

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HG12MW-65800

E.Y.,)	
)	<u>Administrative Action</u>
Complainant,)	
)	FINDING OF PROBABLE CAUSE
v.)	
)	
Lamberts Mill Village Associates,)	
)	
Respondent.)	

On February 11, 2016, Union County resident E.Y. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her housing provider, Lamberts Mill Village Associates (Respondent), failed to provide her with a reasonable accommodation for 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.

Respondent owns and operates a 332-unit apartment complex called Lamberts Mill Village at 333 Spruce Mill Lane, Scotch Plains, Union County, New Jersey.

Complainant is an 83-year-old woman who began renting an apartment from Respondent on or about January 1, 2016, for \$1,480 per month.

On January 14, 2016, Respondent's leasing agent, Valerie Parham, notified Complainant that a maintenance employee heard a dog barking in Complainant's apartment in violation of a lease provision that forbids "pets . . . in the apartment or on the complex grounds."

On January 18, 2016, Complainant hand-delivered a letter to Parham asking that she be allowed to keep the dog, an eight pound Chihuahua, in her apartment as a reasonable accommodation for her "mental health disability as well as physical disabilities." See Letter from Complainant to Respondent, Jan. 17, 2016. The letter invited Respondent to contact her

daughter if it had questions about her condition or request. Ibid. (“My daughter assists me with medical issues and would be the best contact person to assist you further.”).

In support of her request, Complainant attached a note from her treating physician stating that Complainant suffers from “extreme anxiety issues as well as high blood pressure” and that the dog was “very important” for her mental and physical health. The doctor invited Respondent to contact him if it had questions about his recommendation. His note stated:

This is to inform you that [Complainant] is my patient and under my care. [Complainant] suffers from extreme anxiety issues as well as high blood pressure. It is my understanding that she is looking to relocate to be closer to her children and because of her medical conditions she must be allowed to have her dog accompany her. Her dog is her constant companion as she has had one almost her entire life. Please consider this, as it is very important that she have her dog with her for her well being. If you have any questions please feel free to contact me.

See Letter from Bhavani Jeeredy, M.D., to “To Whomsoever it May Concern,” Dec. 8, 2015.

Parham assured Complainant that she would forward the letter and doctor’s note to the relevant decision makers.

There is no allegation or evidence that Respondent contacted Complainant, her daughter, or her doctor, to discuss the accommodation request and/or supporting doctor’s note.

On January 21, 2016, Respondent issued a Notice to Cease reiterating that Complainant was violating the lease’s “no pets” provision. The notice stated in part, “If you do not immediately cease (stop) doing these acts complained of, you may be EVICTED. This means you may be forced to leave.” See Letter from Laura A. Perrella, Esq., to Complainant, Jan. 21, 2016.

Complainant’s treating physician prepared a second letter for Respondent in which he provided specific examples of how she benefited from the dog. The note stated:

I am Dr Bhavani Jeeredy, physician taking care of [Complainant]. She has been suffering from the depression and panic attacks for over twenty years since her youngest daughter moved out. Since then she has been living alone and always had a dog as a companion.

She adopted a dog who is a Chihuahua over ten years ago, who is tan colored, short haired and named her Mia. Mia does not bark much and has been her company since then. Per patient her dog is very emotionally connected to her and understands her behavior and calms her down during anxiety states. Per daughter there were incidents when pt was suffering from panic attack and was about to call the ambulance, but the dog climbed in her lap and comforted her and calmed down without need to go to hospital.

Pt had tried several medications in the past and nothing helped her. Over last ten years, she has been more outgoing and willing to socialize and more active as she had the dog accompanying her. Without the dog, she has been depressed and sad all the time, she was prescribed medication and referred to therapy but nothing has the same impact as the dog would help and comfort her.

So, I am writing this letter to reconsider your decision and let the dog live with her for her therapy and well being. If you have any questions please don't hesitate to contact me.

[See Letter from Bhavani Jeeredy, M.D., to "To Whomsoever it May Concern," Apr. 4, 2016.]

Complainant told DCR that after she received the Notice to Cease, she moved temporarily into her daughter's house with the dog. Complainant subsequently returned to the apartment complex but left the dog with her daughter. She told DCR that she wants to stay in the unit because of its first floor layout and close proximity to her children. She noted in part:

I am physically disabled with arthritis, a left knee replacement and issues with my hips. I use a cane and walker at times when I feel unsteady on my feet or am in a lot of pain from my physical issues. A first floor unit without stairs is essential for me so that I can independently get in and out of my apartment. Additionally, I have incontinence issues that have not been able to resolved medically and I need to launder my clothes frequently. It is very hard for me to use a Laundromat and I cannot go up and down stairs very easily so complexes with laundry in the basement are not a good option for me. I have to remain in the Western Union County areas as I frequently need support from my children. I am not able to drive in the dark, nor can I drive long distances. My children drive me to medical appointments . . .

During the course of the investigation, Complainant gave Respondent a report from her treating physician stating that her condition was worsening in the absence of her dog and asking Respondent to "consider her situation very seriously." See Letter from Bhavani Jeeredy, M.D., to "To Whomsoever it May Concern," Jul. 18, 2016. The doctor wrote:

[Complainant] followed up with me and she is not doing well. She has been getting nightmares and worse panic attacks since her last visit. Pt has been on

anxiolytic and antidepressant but has been worsening secondary to the detachment from her dog. I have increased her medication dose and an additional prescription was added. Please consider her situation very seriously and give her permission to accommodate her dog. Elderly population show remarkable improvement with their attached ones living with them that they respond to the medications. Please contact me if you have any further questions.

[Ibid.]

Respondent denied the allegations of disability discrimination in their entirety. It argues that Complainant “failed to establish that she is disabled pursuant to the [LAD].” See Respondent’s Answer & Affirmative Defenses, Mar. 23, 2016, p. 3. In particular, Respondent argues that there is no indication that Complainant is “disabled or that her ailments substantially limited one or more of her major life activities.” Id. at 2-3.

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. 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. See 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), which is charged with enforcing the federal Fair Housing Act (i.e., the substantial equivalent to the LAD in terms of prohibiting housing discrimination), 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).

If a tenant has a disability that is not readily apparent or known, the housing provider may ask him/her to submit reliable documentation of a disability and his/her disability-related need for an emotional support animal. HUD notes:

[T]he 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, social worker, 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.

[See HUD, FHEO Notice FHEO-2013-01, Apr. 25, 2013.]

In this case, Respondent does not dispute that the dog is an emotional support animal, or that Complainant requested an accommodation, or that it denied the accommodation. Respondent does not allege that allowing the dog to remain in the apartment would have created an undue burden. Nor is there is any evidence that Respondent evaluated the request and supporting documentation from Complainant’s medical provider using the general principles applicable to reasonable accommodation analysis. See generally N.J.A.C. 13:13-3.4 (f)(2). There is no evidence that Respondents undertook a “fact-sensitive examination.” Oras, supra, 373 N.J. Super. at 315.

Instead, Respondent challenges Complainant's claim that she was "disabled or that her ailments substantially limited one or more of her major life activities." See Respondent's Affirmative Defenses, supra, at 2-3.

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).]

Our Supreme Court notes that the above definition is "very broad in its scope." See Clowes v. Terminix Int'l, 109 N.J. 575, 593 (1988). The Court states 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—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.").

In this case, Complainant told Respondent that she had a "mental health disability as well as physical disabilities." Her medical doctor stated that Complainant suffers from "extreme anxiety issues as well as high blood pressure," "depression and panic attacks." The Director finds—for purposes of this disposition only—that those ailments 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). Although the genuineness, or lack thereof, of Complainant’s alleged disability can be explored at an administrative hearing, the Director notes that if Respondent previously had questions about the extent or severity of those conditions, it could have contacted Complainant or her daughter or her treating physician, as it was repeatedly invited to do. It could have requested additional documentation from Complainant or her medical providers. Or it could have consulted its own doctor. But rather than follow any of those courses, it appears that persons with no apparent medical expertise determined that Complainant did not require an emotional support animal, and issued a notice stating that Complainant was required to “CEASE IMMEDIATELY” or “may be EVICTED.” See Letter from Perrella, supra. (emphasis in original).¹

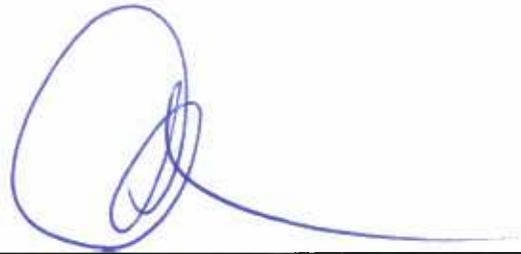
At the conclusion of an investigation, the Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances 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, 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.

¹ To the extent that Respondent contends that by signing the lease, Complainant waived her right to an accommodation, such would run afoul of Oras, 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.

Guided by the above standards, the Director is satisfied that at this threshold stage of the process, 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 Respondents attempted to meet their 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).

DATE: 8-24-16



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS