



STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO.: HN26HT-06255  
HUD NO.: 02-07-0822-8

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HARRY EDWAB & SHIRLEY EDWAB, AND  
J. FRANK VESPA-PAPALEO, DIRECTOR,  
NEW JERSEY DIVISION ON CIVIL RIGHTS,

Complainants,

v.

COVERED BRIDGE CONDOMINIUM  
ASSOCIATION, INC.

Respondent,

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**FINDING OF PROBABLE CAUSE**

Consistent with a Verified Complaint filed on September 27, 2007, and Amendment to the Verified Complaint filed on March 3, 2008, the above-named Respondent has been charged with unlawful housing 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 Shirley Edwab, a condominium owner at Respondent's complex, alleged that she was unlawfully discriminated against based upon her disability (neuroposy<sup>1</sup> in both legs), when Respondent denied her requests for reasonable accommodation. Complainant Shirley Edwab requested that Respondent install ramps where steps were located in the common property area, in order for her to gain accessibility to the parking lot. Complainant Harry Edwab made Respondent aware that his wife, Shirley Edwab, was disabled and utilized a wheelchair and walker, and could not get up and down the steps leading to the parking area. Complainants further allege that on or about June 26, 2006, Respondent approved the construction of two concrete ramps for the parking area and subsequently had one ramp constructed for this project. Complainants allege that on or

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<sup>1</sup>A medical condition that caused Ms. Edwab to have numbness in both of her legs.

about July 30, 2007, Respondent advised the Complainants and other residents, that the constructed ramp had to be removed because it was not designed according to code. Complainants allege that approximately one week later they were informed that Respondent would not install any ramps.

### **SUMMARY OF RESPONSE**

Respondent denied discriminating against the Complainants for any unlawful reason including disability. Respondent admitted that it had a new concrete ramp constructed for the parking area, but had it removed because it was not constructed and designed according to code. Respondent asserted that thereafter the Township of Manalapan Construction Code Department advised Respondent that the construction of ramps were not required until certain types of improvements or rehabilitations are proposed for residential units or site improvements.

In Respondent's answer to the Amended Verified Complaint, Respondent asserted that it declined to incur the cost of installing ramps, however, Complainants were also advised that they would be permitted to make the necessary modifications to the common property for ramps at their own expense.

### **BACKGROUND**

Respondent consists of 1,557 condominium units located in Manalapan, Monmouth County, New Jersey. Complainants own a condominium unit at the complex, located at 3 Pine Cluster Circle, Apartment D.

### **SUMMARY OF INVESTIGATION**

This investigation established sufficient evidence to support a reasonable suspicion that Complainant Shirley Edwab was subjected to unlawful disability discrimination when Respondent denied her requests to provide reasonable accommodation concerning an accessible ramp to the parking area. Moreover, the evidence indicated that Respondent failed to comply with the Federal Fair Housing Act and New Jersey State Barrier Free Codes, in design and construction requirements, when it built a ramp that had to be removed due to code violations.<sup>2</sup>

Complainant Harry Edwab provided a copy of a letter to the Division's Investigator that he sent to Respondent dated April 17, 2006. In this letter Mr. Edwab stated there are nine residents with disabilities which prevent them from getting up and down steps, among them his wife who uses both a wheel chair and a walker. Mr. Edwab listed the units where the disabled residents resided and identified if they used a walker, cane or wheel chair to

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<sup>2</sup>The constructed concrete ramp was not available for inspection by the Division since it had already been removed by orders of the Manalapan Construction Code Department.

aid in their mobility. The disabled residents all resided in buildings three and four, and these were the only buildings at the complex which require a resident to use a set of stairs to get from the parking lot or street to their condominium unit. Mr. Edwab requested that Respondent install ramps, or at least one ramp to the parking area which would provide accessibility for the disabled residents.

In a letter dated June 26, 2006, Respondent informed Mr. Edwab that in response to his request, it agreed to install two small ramps. This letter stated in part:

*We realize you have a viable complaint and empathize with your problem. Consequently, the Board has authorized the making of two small ramps strategically located. They will be installed when we begin concreting. Hopefully, this will alleviate some of the difficulties currently being endured by yourself and neighbors.*

It is undisputed that one ramp was constructed by Respondent at its expense and construction of the second ramp was eventually canceled. In a letter sent by Respondent, dated July 30, 2007, it advised the residents of buildings three and four, in part as follows:

*We have been advised by our attorney that we have no responsibility to put in ramps at Covered Bridge. The attached letter (dated July 12, 2007) from the Manalapan Sub Code official confirms that there is no responsibility under NJ Laws, and our attorney advises us that the federal disabilities act does not apply to a private community like Covered Bridge 1. We have also been informed that we must remove the recently installed ramp because it was not made according to code... If you wish to put in a ramp according to code at your own expense, we will do our best to accommodate you.*

The above cited letter, dated July 12, 2007, from John J. Marini, Building Subcode Official, for the Township of Manalapan, stated in part as follows:

*The provisions of Subchapter 7, Barrier Free guides us through the requirements associated with existing and proposed projects. In your situation we are dealing with existing construction, specifically, built and occupied residential units. To my knowledge, these units were built sometime in the 1960's or 1970's when they had been constructed to code adopted and enforced at that time.*

*Within Subchapter 7, as it now relates to your ramps, we would find Section 5:23-7.12. Existing facilities and proposed work would direct us to comply with Chapter 6, Rehabilitation Subcode (or more commonly referred to as the Rehab Code). Neither chapter requires the installation or construction of code compliant Barrier Free Ramps until certain types or amounts of Rehab is proposed for the residential units or site improvements. At the time work is contemplated or proposed, certain amounts of monies would be dedicated to Barrier Free Compliance and included within the project. The property owner would bear the costs associated with code compliance. Should a property owner elect to install or construct Barrier Free it must be designed and constructed to code.*

The above referenced letter from Building Subcode Official John Marini, indicated that he did not address the issue that Respondent had already constructed a ramp and had it removed because it failed to comply with Federal and New Jersey State design and construction regulations. The letter from Mr. Marini simply provided Respondent with advise and information after it had already removed the ramp for having code violations.

The evidence disclosed that on June 21, 2006, at a Board meeting of the Covered Bridge Condominium Association, Respondent initially approved to pay for the construction of two ramps on the common property of the complex. In the minutes of this meeting it stated, *"A discussion concerning a ramp for building 3 then followed. A motion was made to build 2 ramps for Building 3 and 4. The vote was unanimous. Our foreman Robert is looking into this matter."*

As described in the above Board minutes, Respondent unanimously approved the construction of two ramps at its own expense. Respondent went forward building one of these ramps. This ramp was new construction or site improvements on common property used by the residents and visitors from the public, and Respondent was responsible to comply with design and construction regulations.<sup>3</sup> As stated in John Marini's July 12, 2007 letter to the Board, *"Neither chapter requires the installation or construction of code compliant Barrier Free Ramps until certain types or amounts of Rehab is proposed for the residential units or site improvements. At the time work is contemplated or proposed, certain amounts of monies would be dedicated to Barrier Free Compliance and included within the project."* (Emphasis Added) However, at the time in which the Board proposed and planned the construction of the ramp, it failed to ensure that the ramp conformed to Barrier Free Compliance guidelines.

As a result of Respondent's failure to conform to design and construction requirements, the Building Subcode Official, for the Township of Manalapan, directed Respondent to remove the ramp although it had already been built and used by the residents for a period of time. Moreover, before having the ramp removed Respondent failed to consider or undertake any reasonable modifications to make the ramp accessible under appropriate regulations. Thus, since Respondent failed to ensure that the construction of the ramp conformed to Barrier Free Compliance, it should be responsible for bearing the costs associated with a new ramp, and not the disabled residents in buildings three and four of the complex.

During the investigation, the Division's Investigator requested Respondent for copies of any and all estimates for new ramp construction. Respondent indicated that no estimates were obtained during the interactive process with the residents. Additionally, at

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<sup>3</sup>The American with Disabilities Act (ADA) requires that new construction or alterations to existing facilities comply with the ADA Standards for Accessible Design, including at condominium complexes.

no time did Respondent present evidence that construction of a new ramp would constitute an undue financial hardship for the Association.

In an interview with the Division's Investigator, Complainant Harry Edwab stated the ramp constructed by Respondent was very steep before it was removed. Mr. Edwab stated that the contractor made the ramp by laying down new concrete off the main side walk which lead to the parking area. Mr. Edwab stated the design of the ramp had a sharp incline, had no railings, was not safe and had been poorly constructed.

During the Investigation, the Division's Investigator contacted several of the residents identified by Complainant as disabled and in need of reasonable accommodation for accessibility to the parking area. Building three resident, Henrietta Hirsch, stated that she uses a cane to walk. She tried to use the ramp originally built by Respondent, but it was too steep. She tried to use the stairs, but they were a struggle for her to use. Pauline Rabba of building four stated that she uses a wheel chair. Ms. Rabba stated that she used the ramp before it was removed, now she must go through the grass in her wheel chair to get to the parking area which is dangerous. Eva Smilowitz, also of building four, explained she walks with a cane and has problems with the stairs to the parking area. She was afraid of the ramp originally constructed by Respondent because it was too steep. Ms. Smilowitz stated that she and others would benefit from a properly constructed ramp. Pete Dachille, residing in building four, stated he utilizes a wheel chair and used the ramp until it was taken down. He stated a new ramp is urgently needed to help him access the parking area.

### 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.

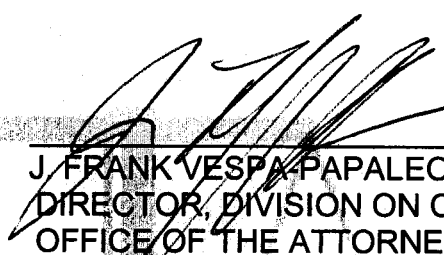
In this case, the investigation established sufficient evidence to support a reasonable suspicion that Complainant Shirley Edwab was subjected to unlawful disability discrimination when Respondent denied her requests to provide reasonable

accommodation concerning an accessible ramp to the common property parking area. The evidence disclosed that Respondent had a ramp constructed and subsequently had it removed because it failed to conform to essential design and construction regulations. When the Board initially proposed and planned the construction of this ramp, it failed to ensure that the ramp conformed to Barrier Free Compliance guidelines. Additionally, before having the ramp removed Respondent never attempted to modify or reconstruct the ramp to bring it within Barrier Free Code compliance. Thus, Respondent was the negligent entity and should bear the costs associated with the new construction of a code compliant Barrier Free ramp, and comply with its obligation under New Jersey Law Against Discrimination to provide a reasonable accommodation to residents with disabilities.

**FINDING OF PROBABLE CAUSE**

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

5/30/08  
DATE



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

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DIVISION ON CIVIL RIGHTS  
DOCKET NUMBER: HN26HT-06255  
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HARRY EDWAB & SHIRLEY	)	
EDWAB	)	
	)	
Complainants,	)	RECEIVED AND RECORDED
	)	DATE
-vs-	)	DEPARTMENT OF LAW & PUBLIC SAFETY
	)	DIVISION ON CIVIL RIGHTS
COVERED BRIDGE	)	By
CONDOMINIUM ASSOCIATION	)	
	)	
Respondent,	)	<b>AMENDMENT TO VERIFIED COMPLAINT</b>

I, J. Frank Vespa-Papaleo, Esq., as the Director of the New Jersey Division on Civil Rights, hereby intervene as a Complainant in the above referenced matter pursuant to N.J.A.C. 13:4-2.2 (e) and hereby amend the caption of the Verified Complaint, received and filed on September 27, 2007 and Amendment to the Verified Complaint, received and filed on March 3, 2008, to read as follows:

HARRY EDWAB & SHIRLEY, AND	)
J. FRANK VESPA-PAPALEO,	)
DIRECTOR, NEW JERSEY DIVISION	)
ON CIVIL RIGHTS	)
	)
Complainants,	)
	)
-vs-	)
	)
COVERED BRIDGE CONDOMINIUM	)
ASSOCIATION, INC.	)
	)
Respondent,	)

