

Khalill Smart vs. Peterson Real Estate, et al.
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SUMMARY OF RESPONSE

Respondent Peterson Real Estate denied discriminating against Complainant for any unlawful reason, including race and disability. In its answer to the complaint, Respondent Peterson Real Estate asserted that “[t]his matter was never about racial discrimination, it was about a dog.” Respondent Peterson Real Estate admits that Complainant sought to rent the apartment and provided it with paperwork regarding his wife’s need for her dog because of her condition, and that it provided this information to the landlord, Respondent Saoud. Respondent Peterson Real Estate contends that it received an unfavorable response from Saoud regarding Complainant’s rental application.

Respondent Saoud asserted he had no knowledge of Complainant’s race. Respondent Saoud asserted that when Spirito told him over the telephone that Complainant and his wife had a dog, he told Spirito they could have the apartment, but without the dog. Respondent Saoud asserted he never received documentation which indicated the dog was a service animal.

BACKGROUND

Complainant is a member of protected classes in that he is Black and his wife is a person with a disability for which her physician prescribed an emotional support animal.

Chinh Q. Le (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).

Respondent Peterson Real Estate is a full service real estate agency located in Secaucus, Hudson County, New Jersey.

Respondent Ray Saoud d/b/a Saoud Enterprises owns a nine-unit apartment building located at 225 Maple Street, Secaucus, New Jersey, and contracts with Peterson Real Estate to obtain and screen tenants for the building.

SUMMARY OF INVESTIGATION

The investigation established sufficient evidence to support a reasonable suspicion that Respondents engaged in unlawful housing discrimination based upon Complainant’s wife’s disability. The investigation disclosed that Ms. Smart suffers from stress and anxiety secondary to

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diagnosis and treatment for breast cancer.¹ The investigation further disclosed that on December 19, 2009, Complainant saw a “For Rent” sign at the property Respondent Saoud owns in Secaucus and contacted Peterson Real Estate to inquire about the apartment. Complainant spoke to Spirito who made an appointment for Complainant to see the apartment at 1 p.m. that afternoon. There was no dispute between Complainant and Spirito that during their tour of the apartment, Complainant advised Spirito that his wife had an emotional support dog, a five-pound Pomeranian/Chihuahua mix named Big Boy, to help her handle stress. In a written statement to the Investigator, Spirito stated in pertinent part:

[Complainant] said the apartment would be for him and his wife and he was looking for February 1 occupancy. [Complainant] asked about dogs. I said the Landlord did not want any pets because he was having a big problem with another tenant with a dog. [Complainant] showed me a picture of a cute little dog on his cell phone. He said the dog was an emotional support dog for his wife to help her handle stress. He said the landlord must take the dog—it is the law. I told him I would call the landlord and tell him about the dog. I could not call the landlord until Monday and we said would speak on Monday. I gave him my business card and said he could reach me directly by cell phone.

On Monday 12/21/09, I called the landlord to tell him about the potential tenant with the dog. I explained what [Complainant] told me. The landlord said he turned away other callers with pets and if he was taking pets he could have rented the apartment sooner. I told him that if the dog is a service animal that the law says he must take the dog. At the time of our conversation, I had no other information but what [Complainant] had told me. The landlord said he did not want a dog and told me about the problems he was having with a current tenant’s dog.

A short time later [Complainant] called me on my cell phone and I told him what the landlord said. He was annoyed and said he was going to fax me a copy of the law.

¹ While Verified Complaint lists Mrs. Smart’s disability as “Post Traumatic Stress Disorder,” the investigation disclosed that she would have a condition meeting the LAD’s definition of disability either as a mental disability, or in connection with the effects of her breast cancer diagnosis.

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During an interview with the Division's Investigator, Respondent Saoud asserted that Spirito called him on Monday, December 21, 2009, and told him Complainant and his wife wanted to rent the apartment, but they had a dog. Respondent Saoud asserted he told Spirito he would not rent to them because of the dog. Respondent Saoud denied Spirito informed him that the dog in question was an emotional support animal.

The investigation disclosed that on December 22, 2009, Peterson Real Estate received a fax from Complainant directed to Spirito, which contained a pamphlet from the U.S. Department of Housing and Urban Development (HUD) entitled "Fair Housing Sheet #6 Right to Emotional Support Animals in 'No Pet' Housing," and a note from his wife's radiation oncologist. In the note, Dr. Williams stated in pertinent part:

Jackie Smart is my patient, and has been under my care since 3/1/09. I am intimately familiar with her history and with the functional limitations imposed by her disability. She meets the definition of disability under the Americans With Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to the illness, Jackie has certain limitations regarding coping with stress/anxiety, etc. In order to help her alleviate these difficulties, and to enhance her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist Jackie in coping with her disability.

During an interview with the Division's Investigator, Spirito admitted that she received the materials Complainant faxed on December 22, 2009. Spirito said she attempted to call Respondent Saoud on December 23, 2009, but he was out making deliveries. Spirito said she did not leave a message. Spirito indicated that she was off for the holidays on December 24 and 25, 2009, and was then out the entire next week due to a death in the family. Spirito said she returned to work on January 5, 2010. Spirito stated she had no contact with either Complainant or Respondent Saoud after December 22, 2009.

The investigation disclosed that Respondent Saoud subsequently rented the apartment to his acquaintances, Eric and Adriana Gacita. During an interview with the Division's Investigator, Mr. Gacita indicated that he is Cuban and his wife is Irish/Italian. They inquired about the apartment on February 15, 2010, and subsequently signed a one-year lease and moved in on March 1, 2010.

Based upon the investigation, it appears Respondent may have been willing to rent to Complainant except for the issue with the service animal. The investigation disclosed insufficient

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evidence, however, to support a claim of race discrimination. Moreover, the investigation disclosed that the leaseholders of two of the nine apartments in the subject building are Black. Consequently, the investigation did not establish a reasonable suspicion that Respondents engaged in unlawful housing discrimination based upon Complainant's race.

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.

N.J.S.A. 10:5-12g makes it unlawful to refuse to rent to an individual because of disability. The prohibitions against disability discrimination include the refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to avoid a person with a disability equal opportunity to use and enjoy a dwelling. N.J.A.C. 13:13-3.4(f)(2). See also, Oras v. Housing Authority of City of Bayonne, 373 N.J. Super. 302, 312 (App. Div. 2004). Such accommodations may include waiver of a "no pets" rule when there is no showing of undue hardship on the part of the landlord.

In this case, after being informed of Respondent's no-pet policy, Complainant made Spirito aware of his wife's need to maintain her dog to ameliorate the effects of her condition and provided a note from her physician prescribing the maintenance of a dog for that purpose. There is some dispute between Spirito and Saoud how much of that information and documentation was passed from Spirito to Saoud; however, it is clear that Complainant provided the information and documentation to Spirito as the individual who was acting as Saoud's agent in all dealings with Complainant. And while Spirito provides an explanation for not addressing Complainant's application between December 23 and January 5, there has been no explanation provided as to why Complainant's application was not addressed between Spirito's return to the office on January 5 and February 15, when the apartment was shown to the eventual tenants. Complainant contends that he attempted to follow-up on his rental application during this period, but his calls were not returned. Further, while Respondents cite to a problem with a current tenant's dog, Respondents have provided

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no explanation why accommodating Complainant's request to maintain the dog for his wife would have imposed an undue hardship.

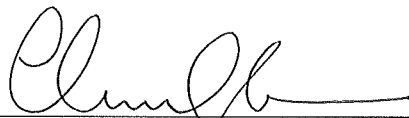
FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint that Respondents refused Complainant rental of an apartment because of disability.

FINDING OF NO PROBABLE CAUSE

It is, therefore, determined and found that No Probable Cause exists to credit the allegations of the complaint that Respondents refused Complainant rental of an apartment because of his race.

06/01/10
Date


Chinh Q. Le, Esq., Director
New Jersey Division on Civil Rights
Office of the Attorney General
Department of Law and Public Safety