . .
>
> [Y]ou have five (5) business days, that is, no later than Thursday, November 19, 2015, to the date of this letter to cure the matter and provide written/documented proof of what has been done with the pet in terms of removal from the property or be subject to, fines and legal action if necessary. . .
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> [See W. Stephens, Sr. Property Manager, Notice of Violation, Notice to Cease and Desist, Nov. 12, 2015 (emphasis in original).]
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> The lease provision upon which Respondents rely states as follows:
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> Tenant is not permitted to keep animals in the dwelling unit with exception of birds, fish, turtles, gerbils, or other such small animals which are customarily kept in interior cages and containers; however, this does not preclude Tenant from keeping an animal which has special training to help Tenant or a member of Tenant's household to cope with a physical or medical impairment subject to the condition that Tenant has satisfactorily provided medical documented evidence to Brooks-Sloate regarding the training of the animal and the physical impairment. This lease agreement must be amended in writing to allow Tenant to keep pets other than those mentioned with in this paragraph and such amendment must be approved by Brooks-Sloate Terrance [*sic*] which may withhold its consent for any reason.
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> [See Lease Agreement, Apr. 1, 2015, at p 7., ¶ M.]

On November 17, 2015, Complainant met with Stephens, Mary Joyner (President, Board of Directors), Carol Austin (Treasurer, Board of Directors), and Scott Pierkarsky, Esq. (who is representing Respondents in the instant matter). Complainant told DCR that during the meeting, she explained that the dog was a gift to her daughter, D.S., who had been very depressed by her father's death. Complainant stated that she told them that D.S. was attached to the dog and that her condition was improving because of the dog. Complainant told DCR that she told them that she could not part with the dog and would be forced to move out if not allowed to keep the dog.

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[1] Complainant told DCR that dog is a twelve pound Shih Tzu.

On November 18, 2015, Complainant submitted a written request to meet with the full Board to discuss her situation. Complainant wrote in part, "My daughter made the honor roll. I am so proud of her. It's been many years since she had all A's and B's. She is definitely improving!" See Complainant, Incident/Complaint Report, Nov. 18, 2015.

Piekarsky replied as follows:

> As you know we are legal counsel to your landlord. In connection with your last letter to management, there will be no further meetings or documents provided, as the same is not necessary or required. You are in violation with the dog that you refuse to remove. This matter is now with legal and any further communications on this must be directed in writing to this office only and not management. Thank you.
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> [See Letter from S. Pierkarsky, Esq., to Complainant, Re: Colonial Mut. Housing Assoc., Inc., Nov. 19, 2015.]

That same day, Piekarsky wrote to Complainant directing her to vacate the premises by December 21, 2015, and imposing a $75 per day fine "as long as the dog is on the premises." See Letter from S. Pierkarsky, Esq., to Complainant, Re: Notice to Quit/Vacate/Terminate, Nov. 19, 2015.

On or about December 3, 2015, Complainant presented Respondents with a doctor's note from Vitale Family Medicine, which stated in part:

> My patient [D.S.] has Conduct disorder which has been aggravated by the loss of her father. Pet therapy is a medical treatment that is recommended for her and her ability to heal. I recommend that the patient have a dog @ home for her treatment of this disease.

Respondent did not rescind or modify its violation notice or notice to vacate in response to the doctor's note or initiate any inquiries as to its substance. Instead, it commenced a civil action in Superior Court to evict Complainant and the two children. Complainant contends that the above amounts to illegal disability discrimination.

Respondents denied Complainant's allegations of wrongdoing in their entirety. Respondents argued that Complainant conceded that she violated the no-pets rule and agreed to move out. Respondents stated, "When Complainant delayed in so vacating Respondent,

Colonial Mutual Housing Corporation, Inc., proceeded to evict her though that case was dismissed without prejudice. It is only thereafter that she then came to the Board claiming her daughter needed the dog as her father had recently passed away." See Answer to Verified Complaint, Apr. 19, 2016, p. 1, ¶3. Respondents contend that the dog "is not needed to facilitate any resident's ability to function," id. at p. 3, and that Complainant's characterization of the animal as providing a therapeutic effect was merely "a pretense, pretext and an afterthought to try to keep the dog and to avoid having to move as agreed to by Complainant and Respondent, Colonial Housing Corporation, Inc." Id. at p. 1. Respondents note that "[t]he pet received no specialized training." Id. at p. 3.

**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, but 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 is remedial legislation designed to root out the "cancer of discrimination." Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996). 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. Similarly, the New Jersey Supreme Court has declared that "[f]reedom from discrimination is one of the fundamental principles of our society." L.W. v. Toms River, 189 N.J. 381, 399 (2007).

Among other proscriptions, 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."). In such cases, appropriate considerations include whether the occupant or prospective 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)).

Respondents' affirmative defense that the animal "received no specialized training," would be applicable if evaluating the bona fides of a *service dog*. N.J.S.A. 10:5-29.2. However, it appears that Complainant's dog is more properly characterized as an *emotional support animal.* And for purposes of the LAD, there is a distinction between the two.

A "service dog" is a dog individually trained to do work or perform tasks for a person with a disability. N.J.S.A. 10:5-5dd. Examples of such work include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications,

calming a person with Post Traumatic Stress Disorder during an anxiety attack, or performing other duties. Ibid. Service dogs are working animals, not pets. The work that a dog has been trained to perform must be directly related to the person's disability.

A tenant or prospective tenant has an absolute right to reside with his/her service dog subject to only a few restrictions, e.g., the person is liable for any damages done to the premises of a public facility by his/her guide dog or service animal. N.J.A.C. 13:13-3.4c; N.J.S.A. 10:5-29.[2] Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the LAD. N.J.S.A. 10:5-5dd. Respondents are correct to the extent that they contend that there is no evidence that Complainant's dog was individually trained to perform work directly related to D.S.'s disability and, therefore, does not meet the LAD definition of a service dog.

However, Respondents are mistaken to the extent that it argues that an "emotional support animal" is required to receive "specialized training." The U.S. Department of Housing and Urban Development (HUD), which is charged with enforcing the federal Fair Housing Act (which is the substantial equivalent to the LAD in terms of prohibiting housing discrimination), 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).

"In light of the HUD rule, it is of no moment whether [Complainant's dog] was specially trained." Warren v. Delvista Towers Condo. Assoc., 49 F. Supp.3d 1082, 1807 (S.D. Fla. 2014). The above-cited language from HUD "make[s] clear that an emotional support animal need not

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[2] In addition, the person is responsible for the animal's care and maintenance. For example, a housing provider may establish reasonable rules in lease provisions requiring a person with a disability to pick up and dispose of his or her service animal's waste.

be specifically trained because the symptoms that the animal ameliorates are mental and emotional, rather than physical." Ibid.[3]

Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an emotional support animal. For example, HUD provides:

> [T]he housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.
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> [See HUD, FHEO Notice FHEO-2013-01, Apr. 25, 2013.]

In view of the above, DCR finds, for purposes of this disposition only, that Complainant's dog is an emotional support animal. Respondents do not allege that allowing the animal to remain in the apartment would have created an undue burden. Nor is there is any persuasive evidence that Respondents evaluated the request and supporting documentation from Complainant's medical provider using the general principles applicable to reasonable accommodation analysis. See generally N.J.A.C. 13:13-3.4 (f)(2). There is no evidence that Respondents undertook a "fact-sensitive examination." Oras, supra, 373 N.J. Super. at 315. Instead, it appears that they simply relied on the no-pets provision in the lease, and accused Complainant of misrepresenting the animal and reneging on her vow to move out after she "promised and agreed" to do so. See Answer to Complaint, supra, at p. 2, ¶6.

To the extent that Respondents contend that Complainant waived her right to an accommodation, such would run 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.

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[3] Although the final rule 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)).

DCR takes no position for purposes of this disposition as to the enforceability of a no-pets provision that makes no allowance for tenants with mental disabilities, and which requires a lease amendment but allows Respondents to unilaterally deny a lease amendment "for any reason." Even without making such a determination, 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 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, because there was no persuasive evidence that Respondents attempted to meet their legal responsibility 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). Instead, they attempted to evict Complainant and her children. And although the animal continues to reside in the unit, Complainant is subject to a $75 a day fine.[4] Accordingly, it is found that probable cause exists to support Complainant's allegations of disability discrimination.[5]

DATE: 7-29-16

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NJ DIVISION ON CIVIL RIGHTS

[4] The LAD prohibits housing providers from charging extra for disability accommodations. N.J.A.C. 13:13-3.4e; N.J.S.A. 10:5-29.2.

[5] This probable cause determination does not preclude Respondents from arguing at a hearing that the dog is not legitimately an emotional support animal for a disability, or that waiving the no pets rule in this instance would result in an undue financial burden or fundamentally alter the nature of their operations.