



STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO.: HG20HT-06114  
REFERRAL NO.: 02-07-0130-8

\_\_\_\_\_  
SUSAN HELLER, AND J. FRANK  
VESPA-PAPALEO, DIRECTOR,  
NEW JERSEY DIVISION ON CIVIL RIGHTS,

Complainants,

v.

CLARIDGE HOUSE II CONDOMINIUM  
ASSOCIATION

Respondent,  
\_\_\_\_\_

**FINDING OF PROBABLE CAUSE**

Consistent with a Verified Complaint filed on January 2, 2007, and Amendment to the Verified Complaint, the above-named Respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.) and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12 (g) because of disability.

J. Frank Vespa-Papaleo (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

**SUMMARY OF COMPLAINT**

Complainant alleged that she was unlawfully discriminated against based upon her disability (Multiple Sclerosis)<sup>1</sup> when Respondent denied her requests for reasonable accommodation. Complainant alleged that since she purchased her condominium apartment on December 6, 2005, she has made multiple accommodation requests to Respondent which have been denied. Specifically, Complainant alleged that her wheelchair does not fit through the narrow doorways in the building and the pool is inaccessible to persons who are wheel chair ambulatory. Complainant alleged the ramp outside the main entrance is steep and dangerous. Finally, Complainant alleged that Respondent subsequently closed the front entrance of the building for remodeling and failed to provide a reasonable accessible route for the Complainant to enter and exist the building.

<sup>1</sup>Complainant utilizes both a manual and motorized wheel chair, to aid in her mobility.



### **SUMMARY OF RESPONSE**

Respondent denied discriminating against Complainant for any unlawful reason, including her disability. Respondent admitted that Complainant purchased her unit in December 2005 and utilized a wheelchair. Respondent provided no explanation regarding Complainant's claim that she was denied reasonable accommodation.

### **BACKGROUND**

Respondent, located at 2 Claridge Drive, Verona, Essex County, New Jersey, is a condominium association authorized to conduct the affairs of Claridge House II Condominium. The condominium is a luxury high rise building consisting of twelve floors.

Complainant, who resides in condominium apartment 12GE, purchased her unit with her husband in December 2005.

### **SUMMARY OF INVESTIGATION**

This investigation established sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when Respondent denied her requests for reasonable accommodation concerning an accessible route to enter and exist the building. The evidence further indicated that Respondent failed to adequately engage in an interactive process to determine a way to accommodate her reasonably.

The Investigation disclosed that on November 2, 2006, Respondent's Board of Directors, provided a letter to its condominium owners notifying them that the main (front) entrance to the building would be closed for construction and remodeling. The letter indicated that *"the biggest hurdle to overcome will be to leave and enter the building while the vestibule and circular driveway are under construction."* During the construction phase, residents were instructed to use the east side service entrance where residents could pick up their cars. The letter further stated *"there will be assistance for those with special needs."* When Complainant became aware of the front entrance construction, she forwarded a letter to Respondent concerning the poor construction of the existing ramp at this location. Complainant indicated the ramp from the sidewalk to the driveway was poorly constructed, and *"frightening to the one in the wheelchair and difficult to maneuver for the person pushing the chair."* Complainant further informed Respondent that any new construction must meet current ADA accessibility standards. Notwithstanding the condition of this ramp prior to the construction of the front entrance, Complainant had an accessible route to her apartment.

As described above, during the construction phase of the front entrance, residents were instructed to use the east side service entrance to pick up their cars. In a letter to the Respondent's Board of Directors dated November 3, 2006, Complainant requested permission for a reasonable accommodation, which states in part, *"to leave and enter the building via the service elevator (E-Wing), where there are no steps and I can remain in the wheelchair with no assistance . . . This is the safest way for me to get in and out."*



Respondent granted Complainant permission to use the service elevator in order to reach the east side service entrance. However, in or about January 2007, Respondent closed the service elevator to its residents which eliminated Complainant's accessible route to enter and exist the building with her wheelchair. On April 30, 2007, when the Division on Civil Rights Investigator visited Respondent's facility to examine Complainant's accessible route at the east entrance, the concierge who identified himself by the name of Emilio, indicated that the service elevator had been out of service and in need of repair for approximately four months. Complainant stated that Respondent has not reasonably taken the necessary steps to have this service elevator repaired to accommodate her disability, including the disability of other residents.<sup>2</sup>

Moreover, as a consequence of the east side elevator being out of service, Complainant was required to exit and enter the east entrance by means of a very steep ramp. Complainant stated that her motorized wheel chair could not make it up this ramp. During a field investigation to the building, Complainant showed the Division Investigator the ramp in question. The Investigator witnessed a woman pushing another woman in a wheel chair down the ramp. They were advised by an employee of Respondent that the woman in the wheel chair should go down backwards, or they risk the woman falling out of the wheel chair due to the steep incline of the ramp. To further demonstrate the design and sharp incline of this ramp, a Division Investigator who uses a wheel chair went down this very dangerous slopped ramp with the aid of another Investigator. The Investigator guiding and holding the wheel chair required substantial physical restraint to avoid a possible hazardous condition. Once on the bottom of the ramp, the Investigator was able to reach a different elevator that lead to an accessible route to Complainant's apartment.

While at the building, Complainant took the Division Investigator for an inspection of two other alternative routes that were provided by Respondent, but it was found that these routes were not reasonably accessible for entering and exiting the building with a wheel chair. Complainant first took the Investigator on a tour of the west-side indoor parking area. The first major barrier was a door with a round doorknob. This doorknob was not easy to grasp with one hand, it required a lot of tight pressure and twisting of the wrist to operate. Additionally, the door required substantial pressure to open. This led to an accessible hallway and then to a small wood ramp that did not match up flush to the top level ground.<sup>3</sup> The ramp had no rails for hand support, was not stable and moved easily. This ramp led to a second door with another round doorknob and a second ramp with similar features as the other one described above. This route finally led into the indoor parking garage.

The other alternative route was to the west side out door parking area. This route involved

---

<sup>2</sup> At the east side entrance, Division Investigators observed several elderly persons with walkers who had difficulty maneuvering the steps and ramp by themselves. These individuals required mobility support and aid from the concierge to avoid a possible hazardous condition.

<sup>3</sup> Investigator measured a one inch lip, the difference from the top of the ramp to the first level of the flat ground, which caused great difficulty for a wheel chair user to overcome to access the indoor parking area.



taking an elevator to the ground floor. The Investigator observed that the elevator doors closed very quickly and hit the wheel chair user.<sup>4</sup> Once off the elevator, it led into an accessible hallway, then to a set of two separate double doors,<sup>5</sup> and then to the west side outside parking area. The first set of double doors required excessive pressure to open. An inspection of the outside parking area indicated rough surfaces and changes in elevation along the path of travel, which caused difficulty for wheel chair users to move about. Complainant stated that Public Service Gas and Electric had been conducting some major repair work in this area. This repair work prevented her from using this route to gain access to the parking area.

As evidenced from the investigation, Complainant requested several reasonable accommodations when the main front entrance of the building was closed due to construction, however, Respondent failed to adequately engage in an interactive process to determine a way to accommodate her reasonably. In addition, Complainant alleged that Respondent's pool was inaccessible. During a visit to the building, the Investigator observed that the only entrance to the pool was by way of a flight of stairs which was inaccessible for a wheel chair user.

### **ANALYSIS**

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a Complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. 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. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In this case, the investigation established sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when Respondent denied her requests for a reasonable accommodation for her disability. The investigation disclosed that due to the construction and remodeling of the main front entrance, alternative entrances, exits and egress routes provided by Respondent were inaccessible to Complainant in a wheel chair. Additionally, based on the inaccessibility of the front entrance, Respondent was obligated to make temporary accessible routes available to Complainant as a reasonable accommodation. Finally, Respondent failed to adequately engage in an interactive process to determine a way to accommodate her reasonably.

---

<sup>4</sup> Elevator door control had to be held so the wheel chair users could enter and exist elevator without getting hit.

<sup>5</sup> The door handles and width of doors were accessible for wheel chair users.



**FINDING OF PROBABLE CAUSE**

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

5/14/07  
DATE

  
\_\_\_\_\_  
J. FRANK VESPA-PAPALEO, ESQ.  
DIRECTOR, DIVISION ON CIVIL RIGHTS  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY

