STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. HB69HT-64962
HUD FILE NO. 02-14-0738-8

A.C.,	)	
	)	Administrative Action
Complainant,	)	
	)	**FINDING OF NO PROBABLE CAUSE**
v.	)	
	)	
AvalonBay Communities, Inc.,	)	
	)	
Respondent.	)	

This is a housing discrimination matter. On November 5, 2014, Bergen County resident A.C. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that his landlord, AvalonBay Communities, Inc. (Respondent), refused his request for reasonable accommodations, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of disability discrimination in their entirety. DCR's ensuing investigation found as follows.

Respondent describes itself as a "real estate investment trust . . . focused on developing, redeveloping, acquiring and managing high-quality apartment communities in high barrier-to-entry markets . . . in the Northeast, Mid-Atlantic, Pacific Northwest, Northern California and Southern California regions of the country." See http://investors.avalonbay.com/CorporateProfile.aspx?iid=103145. Respondent claims that as of September 30, 2015, it "owned or held a direct or indirect ownership interest in 282 apartment communities containing 82,851 apartment homes in eleven states and the District of Columbia . . . " Ibid.

Among those 282 apartment communities is a facility called Avalon at Westmont Station at 100 Rosie Square, Wood-Ridge, Bergen County. The building was constructed in 2012 and, according to Respondent, contains "406 apartment homes." See Letter from Catherine White, Esq., to DCR, Dec. 1, 2014, p. 4. Respondent has other communities in New Jersey: Avalon

Bloomfield Station, Avalon Bloomingdale, Avalon at Edgewater, Avalon at Florham Park, Avalon at Freehold, Avalon Hackensack at Riverside, Avalon Cove (Jersey City), Avalon Run (Lawrenceville), Avalon Run East, Avalon North Bergen, Avalon Princeton, Avalon Roseland, Avalon Somerset, Avalon Tinton Falls, Avalon Union, Avalon Watchung, Avalon West Long Branch, Avalon Princeton Junction, and Avalon Wharton.

Complainant is a 62 year-old man who has been diagnosed with paralysis. He uses a motorized scooter for mobility. On July 11, 2013, Complainant moved into his apartment. His rent is $2,133 per month. He resides with his wife, who acts as his caregiver.

Respondent made modifications to the unit and the building to accommodate Complainant. In July 2013, before Complainant moved in, Respondent installed grab bars in the bathtub, and an automatic door opener on the door between the leasing office/lobby and the hallway where Complainant's apartment is located. Once Complainant enters the building he is able to access his apartment without assistance.

Complainant alleges that Respondent refused his requests to have automatic doors installed to the building's front entrance, community room, pool area, and garbage disposal area. He claims that he is unable to use those doors without assistance. Complainant is usually accompanied by his wife when he leaves the building. However, Complainant and his wife told DCR that his inability to enter or exit the building without assistance poses safety concerns.

Respondent notes that it "tested and adjusted all doors in question to verify that the pressure on doors to verify compliance" with the standards of the Fair Housing Act," and argues that "in the absence of federal subsidies, . . . physical changes to an apartment or common area, may be undertaken, but at the expense of the requesting resident." See Letter from White, supra, at 3.

Respondent told DCR that it "received a quote to do the automatic door openers at $27,276.50." See Email from Catherine White, Esq., to DCR, Aug. 7, 2015, 10:14 AM. In that

email, Respondent noted in part:

> Obviously, this is prohibitively expensive for us to take on. We would, of course, still be willing to undertake it at resident expense as required by FHA to accommodate a disability. As you know, we've already done one door at our expense as a customer service gesture. I've asked Nav [Singh] to look into the expense of doing one additional set of doors. It would be helpful to know which set of doors would be most helpful to [A.C.] (e.g., to the gym, lounge or courtyard).
>
> [Ibid.]

During the course of the investigation, Respondent stated that although it believes it has no legal obligation to do so, it would consider "paying for some portion of the requested modifications as a customer service gesture." It stated in part:

> We continue to value [A.C.] as a resident and would like to work with him to reach a resolution that meets his needs. We would like to discuss alternative accommodations that might meet his needs (such as access to assistance from the community staff) and would even be willing to discuss paying for some portion of the requested modifications as a customer service gesture.
>
> [See Letter from White, supra, p. 5.]

Complainant maintains that he must have automatic doors and knows of no alternative accommodations that would be effective. He is not willing to contribute financially to any portion of the cost of their installation.

Analysis

The LAD bans housing discrimination based on disability. N.J.S.A. 10:5-12(g); N.J.S.A. 10:5-4.1. Discrimination includes a housing provider's "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." 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).

The duty to provide a reasonable accommodation "does not entail the obligation to do everything humanly possible to accommodate a disabled person." Oras, supra, 373 N.J. Super.

at 315. An accommodation is not "reasonable," and therefore not 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). Requests "must survive a cost-benefit balancing test" that weighs the cost to the landlord against the benefit to the tenant. Oras, supra, 373 N.J. Super. at 315.

Moreover, New Jersey regulations promulgated pursuant to the LAD distinguish between changes in "rules, polices, practices or services" on the one hand, and "modifications" i.e., structural changes to existing premises, on the other. As to modifications—such as the installation of automatic doors in an apartment lobby—New Jersey regulations state that it is unlawful for a housing provider "to refuse to permit, at the expense of the person with a disability, reasonable modification of existing premises, if the modification may be necessary to afford the person with a disability full enjoyment of the premises." N.J.A.C. 13:13-3.4(f) (emphasis added). That language arguably supports the notion that a landlord's duty is to allow a tenant to install modifications at his/her own expense, but does not impose an affirmative duty on the landlord to pay for the requested modifications. Similarly, the regulations state that a housing provider cannot charge extra for "special practices or accessories," N.J.A.C. 13:13-3.4(e), but then notes, "This provision does not require a landlord to install or bear the expense of any such special accessories or practices . . . for example, for keeping a guide or service dog or animal or maintaining special equipment such as a shower bar." N.J.A.C. 13:13-3.4(e)(1). And although "special practices or accessories" may be different than structural "modifications," the argument could be made that if a landlord cannot be forced to pay for a shower bar, it should not be obligated to pay for more substantial modifications to existing premises.

The Fair Housing Act (FHA), 42 U.S.C. 3601-3619, is a federal statute that is substantially equivalent to the LAD. Like the LAD, the FHA bans housing discrimination based

on disability and requires housing providers to provide reasonable accommodations to persons with disabilities. The United States Department of Housing & Urban Development (HUD), which enforces the FHA, addressed the issue of which party should pay for structural modifications to existing premises when same is necessary to accommodate a tenant with a disability. In particular, HUD issued a public guidance document that states in part, "[W]hile the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification." See Joint Statement of HUD and DOJ, Reasonable Modifications Under the Fair Housing Act, Mar. 5, 2008, p.3.[1]

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. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

Here, Respondent does not dispute that Complainant is a person with a disability, or that he requested certain accommodations, or that it denied his requests, or that the requested accommodations would have ameliorated the effects of his disabilities. Instead, it argues that it has no legal obligation to pay for structural modifications to an existing apartment or common

---

[1] This rule does not apply to housing that receives federal financial assistance. Pursuant to the implementing regulations of Section 504 of the Rehabilitation Act of 1973, structural changes (reasonable modifications) needed by a resident with a disability must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or would represent a fundamental alteration of the program. In this case, there is no allegation or evidence that the facility receives federal subsidies. See Letter from White, supra, at 4 ("There is no federal funding associated with Avalon Westmont Station.")

area. Respondent has shown a willingness to engage Complainant in an interactive process and it undisputed that Respondent has already undertaken some modifications at its own expense. Respondent indicated during the investigation that it wanted to discuss alternate accommodations that might meet Complainant's needs and/or would "even be willing to discuss paying for some portion of the requested modifications as a customer service gesture." See Letter White, supra. However, Complainant states there are no alternative accommodations that would meet his needs and has made clear that he is unwilling to pay any portion of the requested modification. In the meantime, Complainant remains unable to freely enter or exit the building unless he is accompanied by his wife.

The Director urges the parties to discuss a mutually agreeable resolution that would give Complainant full access to his home. The Director would be more than happy to arrange for a mediation session—formal or informal—in the hope of achieving this end. However, while sympathetic to Complainant's circumstances, what the Director cannot do is find that Respondent's refusal to fully finance the installation of automatic doors in the existing premises, without more, amounts to illegal activity under the LAD. From a financial and logistical aspect, Respondent, which claims to have a "direct or indirect ownership interest in 282 apartment communities," might be in a better position to pay for the doors than Complainant. And doing so might make great sense from a marketing/business perspective and as a matter of customer relations.[2] However, the fact remains that Respondent is not legally required to bear the expenses of modifications to doors that are ADA-compliant.

---

2 Many owners of residential facilities and public accommodations find that automatic doors benefit not only those with mobility impairments, but are also useful to people carrying heavy loads (like groceries), pushing strollers, or pulling luggage or other items.

In view of the above, the agency's investigation will be administratively closed and the matter marked, FINDING OF NO PROBABLE CAUSE.

DATE: 2-12-16

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS