

Beckenstein v. Moors Landing Homeowners Association

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SUMMARY OF RESPONSE

Respondent denied discriminating against Complainant for any unlawful reason including disability. Respondent claimed to be without sufficient information to determine whether or not Complainant has a disability. Respondent further claimed Complainant was allowed to keep the alleged support animal until such time as it made a determination regarding whether Complainant has a disability and the animal qualifies as a service animal.

BACKGROUND

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

Respondent is a homeowners association that governs a housing community consisting of both townhouses and single family homes located in Howell, Monmouth County, New Jersey.

Complainant's parents, Marc and Jane Beckenstein, own a townhouse unit governed by Respondent. Complainant resides in the unit with her parents. Complainant and her parents have resided in the unit for approximately 19 years.

SUMMARY OF INVESTIGATION

The investigation revealed sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when Respondent refused to grant Complainant permission to retain her support animal as a reasonable accommodation for her disability, and instead filed a case in New Jersey Superior Court to force the removal of the animal from Complainant's housing unit.

When she filed the instant complaint, Complainant described her disability as "a seizure disorder." However, during the course of the investigation, it was revealed that Complainant has been diagnosed with epilepsy.

During an interview with the Division's Investigator, Complainant stated that the manifestations of her disability are very unpredictable. Complainant stated she had a period of about seven years with no seizures, but in May 2006, she began to experience frequent grand mal seizures for a period of six or seven months. During grand mal seizures, people with epilepsy experience a loss of consciousness and strong and convulsive muscle contractions.¹

¹Information adapted from <http://www.webmd.com/epilepsy/guide/types-of-seizures-their-symptoms>. Page last viewed August 24, 2010, at or about noon.

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In an interview with the Division's Investigator, Complainant's father stated that, after consultation with Complainant's treating physician, they agreed an assistance dog may be of help to Complainant. Mr. Beckenstein, upon the suggestion of the Respondent's Board president at that time, wrote a letter to Respondent indicating his daughter's need for an assistance animal. This letter, dated June 8, 2007—before a dog was acquired—stated that Complainant has had a seizure disorder since 1996. The letter further stated that Mr. Beckenstein was aware of the Respondent's policy prohibiting the ownership of dogs in townhouse units and requested a waiver of that policy due to Complainant's disability and worsening condition. Several days later, Mr. Beckenstein forwarded to Respondent a note on office letterhead from Complainant's physician, Richard I. Sultan, D.O., of Jersey Shore Neurology Associates. Dr. Sultan's letter, dated June 13, 2007, stated that Complainant has a seizure disorder and she has his "o.k." to get a seizure dog.

During an interview with the Division's Investigator, Complainant stated that shortly after receiving the letters, Respondent's Board president at the time, Gary Boitman, gave her verbal permission to get a dog. According to Complainant she adopted Ziggy, a black lab/border collie mix from the North Shore Animal League on June 18, 2007. Complainant stated Ziggy received basic obedience training and, during his time with her, has provided her with comfort and security while she is experiencing a seizure.

The investigation disclosed that it was not until July 2009—over two years after Ziggy began living with Complainant—that Respondent began to question Complainant's disability and her need for her dog. At Respondent's request, Dr. Sultan completed a "Doctor's Certification Letter." This form had specific questions for the doctor to answer, with space below each enumerated question. The completed form describes Complainant's disability as a seizure disorder, states that she was on medication for the condition, and indicates that Complainant's dog helps provide her with confidence, companionship, and independence. The document shows that Dr. Sultan signed and dated the form on July 31, 2009.

During an interview with the Division's Investigator, Dr. Sultan stated he has treated Complainant for over ten years, and identified Complainant's disability as epilepsy. Dr. Sultan said Complainant is taking two anti-seizure medications. He also stated that Complainant has had a number of very bad seizures, and as a result has been physically injured several times. The last time she was hurt because of a serious seizure was in June 2009. Dr. Sultan said having the dog provides Complainant with comfort and a feeling of security that someone will be alerted while she is having a seizure.

Respondent sent a letter to Complainant's parents dated August 26, 2009, which stated Respondent had received the completed Doctor's Certification Form. The letter stated that Complainant had not provided Respondent with "a letter from the organization responsible for training the dog, certifying that this particular dog is certified and trained to address your daughter's

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handicap.” In the letter, Respondent requested the dog be removed from the unit immediately. The letter, citing to their “Declaration of Covenants and Restrictions” and threatening legal action for noncompliance, stated in pertinent part:

No animal of any kind shall be raised, bred or kept in any townhouse unit except for indoor pets, which shall be defined as animals which do not typically leave the home, and shall include, but shall not be limited to fish, birds, declawed cats and gerbils. Single family unit owners shall be permitted one outdoor pet per unit, which shall be defined to include dogs and cats only.

If you fail to comply, the Association will seek an injunction to enforce the Declaration of Covenants and Restrictions of the Moors Landing Homeowners Association, Inc. which provides that no dogs be kept in any townhome unit. The association will seek to have the dog removed from the unit.”

In response to the above letter, Complainant sent Respondent a letter dated September 10, 2009. This letter stated in pertinent part:

Seizure dogs are different than other types of service dogs. One such way is the training was in the training or lack of training that the dog undergoes. Dogs for people with seizures have been proven to provide companionship and promote independence.

[Ziggy] alerts others when something is wrong by barking to gain attention, but staying by my side. In June 2009, Ziggy proved that he would not leave my side when I needed medical attention by paramedics.

The above behavior is not something that occurs through training: it occurs through bonding with the animal by spending time together and creating a secure bond and trust.

Complainant stated there was no other contact with Respondent regarding the matter until her parents received notice that Respondent had filed a complaint in the Superior Court of New Jersey, Chancery Division, General Equity Part, Monmouth County, Docket Number C-6-10, and named her parents and multiple other unit owners, who had dogs, in violation of the above-referenced policy. In the complaint, Respondent charged Marc and Jane Beckenstein, as well as owners of other townhome units, with violating the rules and regulations of the Association by

keeping a dog within their unit, and indicated that the dog has been visually observed outside of the unit. Respondent demanded the dog be removed and costs, fines, penalties, and attorneys fees be paid. As of the date of this Finding of Probable Cause, the case has not yet been heard.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. 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. A finding of probable cause is not an adjudication on the merits but, rather, an “initial culling-out process” whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In the instant case, the investigation disclosed that Complainant provided Respondent with sufficient information to make a determination that Complainant is a person with a disability. Respondent demanded proof that Complainant’s dog is a service animal trained by a certified training agency. In doing so, Respondent excludes the possibility that Complainant’s dog could have learned the skills necessary to assist Complainant without attending formalized training.² In the housing context, the LAD does not require that a service dog be trained by a recognized training agency or school. See N.J.S.A. 10:5-29.1. Compare N.J.S.A. 10:5-29 (where a service dog must be trained by a recognized training agency or school in order to access public facilities). In this case as long as the dog was individually trained to the requirements of a person with a disability, it can meet the definition of service dog. Of particular importance in this case, the definition of service dog expressly includes seizure dogs trained to alert or assist persons subject to epilepsy or other seizure disorders. N.J.S.A. 10:5-5dd. Consequently, Respondent placed a requirement on Complainant (certified training) that goes beyond the LAD’s statutory requirements.

Even if Complainant’s seizure dog does not meet the statutory definition of service animal, that conclusion does not end the inquiry. Pursuant to N.J.S.A. 10:5-4,1 and 10:5-12(g), it is unlawful to discriminate in the terms, conditions, or privileges of a sale or rental of real property, or in the

²A seizure dog is a dog that has been trained (or has learned), to respond to or warn of an impending seizure in someone who has epilepsy. See <http://www.epilepsyfoundation.org/epilepsyusa/seizuredogs.cfm>. Page last viewed August 24, 2010 at or about 1PM.

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furnishing of facilities or services in connection therewith. The LAD prohibition against disability discrimination in housing includes the 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). Determination of whether an accommodation is reasonable is a cost-benefit analysis. If the benefit of the accommodation in ameliorating the complainant's disability outweighs the costs and burden on the housing provider, the accommodation should be made. See Oras v. Housing Authority of City of Bayonne, 373 N.J. Super. 302, 312, 317-18 (App. Div. 2004). This includes "changing some rule that is generally applicable to everyone so as to make its burden less onerous on the [individual with a disability]. Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450, 462, n.25 (D. N.J. 1992)." Such accommodations may include waiver of a policy that prohibits townhome owners from owning a dog yet permits single family unit owners to do so when there is no showing of undue hardship on the part of the housing provider.

As to Respondent's initial contention that Complainant is disabled and thus qualified to request a reasonable accommodation, the LAD's definition of "disability" states in pertinent part that a disability is: "a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders....[which] prevents the normal exercise of any bodily or mental functions. . . ." N.J.S.A. 10:5-5(q). While a person requesting a reasonable accommodation may be required to document his or her disability and any need for an accommodation, as Complainant did in this case, the nature of Respondents' requests for more information went beyond what is required can be viewed as a denial of the accommodation. Complainant, and her father, made express requests for an accommodation (i.e., a waiver of the no dogs in townhome unit rule), and provided additional support from Complainant and her doctor for the accommodation when requested by Respondent.

Respondent based its additional argument on the fact that the Complainant's dog is not a service dog, trained by an organization which trains animals to provide assistance to people with disabilities; however, the issue in the case at bar is that the complainant sought an assistance animal/dog prescribed by her doctor as part of her treatment of her disability. As the General Deputy Assistant Secretary of HUD's Office of Fair Housing and Equal Opportunity recently explained:

[A] person may keep an assistance animal as a reasonable accommodation if:

- (1) the person has a disability, as defined by the Fair Housing Act,*
- (2) the animal is needed to afford a person with a disability an equal opportunity to use and enjoy a dwelling, and*
- (3) the person who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides. . . .*

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Under the Fair Housing Act, a person may not be denied an assistance animal because the animal lacks specialized training or does not perform tasks.³

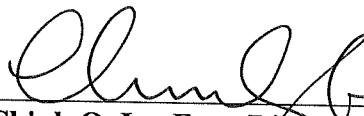
The investigation conducted by the Division demonstrates that Complainant has a legally-recognized disability and her assistance dog, Ziggy, meets the criteria set forth above under both state and federal standards. Complainant complied with Respondent's requests, yet Respondent did not show—as it was required—that a deviation from its existing pet policy, in the case at bar, was an unreasonable accommodation or an undue burden, particularly after waiting two calendar years to require Ziggy's removal or question his ability to assist Complainant.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

08/26/2010

Date



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Division on Civil Rights
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety**

³Information obtained from: <http://blog.govdelivery.com/usodep/2010/05/assistance-animals-the-fair-housing-acts-protections-for-people-with-disabilities.html>. (Citations omitted). Page last viewed on August 25, 2010, at or about 2PM.