STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HQ06HW-65447
HUD NO. 02-15-0654-8

James M. Zelinsky Complainant, v. Anchorage Harbor Association, Inc. & JLC Property Management LLC, Respondents.	)	Administrative Action **FINDING OF PROBABLE CAUSE**

On July 22, 2015, Ocean County resident James Zelinsky (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Anchorage Harbor Association, Inc. (Respondent or Anchorage Harbor) and JLC Property Management, LLC (Respondent or JLC) refused to grant 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. Respondent denied the allegations of discrimination in their entirety. DCR's enusing investigation found as follows.

Anchorage Harbor is a non-profit corporation that governs a 110-unit homeowner's association in Toms River, New Jersey. JLC provides management services to Anchorage Harbor.

Complainant is a 70 year-old widower whose multiple disabilities cause him to be oxygen-dependent and have restricted mobility, among other impairments. In 2004, he and his wife Wendi purchased a condominium unit in Anchorage Harbor in 2004.

Since 2010, Complainant has had an arrearage in his monthly Association assessment account. Complainant claims that the arrearage was the result of financial hardships caused by

health problems and a prior dispute with Anchorage Harbor over faulty roof repairs that allegedly resulted in water damage to his unit including black mold.

On August 1, 2013, Anchorage Harbor passed a resolution authorizing the suspension of parking privileges and the towing of vehicles. The resolution states in part:

> In the event that any unit owner's balance for unpaid assessments exceeds an amount equal to two (2) months of the common monthly assessments, his/her parking privileges shall be suspended until all such amounts are paid in full. The delinquent unit owner, or any related resident or tenant, shall be prohibited from parking within the Association's parking areas. Any Passenger vehicle parked on the Association's Property and owned by a Unit Owner, or a tenant or resident, where the Unit Owner is more than 60 days arrears in Association monthly assessments, fines, late fees and/or attorneys' fees, shall be towed.

On December 23, 2013, JLC Property Manager John Cruz sent a Notice of Parking and Towing Policy to homeowners that stated as follows:

> Enclosed please find a copy of Anchorage Harbor Association, Inc.'s Policy Resolution Authorizing the Suspension of Parking Privileges and Towing of Vehicles. The attached resolution sets the parking rules and regulations and states which residents are eligible to park in the Association's community. Per the resolution, you are required to register your vehicle(s) with management in order to obtain a parking tag. The parking tag must be displayed in your vehicle at all times while your vehicle is parked in the Association's community. All residents are required to register their vehicles on or before January 15, 2014. Any vehicles that do not have the approved parking tags after January 15, 2014 are subject to tow.
>
> Further, if you are currently in arrears with monthly association assessments, late fees, fines and/or attorneys' fees, you will not be permitted to park your vehicle in the Association's community after January 15, 2014 unless you enter into an approved written payment plan with the Association. Likewise, if you rent your unit and you are in arrears, your tenant's vehicle may be towed after January 15, 2014 unless you enter into an approved written payment plan with the Association. If you are currently in arrears, please contact the Association's management to propose a payment plan to avoid your vehicle from being towed after January 15, 2014.

Complainant said that after receiving the December 23, 2013 letter, he called Anchorage Harbor and left a voice mail message indicating that he was only able to pay them $225 per month. Complainant hoped that Respondents would allow him to continue to use his parking space.

In February 2014, Complainant was diagnosed with Leukemia and underwent chemotherapy. He was in and out of the hospital for almost four months, unable to return to his job, and began to collect Social Security.

Respondents had Complainant's vehicle towed from the property on May 29, 2014, and July 25, 2014.

In a letter dated January 14, 2015, Complainant requested a disability accommodation from Anchorage Harbor's board of directors He wrote:

> I am writing to you the current Board of Directors, to request a reasonable accommodation to park my vehicle in the parking space designated for my unit here at Anchorage Harbor Condominiums. I must park my vehicle in the premises due to arrearage of assessments, the parking policy initiated by the Board, and the reality of having my vehicle being towed. My request for reasonable accommodation is based upon my medical diagnosis and weakened physical condition. I currently must walk a substantial distance to access my vehicle off site. This may aggravate my existing medical condition due to the fact that I experience extreme fatigue and shortness of breath upon physical exertion.

In support of that request, Complainant attached a letter from Vimal D. Patel, M.D., which stated as follows:

> James Zelinsky (DOB: 3/12/1945) was diagnosed with Acute Myeloid Leukemia in February 2014 and is currently receiving chemotherapy. Side effects of chemotherapy include shortness of breath, inability to walk long distances as well as fatigue. He has been a patient of Dr. Vimal Patel at Rutgers Cancer Institute of New Jersey since his diagnosis. Please call 732-235-8962 if you require additional information.

Respondents did not respond to the request. In June 2015, Complainant was diagnosed with chronic lung disease. On July 7, 2015, Complainant's vehicle was towed from the property a third time.

On September 10, 2015, approximately two months after Zelinsky filed his verified complaint with DCR, Respondents responded to his January 14, 2015 request. Respondents wrote as follows:

> This correspondence is in response to your request for parking accommodations. The Association has reviewed your request and has agreed to allow you to park your vehicle in the parking space designated and assigned to 1108 Lighthouse Lane without fear of the vehicle being towed.

Complainant told DCR that after the resolution went into effect, he was forced to park in the closest offsite parking area, which was approximately 1/4 mile away from his unit. DCR used a Keson Measuring Wheel, Model RR318N, to measure the walking distance from the area Complainant parked his vehicle on Mount Lane and Vincent Street to his unit located at 1108 Lighthouse Lane. The distance was 1,378 feet or .26 miles, which he walked with his mobility apparatus and oxygen tank.

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).

However, a landlord's 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." Estate of Nicolas v. Ocean Plaza Condo. Ass'n, Inc., 388 N.J. Super. 571, 588 (App. Div. 2006). Cost to the landlord and benefit to the disabled tenant must be considered in determining what is reasonable. Oras, supra, 373 N.J. Super. at 315 ("The accommodation must facilitate the disabled tenant's ability to function, and it must survive a cost-benefit balancing that takes both parties' needs into account."). An accommodation is not "reasonable" and will not be required, if it would "impose undue financial and administrative burdens on the landlord or if the requested accommodation would fundamentally alter the nature of the landlord's operation." See Sycamore Ridge Apartments v. L.M.G., 2012 N.J. Super. Unpub. LEXIS 1313, *23 (App. Div. June 14, 2012).

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 parking lot common element sufficient to afford [a resident with a disability] an equal opportunity to the use and enjoyment of her condominium unit" if there was no showing that the accommodation would impose an undue burden on the association. Estate of Nicholas, supra, 388 N.J. Super. at 591.

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 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), certif. 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, Respondents do not dispute that Complainant is a person with a disability, or that he requested a parking accommodation, or that they denied his request, or that the requested accommodation would have ameliorated the effects of his disabilities. They do not contend that granting Complainant's request would have imposed an undue financial or administrative burden or fundamentally altered their operations.

Instead, they argue that they "did not respond to [Complainant's] request because of the substantial amount of arrears over the last five years," and that they now allow Complainant "to park in his parking spot again." See Respondents' Answer to the Verified Complaint, Oct. 13, 2015, at p.2. DCR is aware of no binding legal authority—and none has been cited by Respondents—that supports the proposition that a housing provider's legal obligation to provide reasonable accommodations exists only to the extent that a resident is not in arrears. That argument, taken to its logical conclusion, would suggest that a landlord could openly discriminate against a tenant based on race, gender, or sexual orientation, etc., so long as the tenant was behind in his or her rent. Nor is there any authority to support the proposition that a housing provider can meet its obligations to provide reasonable accommodations by delaying action on a resident's request until after a discrimination complaint is initiated.

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 housing discrimination based on a theory of failure to provide a reasonable accommodation. N.J.A.C. 13:4-10.2.

DATE: 12-24-15

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS