STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HC24MW-65699

G.M.,	)	
	)	
Complainant,	)	Administrative Action
	)	
v.	)	**FINDING OF PROBABLE CAUSE**
	)	
Le Club II Condominium Association,	)	
	)	
Respondent.	)	

On November 24, 2015, Burlington County resident G.M. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her homeowners' association, Le Club II Condominium Association (Respondent), discriminated against her in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, by not permitting her to keep a dog that allegedly assists her with her daily activities. Respondent denied Complainant's allegations of disability discrimination in their entirety. DCR investigated the matter and now finds, for purposes of this disposition only, as follows.

Respondent is a condominium association that governs a 176-unit complex in Mount Laurel, New Jersey. Complainant is an 83-year old widow who purchased her unit on June 28, 2005, and has resided in the unit since that time.

On September 1, 2015, Respondent notified Complainant that she had ten days to remove her dog (a neutered 10-year-old cocker spaniel mix) from her unit. The letter stated in part, "If no response is received within our office, please be advised a $25.00 fine will be assessed to the account and this issue will be turned over to the Association's attorney for enforcement procedures."

On September 3, 2015, Complainant's son, E.M., sent a letter to Respondent stating that the dog is a "service/emotional support animal that will assist [his mother] in coping with her disabilities." He wrote:

> My name is [E.M.], my mother is [G.M.] and she is the property owner of the residence at [****] Ralston Drive. I have complete and durable power of attorney for [G.M.] and that designation can be documented if necessary.
>
> I am in receipt of your letter 01SEP2015 regarding a complaint that a dog is being kept in the unit where my mother resides. That information is absolutely correct and we were already in the process of contacting the Association concerning the animal when your letter arrived.
>
> My mother is a widowed 83 yo resident who has been diagnosed and is suffering from hearing and neurological disabilities, both of which offer her rights of protection under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973. I am under no obligation at the moment to divulge to you any personal medical history for [G.M.]. However, I will tell you that she has functional limitations imposed by her disabilities, and the animal is here as a service/emotional support animal that will assist [G.M.] in coping with her disabilities.
>
> On behalf of my mother, [G.M.], I am kindly requesting that you waive the no-dog restriction for her in this case. Please find enclosed a copy of the receipt from the Mount Laurel Township Clerk's Office, which has licensed the animal as a Service Dog.
>
> If you require any additional clarification, please feel free to contact me directly as I am the POA and I have the legal authority of speaking on behalf of [G.M.] in all her matters.

E.M. enclosed a receipt for an animal license issued by Mount Laurel Township, which exempted Complainant's dog from fees on the grounds that it was a service animal.

In further support of Complainant's request to be allowed to keep the dog, her treating physician sent a letter to Respondent stating that Complainant required an emotional support animal to help her cope with her disabilities. The doctor wrote:

> [G.M.] is an 83-year-old lady under my care for Alzheimer's Disease since April 2014. I am intimately familiar with her history and with the functional limitations imposed by her disability. She meets the definition of disability under the Americans with Disabilities Act, The Fair Housing Act and the Rehabilitation Act of 1973.

> Due to mental illness, [G.M.] has certain limitations regarding social interaction/coping with stress/anxiety. In order to help alleviate these difficulties and to enhance her ability to live independently and to fully use and enjoy the dwelling unit you own and or administer, I am prescribing an emotional support animal that will assist [G.M.] with her disability.
>
> I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [G.M.]. Upon request, I will share citations to relevant studies and would be happy to answer other questions you may have concerning my recommendation that [G.M.] have an emotional support animal. Should you have additional questions, please do not hesitate to contact me.
>
> [See Letter from S. Manzoor Abidi, M.D., F.A.C.P., F.A.A.N., Neurological Regional Associates, P.A., to Respondent, Sept. 3, 2015.]

On October 29, 2015, Respondent notified Complainant that she was in violation of its policy prohibiting dogs. See Letter from Sanford F. Schmidt, Esq., to Complainant, Oct. 29, 2015. The letter made no mention of Complainant's request for an exception on medical grounds to the policy.

On November 5, 2015, E.M. sent another request to Respondent asking that it "waive the no-dog restriction" because his mother's dog assists with her "hearing and neurological disabilities."

On November 24, 2015, Respondent sent a letter to E.M. denying the request. The letter stated in part:

> The Board of Directors of LeClub II Condominium Association has recently reviewed your request for an exception to the governing documents in allowing your mother, [G.M.], to house a dog within her unit located at [****] Ralston Drive. As the documents you provide fail to support a reasonable accommodation, the Board is not in a position to allow the dog to remain on the premises.
>
> * * *
>
> In the event you do not wish to participate in [Alternate Dispute Resolution], I am making a demand that you notify my office **in writing** of your compliance with the governing documents within one (1) week of the date of this letter. Failure to do so, I have been authorized by the Board to institute litigation. Any expense associated with necessary legal action will become your obligation pursuant to the governing documents.
>
> In addition, fines will be imposed as set forth in the governing document. I hope that can be avoided by immediate compliance with this letter.
>
> [See Letter from Sanford F. Schmidt, Esq., to Complainant, "LeClub II Condominium Association," Nov. 24, 2015.]

E.M. told DCR that his mother is also hearing-impaired and sometimes forgets to wear her hearing aids. He produced a receipt for Complainant's hearing aids. He said that in addition to assisting with his mother's mental disabilities, the dog alerts her when someone knocks on the door or rings the bell.

On November 5, 2015, E.M. sent a letter to Respondent stating in part:

> My mother is of very old age and suffering from dementia due to alzheimers and she is also hearing impaired. And in reality, and as horrible as it may sound for me to say, neither my mother not the animal have very much time left to enjoy each others company . . . My mother is not capable of moving and she just wants to live out the rest of her life here in her condo, in peace and tranquility. The animal not only helps with her disabilities, the animal also helps alleviate her paranoia and loneliness and despair of growing old and loosing her faculties. And I can not even begin to explain just how much this animal helps her get through her day, every day. Please reconsider the request to waive the policy for [her]. [She] has become so attached to this animal that separating them now will only compound the stress and anxiety she is already experiencing from her afflictions . . . [*sic* throughout]

The dog has resided with Complainant throughout the course of the investigation.

Respondent argues that the dog is not an emotional support animal, that there is "no relationship between the accommodations sought and the Complainant's disability," that DCR "lacks jurisdiction as this matter does not involve a sale or lease of property," that the requested accommodation would impose an undue financial and administrative burden, that "Complainant has failed to offer alternative accommodations that would effectively meet the requestor's disability needs and the needs of Respondent," and that the "governing documents of Respondent . . . have prohibited ownership of dogs since 9/1/90 . . . [and] Complainant purchased her until with full knowledge of this prohibition." See Answer to Verified Complainant, Jan. 13, 2016, p.2. In support of its "governing documents" argument, Respondent produced a copy of its "Rules & Regulations," which state in pertinent part:

> No dogs will be kept in any of the units or common elements, except the dogs which were registered with the management company from unit survey data, and which were properly licensed with the township, prior to September 1, 1990 will [*sic*] each be cause for a fine of $100.00 and the owner/tenant will have to remove the animal(s) from the premises. Should the owner/tenant not comply, they will be

subject to graduated fines as set forth herein. When one of those preexisting dogs is lost or passes away, or that unit is sold or re-entered, then this rule will henceforth apply to that unit as all others.

[See LeClub II Condominium Association Rules & Regulations, (effective Jul. 1, 1990, revised May 24, 1999.]

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").

The LAD bans housing discrimination based on disability. N.J.S.A. 10:5-12(g); N.J.S.A. 10:5-4.1. Persons with disabilities are entitled to "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [them] equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2).

A request to relax a no-pets policy to allow an emotional support animal is a request for a reasonable accommodation. See generally N.J.A.C. 13:13-3.4 (f)(2). In such cases, appropriate considerations include whether the occupant or prospective occupant has a disability-related need for the animal, whether the animal would alleviate one or more identified symptoms, and whether granting the request would result in an undue financial burden or fundamentally alter the nature of the housing provider's operations. Oras, supra, 373 N.J. Super. at 315-16 (citing Bronk v. Ineichen, 5 F.3d 425 (7th Cir. 1995) (discussing request for hearing assistance dog), Janush v. Charities Housing Devel. Corp., 169 F. Supp. 1133 (N.D. Cal. 2000) (discussing request for birds and cats that provide companionship)).

In this case, Respondent argues that Complainant's need for the dog has not been established. The Director does not find that argument to be availing. Respondent was presented with letters from Complainant's son and a treating physician that described her disabilities and her medical need for the animal. Respondent dismissed the letters in conclusory fashion by stating that "the documents . . . fail to support a reasonable accommodation." At no time has Respondent elaborated on what it found to be lacking. If Respondent had questions or required additional information, it could have contacted E.M. and/or the doctor. Both invited Respondent to do so. There is no indication that Respondent accepted those invitations. Respondent has produced nothing to support its assertion that there is "no relationship between the accommodations sought and the . . . disability." In the absence of any contradicting evidence, the Director is satisfied for purpose of this disposition that Complainant has established that she has a disability and that the dog is an emotional support animal that would alleviate the effects of her disability to afford her an equal opportunity to use and enjoy the dwelling.

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). An accommodation is 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).

In this case, Respondent argues that the requested accommodation is unreasonable. But here again, Respondent makes the argument in conclusory fashion without any supporting evidence. To carry the day, a determination that an accommodation would impose an undue hardship must be based on persuasive evidence, not conjecture or unsupported accusation. This is because the burden to prove that an accommodation is unreasonable falls on the party that denied the request. See, e.g., Lapid-Laurel, LLC v. Zoning Bd. of Adjust. of Scotch Plains, 284 F.3d 442,

457 (3d Cir. 2002); see Lasky v. Moorestown Twp., 425 N.J. Super. 530, 545 (App. Div. 2012), certif. denied, 212 N.J. 198 (2012) ("If a defendant's response to a reasonable accommodation claim is that that accommodation would be unduly burdensome or an undue hardship, this defense is considered an affirmative defense and the defendant assumes the burden of proof on this issue.").

In this case, Respondent has not identified the "costs or burdens . . . [to] be balanced against the benefit of the requested accommodation to assess whether the accommodation was reasonable." Oras, supra, 373 N.J. Super. at 317 (citing Janush, supra, 169 F. Supp. at 1136). In the absence of such proof, the Director finds that the "cost-benefit balancing that takes both parties' needs into account" weighs squarely in favor of Complainant. Id. at 315 (quoting Bronk, supra, 5 F.3d at 431).

Respondent also argues that Complainant's claim is flawed because she "failed to offer alternative accommodations that would effectively meet [her] disability needs and the needs of Respondent." See Answer, supra, p.2. Respondent, as the party who denied the accommodation, would likely be in a better position to propose a feasible alternative, particularly since it is the party that challenged the accommodation's effectiveness and reasonableness. But as a general matter, the Director rejects the notion that a plaintiff cannot prevail in a disability discrimination case unless it shows that it offered an alternative accommodation to the defendant. The Director is aware of no state or federal law that requires a person with a disability to keep proposing alternative accommodations until it happens upon one that the housing provider deems acceptable.

Nor is the Director persuaded by the argument that the requested accommodation is foreclosed by the express language of Respondent's Rules & Regulations. A similar issue arose in Oras, supra, where the housing provider argued that the plaintiff's theory of discrimination failed because he sought an accommodation which, if granted, would violate the terms of his lease. In rejecting that argument, the Court reasoned:

> [E]ven were it established that plaintiff was aware of the pet policy at the time he entered into the lease, that does not mean that he would be precluded from keeping a pet in his unit if he needed the pet to accommodate his disability. Despite its pet policy, the [Housing] Authority remains obligated to accommodate plaintiff's disability "to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person." . . . A landlord may not relieve itself of those responsibilities by having a tenant waive his right to a reasonable accommodation of his disability in a lease.
>
> [Id. at 314 (citations omitted).]

In keeping with the Court's guidance above, the Director finds that it would be improper to place "contractual responsibilities . . . ahead of the . . . obligation under state and federal law to accommodate plaintiff's disability." Id. at 315. Stated differently, a condominium association's rules and regulations must take a back seat to State legislation, not the other way around.

Lastly, Respondent's argument that DCR lacks jurisdiction because "this matter does not involve a sale or lease of property," ignores or improperly discounts the fact that the LAD makes it unlawful to discriminate against any person in the "terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith . . . " N.J.S.A. 10:5-12g. Elsewhere, the LAD states, "All persons shall have the opportunity . . . to obtain all the accommodations, advantages, facilities, and privileges of any . . . real property without discrimination" based on disability. N.J.S.A. 10:5-4. Moreover, 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). Indeed, a LAD claim against a condominium association for failing to provide a reasonable accommodation is hardly a matter of first impression. See e.g., Estate of Nicholas v. Ocean Plaza Condo. Assoc., 388 N.J. Super. 571 (App. Div. 2000). In this case, the Director is satisfied that Complainant is alleging discrimination in the terms, conditions, accommodations, advantages, facilities, and privileges of her use and

ownership of real property, which is sufficient to trigger DCR's jurisdiction. N.J.S.A. 10:5-12g; N.J.S.A. 10:5-4.

After the DCR conducts an investigation, the Director must determine whether probable cause of discriminatory conduct exists. N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" 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 DCR 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.

Here, the Director is satisfied that the circumstances of this case support a "reasonable ground of suspicion" that Respondent failed to provide a reasonable accommodation that would allow Complainant an equal opportunity to use and enjoy the subject dwelling. N.J.A.C. 13:4-10.2. The Director recognizes that Respondent may ultimately present sufficient evidence to demonstrate that relaxing its no-dogs rule would have imposed an undue burden on its operations. However, because the burden of proof on that issue clearly rests with Respondent, and given the legal presumption in favor of disability accommodations, the Director finds at this preliminary stage in the process that Respondent has failed to establish that his affirmative defense is meritorious.

DATE: 2-22-16

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS