STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HN17HC-66399

Karla L. LaVoie,	)	
	)	Administrative Action
Complainant,	)	
	)	**FINDING OF PROBABLE CAUSE**
v.	)	
	)	
Twin Lights Condominium Association,	)	
	)	
Respondent.	)	

On March 30, 2017, New Jersey resident Karla L. LaVoie (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Twin Lights Condominium Association (Respondent) refused to let her modify her condominium in a manner that would accommodate her disability, 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

Respondent is a 140-unit condominium community in Highlands, New Jersey. In July 2015, Complainant purchased a one-bedroom unit for $195,000.

Complainant alleges that in September 2016, she noticed a chemical smell emanating from her living room carpet.

During an October 17, 2016 meeting of Respondent's Board of Governors, she requested permission to remove the carpet and install hardwood floors at her own cost. She submitted the following letter to the Board:

> I am requesting permission to install hardwood floors with cork underlayment in my one bedroom unit. The reason being, I am highly allergic to all new carpeting.
>
> When I was looking here in the early months of 2015 I saw many units with various types of flooring, hardwood and laminate included. As an incentive to purchase a unit owner offered to take up all of his worn out carpet, make it ready for hardwood and introduce me to his floor person. The unit I am in now has hardwood in the kitchen and dining area. I had no reason to believe that hardwood flooring was prohibited.

> The carpet that is in this unit is incredibly thin and emits an odor. It is not much thicker than indoor outdoor. Please see the sample. When I recently tried to clean some spots on the floor something slimy came up leaving a darkened area. Really disgusting. I need to remove it.
>
> Enclosed in this packet: 1. A letter from my doctor who has been treating me for over 20 years. 2. A letter from Stacy Zelgowski Unit J-5 explaining an interesting experiment we conducted. 3. Information about cork underlayment indicating its superior performance for sound reduction. You will notice that using ¼ inch underlayment doubles the sound absorption. I intend to use that thickness. A sample is included.
>
> My installer is someone who has worked for me for many years installing hardwood and tile in my last home. He is very sensitive to my needs due to the sensitivities and I trust him to do this work. He has done beautiful flooring for me in the past. I have a picture of his work from my former home if you would like to see them. The bottom line is, I cannot put in carpet and the present material really needs to go.
>
> I hope you will understand and grant my request. I am certain based on the experiment with Stacey and the effectiveness of the underlayment that the new floor will have much greater sound absorption than what is here now. If you need any further information let me know.
>
> [See Letter from Complainant to Board of Governors Twin Lights Terrace Condo. Assoc., Oct 10, 2016.]

Complainant submitted a letter from her doctor recommending that she be allowed to replace her carpet with hardwood floors for health reasons. The doctor wrote:

> Karla LaVoie is a patient in this office. She is being treated for Multiple Food and Chemical Sensitivities. These sensitivities are being treated orthomolecularly.
>
> Because of chemicals used in manufactured carpeting, I recommend pre-finished hardwood flooring so as not to compromise her health. All carpeting and laminates contain isocyanate since formaldehyde has been outlawed. If you have any questions in this matter, please feel free to call my office.
>
> [See Letter from Kenneth J. Emonds, Ph.D., New England Center for Orthomolecular Medicine, to "To Whom It May Concern," Jul. 12, 2016.]

Complainant also submitted a letter from the owner-occupant of the unit directly below hers, who wrote that she had no objections to Complainant removing the carpeting and installing hardwood floors. The downstairs neighbor wrote:

> I, Stacey Zelgowski residing in the Twin Lights Terrace Condominium unit J-5 am writing to inform you that I was asked by my upstairs neighbor Karla LaVoie in unit J-6 if I would approve of her changing her carpeted flooring to hardwood flooring and if so could I kindly write a letter to the board. Karla then informed me this was due to health concerns of hers and that normally the board doesn't allow hardwood in 1 bedroom units. Karla currently does have some hardwood in the kitchen so we did a sound test of her walking across the carpeted portions and then again across the hardwood portions. If anything the carpeted portions were more pronounced with sound than the hardwood. So after performing the sound test, I, Stacey Zelgowski J-5 am giving my permission for Karla LaVoie J-6 to install as much hardwood flooring as she requires. Feel free to contact me at the phone number listed below for any further questions or information you may require.
>
> [See Letter from Stacey Zelgowski to Board of Governors, Sept. 12, 2016.]

On October 26, 2016, Board President Rich Fitzgerald notified the his fellow Board members that he believed Complainant had a "legitimate medical issue" but that he was still voting, "NO." He wrote in part:

> So in my opinion the only way we could approve the request is by granting a medical exemption to the rule to have carpet in the one bedroom unit. My vote is NO, but I will follow whatever the Board wants to do. As much as I believe Karla has a legitimate medical issue and would like to assist her, I think reopening the issue of wood flooring creates another set of problems.
>
> [See Email from R. Fitzgerald to W. Ernst, et al., "TLTCA J-6 Request for Exemption from Carpet Requirement," Oct. 26, 2016.]

All members of the Board either voted not to allow an exemption for Complainant or abstained. On November 1, 2016, Fitzgerald notified Complainant that her request was denied. He wrote:

> The Board reviewed your request to install the cork flooring that you had shown me, but the majority did not want to allow the exception to the rule that requires carpeting in one bedroom units. Several members had questions and comments that were hard to discuss by e-mail, so I plan to review the general issue of should the Association allow other types of flooring in one bedroom units again at the Board meeting scheduled for December 5th.
>
> In the meantime, please contact me if you want to discuss your request or the issues surrounding the carpet rule.

[See Email from R. Fitzgerald to Complainant, "TLTCA J-6 Request for Cork Flooring," Nov. 1, 2016.]

According to the minutes of the December 5, 2016 board meeting, the issue of Complainant's request was scheduled to be discussed, but not addressed because of her absence. Complainant told DCR she did not attend the December meeting because she had a respiratory infection.

On March 30, 2017, Complainant initiated the instant matter, alleging that she was denied a reasonable accommodation for a disability, in violation of the LAD and regulations promulgated thereunder.

Respondent denied the allegations of discrimination in their entirety. It argues that its rules and regulations prohibit the installation of hardwood floors, that Complainant "did not identify herself as disabled," never reported that the carpet smelled of mold and mildew until she initiated the DCR complaint, and that she should have asked about the carpeting before purchasing the unit ("It would seem to us, that it would have been important to someone with Ms. LaVoie's medical problems to ascertain the carpet's condition and to verify, through the Association, what flooring was allowed replace it before purchasing the unit."). See Answer to Verified Complaint, Apr. 20, 2016, pp. 1&2. It also argues that the carpet serves as a sound barrier to protect the downstairs neighbor from unwanted noise. It wrote:

> The basis for denying the request was the concern for the welfare of the two bedroom unit owner living below the complainant and for the living conditions of other two bedroom unit residents who might have to endure unacceptable noise levels in their units from flooring with poor sound deadening characteristics or from flooring that was poorly installed, thus lessening the stated sound reducing specifications. The . . . Board of Governors has to consider the welfare of all residents when considering a request such as made by the complainant.

Respondent argues that after denying the request on November 1, 2016, it "planned to continue to discussion of flooring solutions at the December 6, 2016 meeting which Ms. LaVole choose [*sic*] not to attend. Instead she chose to file the complaint" with DCR. Id. at 2. Lastly, it argues, "We do not agree that replacing the carpet with hardwood floor was the only reasonable accommodation for her medical condition." Id. at 1.

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.

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, 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. Cf. Joint Statement of HUD and DOJ, Reasonable Modifications Under the Fair Housing Act, Mar. 5, 2008, p.3 ("[W]hile the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.").

The LAD defines "disability" as follows:

> "Disability" means physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

N.J.S.A. 10:5-5(q). The New Jersey Supreme Court found that the above definition is "very broad in its scope." See Clowes v. Terminix Int'l, 109 N.J. 575, 593 (1988). The Court declared

that the term "disability" is "deserving of a liberal construction" because the LAD is "remedial social legislation." Id. at 590. Thus, for example, although a federal statute—the Americans with Disabilities Act (ADA)—defines "disability" as an impairment that "substantially limits one or more of her major life activities," the LAD has no such requirement. See Gimello v. Agency Rent-A-Car Systems, 250 N.J. Super. 338, 358 (App. Div. 1991); see e.g., Andersen v. Exxon Co., 89 N.J. 483, 495 (1982) ("We need not limit this remedial legislation to the halt, the maimed or the blind. . . . There is simply no basis for limiting its coverage to so-called severe disabilities.").

Here, Respondent does not challenge Complainant's disability status. Instead, it argues that she never "identif[ied] herself as disabled in any correspondence with [Respondent]." However, Complainant told Respondent that she was "highly allergic to all new carpeting." Her doctor told Respondent that she was being "treated for Multiple Food and Chemical Sensitivities." Indeed, Respondent's Board President acknowledged to his fellow-board members that he believed Complainant had a "legitimate medical issue" and acknowledged that the Board could "approve the request . . . by granting a medical exemption."

Under the circumstances, the Director finds—for purposes of this disposition only—that her documented chemical sensitivities may contribute to "anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically." N.J.S.A. 10:5-5(q).

Respondent does not dispute that Complainant sought permission to replace the carpet with hardwood floors, or that it denied the request. Nor does Respondent appear to challenge the reasonableness of the request. It does not argue that allowing Complainant to replace the carpeting would "impose undue financial and administrative burdens on the landlord or [that] the requested accommodation would fundamentally alter the nature of the [Association]'s operation." See Sycamore Ridge Apartments, supra, at *23. Complainant was not asking Respondent to pay for the materials or labor, or oversee the installation. Thus, there were no financial or administrative burdens. And the notion that the denial was simply intended to protect Complainant's downstairs neighbor from unwanted sound is undercut by the fact that before reaching that decision, the Board members were provided with a letter from the downstairs neighbor stating that she performed a "sound test" and concluded that "[i]f anything the carpeted portions were more pronounced with sound than the hardwood."

Respondent argues that there were other reasonable accommodations. See Answer to Verified Complaint, supra, at p.1 ("We do not agree that replacing the carpet with hardwood floor was the only reasonable accommodation for her medical condition."). And although that assertion may be accurate, Respondent has not identified any alternate accommodations to date.

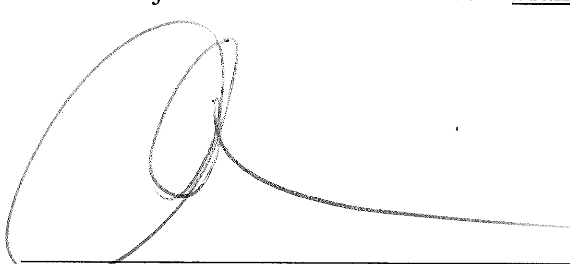
Respondent argues that after denying the request on November 1, 2016, it was prepared to discuss the matter at the December 5, 2016 Board meeting but Complainant chose not to

attend. It appears that Complainant did not attend the meeting because she had a respiratory infection. There is no indication that in the months between the December 5, 2016 meeting and March 30, 2017, when Complainant initiated the instant action, Respondent made any attempt to identify possible alternative accommodations or even discuss the issue with Complainant.

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. It is 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.

Guided by those standards, the Director is satisfied that the weight of the evidence supports a reasonable ground of suspicion that Respondent violated the LAD by denying a housing accommodation to an occupant with a disability. It appears that removing the carpet is necessary to afford Complainant full enjoyment of the premises. The investigation found no persuasive evidence, and none was produced by Respondent, that granting the request would have amounted to an undue hardship for Respondent. There is no indication that Respondent offered, or even considered, any possible alternatives. Accordingly, the Director finds that this matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.



DATE: 2-15-18

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS