



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: HK09HT-06323
HUD NO. 02-08-0446-8

GLENN GORDON, AND J. FRANK
VESPA-PAPALEO, DIRECTOR, NEW
JERSEY DIVISION ON CIVIL RIGHTS,

Complainants,

v.

DORIS MILNES,

Respondent,

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on February 6, 2008, and Amendment to the Verified Complaint, 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)(1)(2) 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 Respondent denied his request for a reasonable accommodation for his disability (Fibrodysplasia Ossificans Progressiva).¹ Complainant alleged that Respondent's property owner, Doris Milnes (hereinafter referred to as Ms. Milnes), has placed conditions which prevent him from leaving his rental unit. Specifically, Complainant alleged that Ms. Milnes denied his request to allow the LINK transportation service to travel down the driveway to pick him up for medical treatment. Complainant further alleged that Ms. Milnes advised him not to ride his motorized scooter on the

¹This disability adversely affects Complainant's ability to walk and he utilizes a motorized scooter to aid in his mobility.

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driveway to meet the LINK transportation service on the main road. Finally, Complainant alleged that Ms. Milnes has threatened him with eviction.

SUMMARY OF RESPONSE

Ms. Milnes denied discriminating against Complainant for any unlawful reason, including his disability or denying his request for a reasonable accommodation. Ms. Milnes asserted that the driveway on the property was not suitable for the size of the vehicles the LINK transportation system uses. Ms. Milnes asserted that a bus of any size would cause damage to drainage pipes that are located under the driveway. Ms. Milnes further indicated that Complainant may tip his motorized scooter over if he drove it on the driveway.

BACKGROUND²

Ms. Milnes is the owner of the subject property located at the end of a driveway (approximately 1500 feet long) consisting of stone and gravel,² off of Route 12, in Flemington, Hunterdon County, New Jersey. The property has a single family house occupied by Ms. Milnes and a separate smaller cottage that Complainant rented. Complainant signed a lease to rent the unit from May 1, 2007 to April 30, 2008, at a monthly rent of \$950.00 per month.

SUMMARY OF INVESTIGATION

This investigation established sufficient evidence to support a reasonable suspicion that Ms. Milnes engaged in unlawful housing discrimination based on the Complainant's disability. The evidence disclosed that Ms. Milnes denied Complainant's request for a reasonable accommodation by not allowing a smaller LINK transportation service to travel down her driveway to pickup Complainant for medical treatment. Moreover, the evidence indicated that Ms. Milnes failed to adequately engage in an interactive process to determine a way to accommodate him reasonably.

In a letter dated December 6, 2007, Ms. Milnes informed Complainant that she no longer thought it was safe for him to reside in the rental unit. Ms. Milnes stated that he had health problems which required the use of emergency vehicles and her driveway was not

²During the investigation, photographs taken of vehicles on Ms Milnes' property confirmed that they were capable of traveling up and down the driveway. The end of the driveway included a very wide cul-de-sac for vehicles to turn around.

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equipped to handle the size of the vehicles. Ms. Milnes further informed Complainant the following:

"It (the driveway) must be paved for you to leave your apartment and proceed to State Highway 12 where the LINK Bus may stop to pick you up. You may not use your motorized scooter on the driveway in its current condition. Do not ask the LINK to enter this driveway to pick you up . . . A home that can access public transportation and a more social neighborhood would be much safer and more enjoyable for you . . . Please arrange to leave here as soon as you are able . . . Consider this letter a notice to vacate the premises."

During the Division's investigation, Ms. Milnes provided another explanation for not allowing the LINK transportation service to travel down her driveway. Ms. Milnes stated that in May 2007 the LINK sent a bus to pickup Complainant and there was not enough room for the bus to turn around in the driveway. The driver of the bus pulled off the driveway, got stuck in the mud and had to be towed out. Additionally, Ms. Milnes stated that there are drainage pipes located about every 40 feet that could be damaged by the weight of the LINK vehicle.

The investigation disclosed that there was an interactive process³ between the Hunterdon County Department of Human Services (HCDHS), the agency that administers the LINK service and Ms. Milnes. This discussion was to determine a reasonable accommodation to resolve Complainant's transportation issue. In January 2008, HCDHS Program Coordinator, Lupe Fowler, requested permission for Ms. Milnes to allow a much smaller LINK transportation vehicle to access her property to pickup Complainant. Ms. Fowler explained to Ms. Milnes that this smaller vehicle would allow Complainant to safely leave the property and would allow him to take his motorized scooter in the vehicle to the Hunterdon Medical Center for treatment. Additionally, Complainant would not have to drive his scooter on the driveway and it would resolve Ms. Milnes' safety fears of any possible damage to her driveway. Ms. Fowler stated that Ms. Milnes denied all reasonable options to accommodate Complainant and was adamant of not allowing any type of LINK vehicle to travel down her driveway. Moreover, due to this intolerable and unresolved transportation issue, Complainant was forced to move out of Ms. Milnes' rental unit prior to the expiration of his lease.

³A process and discussion through which Ms. Milnes and Hunterdon County Human Services could work together to arrive at a reasonable accommodation for the Complainant.

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ANALYSIS

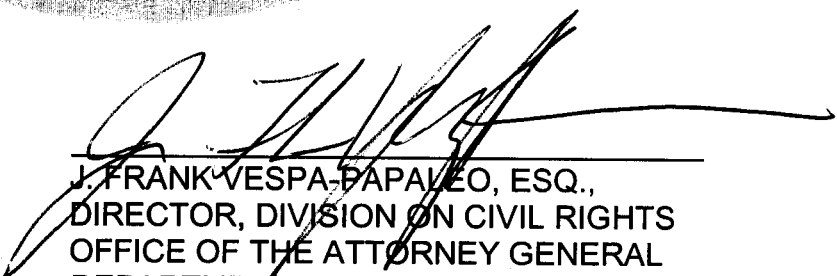
At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a Complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion 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 housing discrimination based on his disability. The evidence established that HCDHS Program Coordinator, Lupe Fowler, explored reasonable accommodation options with Ms. Milnes and recommended that a much smaller LINK vehicle be allowed on her property to pick up and transport Complainant for necessary medical treatment. However, Ms. Milnes failed to agree to this reasonable accommodation, declined to offer any other options and was adamant about not allowing any type of LINK vehicle to travel on her property. Thus, Ms. Milnes failed in her obligation to engage in a good-faith effort during the interactive process, by not exploring any possible reasonable accommodation for Complainant's transportation issue.

FINDING OF PROBABLE CAUSE

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

5/29/08
DATE


J. FRANK VESPA-PAPALEO, ESQ.,
DIRECTOR, DIVISION ON CIVIL RIGHTS
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