STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HD12QW-63575

K.L.,	)	Administrative Action
Complainant,	)	**PARTIAL FINDING OF PROBABLE CAUSE**
v.	)	
Deer Path Trust,	)	
Respondent.	)	

On February 22, 2017, Monmouth County resident K.L. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her landlord, Deer Path Trust (Respondent), refused to reasonably accommodate her and her daughter's disabilities and discriminated against her because she sought to rely on a Housing Choice (Section 8) Voucher, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied Complainant's allegations of discrimination in their entirety. The DCR investigation found as follows.

Summary of Investigation

Respondent owns a three-bedroom condominium unit within Independence Square Condominium Association in Freehold, which it uses as a rental property. Paul R. Daniele, Esq., and Joyce Daniele are the trustees.

On July 11, 2017, Respondent entered into a one-year agreement to rent the unit to Complainant for $2,100 per month. The lease agreement included a provision stating that no pets were allowed without the landlord's written consent. Respondent told DCR that before the parties signed the lease, it emphasized to Complainant that no pets were allowed because it feared that pets would damage the unit's new floors and carpeting on the stairs.

At the time, Complainant did not disclose that she and her adult daughter, A.M., each had a dog, which they deemed to be emotional support animals (ESA). On July 28, 2017, Complainant and her two children moved into the unit with their two dogs.

Paul R. Daniele, Esq. (Daniele) filed an answer to the verified complaint on behalf of Respondent. Respondent noted that Daniele was not aware of the dogs until he stopped by the unit unannounced to inform Complainant that an electrician would be contacting her regarding a service issue.

On September 3, 2017, after Daniele had already been alerted to the dogs, Complainant sent an email to Respondent acknowledging their presence. ("I also wanted to let you know I have two service dogs living with us in the unit."). She characterized the dogs as "mental and emotional support dogs for the family." She wrote, "I have a letter on file from our therapist documenting this need due to our past trauma."

On September 4, 2017, Respondent replied via email expressing concern that Complainant withheld the information prior to moving into the unit, and noting that she was in violation of the lease. Respondent asked Complainant to provide a note from her doctor explaining why she needed the dogs and when the prescription was written.

On September 4, 2017, Complainant responded by presenting Respondent with two letters from Sharon J. Rukin, LCSW, dated April 7, 2017. The first letter stated as follows:

> TO WHOM IT MAY CONCERN: [Complainant] has been under my care for issues of anxiety and depression. It is necessary for [Complainant] to have her Emotional Support dog reside with her in order to stabilize her diagnosis.

The second letter referenced her daughter, A.M., but was otherwise identical to the first letter.

On September 7, 2017, Respondent sent an email to Complainant accusing her of dishonesty for failing to tell Respondent or the real estate agents about her dogs when the parties discussed the "no dogs" provision prior to signing the lease. The email also stated that Respondent was reviewing Complainant's request to have the dogs live on the premises.

On September 18, 2017, Complainant sent an email to Respondent stating that she obtained a Section 8 voucher. The email included contact information for Complainant's Section 8 caseworker, Marie Rangaswamy, and a Request For Tenancy Approval form that Respondent needed to fill out in order for Complainant to receive her subsidy.

On September 23, 2017, Daniele sent an email to Complainant stating that Complainant's deception regarding the ESAs meant that there was no "meeting of the minds" when the parties entered the lease and, therefore, that "the contract of lease is void." Daniele wrote that neither the Americans with Disabilities Act (ADA) nor the LAD covered ESAs, but that to the extent that that the LAD allowed her to have the dogs, it required her to produce a note from a medical doctor. Daniele wrote in part:

> Neither the ADA nor LAD includes pets or what are often referred to as emotional support animals. So although your dogs may be a comfort to you they are still pets and since they are not trained for a specific task they are not permitted to remain on the premises . . . and must be removed immediately . . . if you state that your dog is

> allowed under the LAD then this law requires that an occupant of a house receives a prescription from their "medical provider". A medical doctor has not provided us with a letter that you are being treated by said person indicating your need . . . A social worker is not a medical doctor. Therefor[e], the letter from Sharon J. Rukin dated April 07, 2017 is not accepted as meeting the requirements of the "LAD".

Daniele next addressed Complainant's Section 8 voucher. He wrote that Rangaswamy had said that the lease needed to cover at least one year for an applicant to receive assistance, which meant that the parties needed to enter into a new lease agreement because the current lease was for only eleven months. Daniele concluded that Complainant had two options: "(A) Re-negotiate the terms of the lease so that you may comply with the Rental Assistance Program. (B) Vacate the premises and seek another unit to occupy."

On October 2, 2017, Complainant provided Respondent with two letters from Sabine T. Paul-Yee, M.D., of Family Practice of CentraState, dated September 28, 2017. The letter for Complainant read as follows:

> To Whom It May Concern: [Complainant] is currently under my medical care. Due to chronic mental health conditions, [Complainant] requires her dog to live with her. This will stabilize her medical condition. If you require additional information please contact our office.

The second letter referenced A.M., but was otherwise identical to the first letter.

Respondent did not respond.

On November 4, 2017, Complainant sent a letter to Respondent, stating that she intended to vacate the property by November 26, 2017. She wrote in part, "Because of your lack of responsiveness to submit the federal government funding paperwork to Monmouth County Division of Social Services, documented by emails dated 10/2/17 on this matter, I have no choice but to vacate the unit or lose my funding."

Respondent did not respond.

On November 14, 2017, Complainant sent an email to Respondent following up on her November 4, 2017 letter.

On November 17, 2017, Respondent replied via email that it had planned to initiate an eviction proceeding, but that formal legal action was now moot based on her decision to leave voluntarily. Respondent wrote in part:

> Please accept our apology for not having responded to your notice to vacate [the unit] prior to now. We had notified an attorney prior to your notice dated 11/4/17 with the intent to institute legal proceedings. However, your notice to vacate the premises on 11/26/17 made our action moot and unnecessary.

Complainant told DCR that she secured another rental and vacated the unit "under great stress and unnecessary cost to myself." Complainant said she had only two months to secure a rental or her voucher would be void.

In January 2018, Respondent entered into a rental agreement with D.B. who has a rent subsidy through New Jersey Department of Community Affairs.

Information obtained during the investigation was shared with Complainant, and prior to the conclusion of the investigation Complainant was given the opportunity to rebut and/or submit any additional information.

Analysis

a. Standard of Review and Procedure

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 finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10(e).

If, on the other hand, if the Director finds that probable cause exists, then the matter will proceed to a conciliation. N.J.S.A. 10:5-14. Should the matter not be resolved during the conciliation process, the matter will proceed to a plenary hearing where the parties will have an opportunity to present evidence regarding their respective versions of events. N.J.A.C. 13:4-11.1(b). At that hearing, a fact-finder will hear live testimony and evaluate the credibility of the witnesses. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988).

A finding of probable cause is not an adjudication on the merits. It is merely an initial "culling-out process" in which 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.

b. Failure to Accommodate

The LAD bans housing discrimination based on disability. N.J.S.A. 10:5-12(g) & (h). Prohibited acts include refusing "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.

The duty to provide a reasonable accommodation "does not entail the obligation to do everything humanly possible to accommodate a disabled person." Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 315 (App. Div. 2004); see generally Tynan v. Vicinage 13, 351 N.J. Super. 385, 397 (App. Div. 2002) (noting that the obligation to provide reasonable accommodations "does not require acquiescence to the [person]'s every demand."). It is necessary to weigh the cost to the landlord against the benefit that the tenant accrues from the accommodation. Ibid.

A tenant's request to keep an emotional support animal must be evaluated using the general principles applicable to all reasonable accommodation analysis. N.J.A.C. 13:13-3.4 (f)(2). Here, the Director finds—for purposes of this disposition only—that Complainant's dogs meet the definition for "emotional support animal"[1] in view of the letters from treating healthcare professionals opining that Complainant's dogs were "necessary . . . to stabilize" conditions of "anxiety and depression" and "require[d]" for "chronic mental health conditions."

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[1] Complainant uses the terms "service dog" and "emotional support animal" interchangeably. But there is a critical distinction for purposes of the LAD.

"Service dogs" are individually trained to do work or perform tasks for people with disabilities. N.J.S.A. 10:5-5dd ("Service dog means any dog individually trained to the requirements of a person with a disability"). Examples of such work include "minimal protection work, rescue work, pulling a wheelchair, or retrieving dropped items . . . alert[ing] or otherwise assist[ing] persons subject to epilepsy or other seizure disorders." 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 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 the animal. N.J.A.C. 13:13-3.4c; N.J.S.A. 10:5-29.21 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.

"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, U.S. Dept of Housing & Urban Devel. (HUD)'s response to comments (Oct. 27, 2008). A federal court found that the above language "make[s] clear that an emotional support animal need not be specifically trained because the symptoms that the animal ameliorates are mental and emotional, rather than physical." See Warren v. Delvista Towers Condo. Assoc., 49 F. Supp.3d 1082, 1087 (S.D. Fla. 2014).

The remaining facts are largely undisputed. The parties entered into a lease agreement that stated that dogs were not permitted absent the landlord's express consent. Complainant did not inform Daniele of her intent to live with her two ESAs, and did not seek permission to do so until after Daniele inadvertently discovered their existence.

In asking Daniele to relax the "no dogs" rule, Complainant provided a note from her treating licensed social worker stating in part that the dogs were necessary to help stabilize certain medical conditions, i.e., anxiety and depression. Daniele—an attorney licensed in New Jersey—told Complainant that the LAD does not cover ESAs, and that to the extent it does, a note from a treating licensed social worker would be insufficient under the statute. In response, Complainant provided notes from her treating medical doctor stating that the dogs were required due to chronic mental health conditions and inviting Respondent to contact the doctor if it required additional information. Respondent did not contact the doctor. Instead, it contacted an attorney "with the intent to institute legal proceedings."

DCR is unaware of any precedent establishing that only a medical doctor may provide support for an accommodation request.[2] And in any event, Complainant thereafter provided a note from her family doctor—a licensed physician in New Jersey—to Respondent on September 28, 2017. If Respondent had an issue with the supporting evidence that Complainant provided or the scope of the requested accommodation, it should have communicated with Complainant and given her an opportunity to offer additional information. It did not do so. It did not contact either health professional. It did not initiate any further communication with Complainant. Instead, it elected to institute eviction proceedings.[3]

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[2] To the contrary, guidance provided under the federal Fair Housing Act states that a "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, <u>social worker</u>, 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. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support." <u>See</u> HUD, Service Animals and Assistance Animals for People with Disabilities in Housing & HUD-Funded Programs, FHEO Notice: FHEO-2310-01 (Apr. 25, 2013) (emphasis added). The LAD is to be construed consistent with the Fair Housing Act. <u>See</u> N.J.S.A. 10:5-9.2.

[3] One might view Respondent's argument that that the lease was void due to a lack of "meeting of the minds" to suggest that if Respondent had known Complainant had an ESA, it would have charged her a higher rent or rejected her application altogether. Either scenario would implicate the LAD.

Complainant's lack of forthrightness and her violation of the lease's terms do not, without more, somehow nullify the LAD's expansive prophylactic powers. Stated differently, the Director does not condone Complainant's choice to conceal her ESAs. But Complainant's lack of candor in that regard does not provide Respondent with grounds for ignoring her request for an accommodation when it was made. Indeed, the LAD obligates Respondent to modify the terms of the lease to reasonably accommodate Complainant's disability unless doing so 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). To date, Respondent has not made any such argument.[4]

In view of the above, the Director is satisfied that this matter should "proceed to the next step on the road to an adjudication on the merits" with regard to the allegation that Respondent improperly responded to Complainant's request for a reasonable disability accommodation. Frank, 228 N.J. Super. at 56.

c. Section 8 Discrimination

The LAD also makes it unlawful to refuse to rent property because of a tenant/prospective tenant's "source of lawful income used for rental or mortgage payments." See N.J.S.A. 10:5-12(g)(1). A housing subsidy is source of lawful income as that term is applied by the LAD. See Franklin Tower One v. NM, 157 N.J. 602, 618-23 (1999) (holding that landlords are prohibited from refusing to rent to persons solely because of the use of a Section 8 voucher to assist in the payment of rent).

Here, the evidence did not support a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that" Respondent harbored a bias against persons with rent subsidies/housing vouchers. See N.J.A.C. 13:4-10.2. Indeed, the undisputed evidence is that in January 2018—i.e., before Respondent was served with the verified complaint in this matter—Respondent elected to rent the same unit to a woman who has a government rent subsidy. Accordingly, in the absence of any persuasive evidence that Respondent was motivated by a discriminatory animus related to Complainant's "source of lawful income used for rental or mortgage payments," that aspect of the verified complaint will be closed based on a finding of no probable cause.

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[4] For example, Respondent has not argued that the ESAs "pose[] a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or . . . would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation." See HUD, Service Animals and Assistance Animals for People with Disabilities in Housing & HUD-Funded Programs, FHEO Notice: FHEO-2310-01 (Apr. 25, 2013).

Conclusion

Based on the investigation, the Director finds that no probable cause exists as to the allegations of "source of lawful income" discrimination. However, the Director finds at this threshold stage of the process that there is a sufficient basis to support the allegation of disability discrimination.

DATE: 6-8-18

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS