

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HM25MB- 66066

T.D.,)	
)	<u>Administrative Action</u>
Complainant,)	
)	FINDING OF PROBABLE CAUSE
v.)	
)	
Harbortown Sail, LLC,)	
)	
)	
Respondent.)	

On August 6, 2016, Middlesex County resident T.D. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her landlord, Harbortown Sail, LLC (Respondent), refused to allow her to keep her emotional support animal as a reasonable accommodation for her disabilities, 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

Harbortown Sail is a townhome-style condominium community in Perth Amboy. Respondent owns 55 units that it rents to tenants. Unit owners are allowed one domestic pet per unit. Renters are not allowed to have pets.

On July 1, 2015, Complainant's husband and Respondent entered into a one-year lease agreement to rent a two-bedroom unit for \$1,655 per month. Complainant, her husband, and their dog, moved into the unit on or about that date. Complainant told DCR that no one objected to the presence of their dog until an incident occurred involving D.B., who is a member of the condominium board. Complainant told DCR:

At the time we had our dog, which I needed for my mental and physical health. When we initially moved in, we experienced no problems with management or board members and received no complaints regarding my assistive animal. In or around August 2015, the dog of a unit homeowner [D.B.] became aggressive with our dog. I got in between them to separate them and scolded the aggressive animal. Since that time we have experienced problems with the management company and Condominium Board. For instance, only after that incident were we contacted by the management company and told that we could not keep a pet. I explained that it was not a pet, but an assistive animal, and I submitted letter from my medical provider explaining my medical need for my dog.

On or about September 10, 2015 Complainant asked Respondent to be allowed to keep the dog as an emotional support animal, and submitted a letter from her physician, Shailendra Hajela, M.D., in support of the request. Dr. Hajela's letter stated in part:

[Complainant] is my patient and has been under my care since 6/25/14. I am intimately familiar with her history and with the functional limitations imposed by her disability. She meets the definition of disability . . . Due to her multiple illnesses [Complainant] has certain limitation [sic] regarding social interaction/coping with stress and anxiety etc. In order to help alleviate these difficulties and enhance her ability to live and to fully use and enjoy the dwelling you own/administer, I am prescribing an emotional support of an animal that will assist [Complainant] in coping with her multiple illnesses and disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with such as [sic] the experienced by [Complainant]. Upon request, I will share citations to relevant studies, and would be happy to answer any other questions you may have concerning my recommendation that [Complainant] have an emotional support animal for her mental and physical health. Should you have additional questions please do not hesitate to contact me.

[See Letter from Shailendra Hajela, M.D., Jersey Rehab, P.A., to "To Whom It May Concern," Sept. 8, 2015.]

Dr. Hajela holds himself out as being board certified in physical medicine and rehabilitation, board certified in pain management, and board certified in sports medicine. The letter was written on letterhead and listed Dr. Hajela's street address in Belleville, New Jersey. It also listed his telephone number, fax number, email address, and the names of three other doctors in the practice.

Respondent's management company, Middlesex Management, denied the request. It sent a letter to Complainant's husband that stated:

This is to advise that Management has received your letters stating that you have an emotional support dog. Unfortunately, upon review of your note with upper Management and our attorney we cannot give you authorization for this pet. Though you [*sic*] information is detailed, we require all documentation provided to be on an authorized doctor's prescription pad. If you have any questions and/or concerns please do not hesitate to contact us.

[See Letter from Legal Department, Middlesex Mgmt. to Complainant, Oct. 30, 2015.]

Respondent argued that it required that doctor's notes appear on prescription pads or on letterhead showing license numbers because people submit fake letters from fictitious doctors.

It argued in part:

Respondent, as well as other landlords, have been inundated by doctors' letters from the internet purporting to be treating physicians and requesting reasonable accommodations. Since most of these come from out of state, California and Utah, for example, they are clearly bogus. To guard against bogus letters, Respondent demands that letters be either on prescription [*sic*] or on letterhead showing the health professional's license number. This is a reasonable method to avoid bogus requests. These requests actually hurt the movement toward reasonable accommodations for the disabled.

[See Respondent's Response to Document & Information Request, Sept. 21, 2016, at p. 1.]

However, Respondent appears to acknowledge that Dr. Hajela was not a fictional person. It wrote:

The physician's office called to see why the request was denied. Respondent told physician's office to please provide the doctor's license number. Office said the patient had told physician that she lived in a pet friendly building, which Respondent said was not accurate. The doctor never provided the license number . . . It is Respondent's belief that the doctor did not provide the information because he felt that the Complainant had not been truthful with him.

[Id. at p. 1 & 2.]

Complainant told DCR that Dr. Hajela told her he was not comfortable writing the letter on a prescription pad and declined to re-write the note.

On December 11, 2015, Respondent caused a certified letter to be sent to Complainant and her husband demanding possession of the apartment because of the dog. The notice said in part, "Your lease is TERMINATED (ended) as of JANUARY 31, 2016 . . . You must leave and

vacate the rented property on or before that date (JANUARY 31, 2016). This means you must move out and deliver possession to me, your Landlord.” See Colleen Nagy, Legal Dept., Middlesex Mgmt., to Complainant, Notice to Quit, Dec. 11, 2015.

On or about January 12, 2016, Complainant permanently removed the dog from the apartment to comply with Respondent’s demands.¹ Complainant alleged, “As a result of no longer having my assistive animal, my stress, anxiety and depression have worsened.”

On February 4, 2016, Respondent caused a certified letter to be sent to Complainant and her husband stating that the notice to quit “has been cancelled and your lease is [*sic*] will not be terminated.” See Colleen Nagy, Legal Dept., Middlesex Mgmt., to Complainant, Feb. 4, 2016.

Dr. Hajela told DCR that Complainant has been diagnosed as suffering from a number of diagnoses (including neuropathy and lupus) which cause chronic pain in her arms and lower back, and produce anxiety. He stated that he prescribed medication for the pain and neuropathy. He said that he believed that her dog could provide emotional support, which would help her cope with her pain and alleviate anxiety. He stated that he believed that the dog would reduce her use of opioid pain medications, which would produce a better health outcome. He confirmed that he does not like to write medicals letters—such as the one he wrote for Complainant—on prescription pads because the pads can be stolen. He said that he prefers to use his office’s stationary.

Analysis

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

¹ Complainant told DCR that the dog subsequently passed away.

an adjudication on the merits, but 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.

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

A request to relax a no-pets policy is a request for a reasonable accommodation. Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 315 (App. Div. 2004) (“Whether a pet is of sufficient assistance to a tenant to require a landlord to relax its pet policy so as to reasonably accommodate the tenant's disability requires a fact-sensitive examination.”). 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. Id. at 315-16 (citing Janush v. Charities Housing Devel. Corp., 169 F. Supp. 1133 (N.D. Cal. 2000) (discussing request for birds and cats that provide companionship)).

The U.S. Department of Housing and Urban Development (HUD) has declared that “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, response to comments, (Oct. 27, 2008).²

In this case, Respondent does not allege that allowing the animal to remain in the apartment would have created an undue burden. Nor does it challenge the substance of the note prepared by Complainant’s doctor. Indeed, Respondent refers to the information contained therein as “detailed.” Instead, Respondent appears to argue that it could not be certain as to the authenticity of author because it was not written on a prescription pad or letterhead showing the health professional’s license number. But if Respondent had concerns that Shailendra Hajela, M.D. from Jersey Rehab, P.A., was a fictitious entity, it could have made some sort of minimal inquiry. It could have called the number on the letterhead or faxed it a note, or written a letter. It could have simply Googled the doctor’s name and/or the name of his practice. Indeed, Dr. Hajela offered to discuss the matter with the landlord. See e.g., Letter from Dr. Hajela, M.D., supra, (“Should you have additional questions please do not hesitate to contact me.”). And in fact, Respondent appears to suggest that it does not question Dr. Hajela’s existence. It confirms speaking with someone purporting to be from his office who “called to see why the request was denied.”

To the extent that Respondent contends that by signing a lease containing a no-pets provision, Complainant waived her right to an accommodation, such would run afoul of Oras, supra, where the Court stated, “A landlord may not relieve itself of [its legal] responsibilities by having a tenant waive his right to a reasonable accommodation of his disability in a lease.” Oras, supra, 373 N.J. Super. at 315.

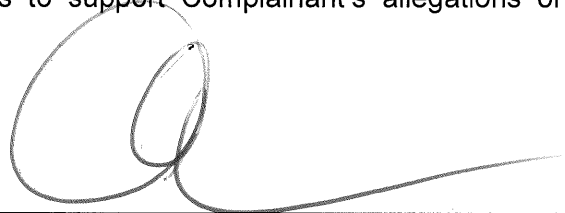
² HUD is charged with enforcing the federal Fair Housing Act, which is the substantial equivalent to the LAD in terms of prohibiting housing discrimination. Although the final rule cited above was issued in regards to HUD-assisted public housing and multifamily housing projects, the rationale is equally persuasive in this instance. See Warren v. Delvista Towers Condo. Assoc., 49 F. Supp.3d 1082, 1087 (S.D. Fla. 2014) (citing Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp.2d 850, 860 (S.D. Ohio 2009) aff’d on other grounds, 415 Fed. Appx. 617 (6th Cir. 2011)).

As a general matter, the Director fully concurs with Respondent's assessment that "bogus requests . . . actually hurt the movement toward reasonable accommodations for the disabled." The practice of impersonating a person with a disability and insisting that a family pet is a service dog, for example, has created confusion and consternation among persons with disabilities, animal-rights advocates, disability-rights advocates, the business community, and law enforcement personnel, among others. Moreover, such behavior can be expected to increase resentment towards hard-fought anti-discrimination laws aimed at protecting persons with genuine disabilities. But for the reasons set forth above, to simply conclude that Complainant was relying on "doctors' letters from the internet purporting to be treating physicians and requesting reasonable accommodations . . . most of [which] come from out of state, California and Utah . . . [and] are clearly bogus" (see Respondent's Response to Document & Information Request, supra, at p. 1), was unreasonable under the specific circumstances of this case.

In view of the above, the Director is satisfied at this threshold stage of the process that the evidence supports a "reasonable ground of suspicion" to warrant a cautious person in the belief that the matter should "proceed to the next step on the road to an adjudication on the merits," Frank, supra, 228 N.J. Super. at 56, because there was no persuasive evidence that Respondent attempted to meet its legal responsibility 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). Accordingly, it is found that probable cause exists to support Complainant's allegations of disability discrimination.

DATE:

6-2-17



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS