



the puppy would weigh about 6 pounds when fully grown. As part of the purchase process, Complainant needed a letter from her landlord stating that the dog would be allowed to reside in her apartment.

On the same day, Complainant visited the real estate office at the complex and spoke to property manager Bill Jannarone. Complainant gave Jannarone the prescription from [REDACTED] as well as a certificate from the Emotional Support Animal Registration of America indicating that a Yorkshire terrier dog named [REDACTED] was registered as an emotional support animal.<sup>2</sup> Jannarone told Complainant he would have to talk with David Lowenstern, the owner of Respondent Valley Gardens, LLC. Later that day, Jannarone informed Complainant that her request to keep an ESA in her apartment was denied. Complainant provided DCR a screenshot of a May 23, 2018 text message from Jannarone which said:

Sorry [REDACTED] Valley Gardens has to keep its no pets policy Ur probably better off renting a house I'll find you one if you like

In a written statement to DCR, Jannarone stated in part as follows:

...I spoke with Mr. Lowenstein and he and I agreed that we would not be reasonably able to provide services for a dog at Valley Gardens Apartments. I explained that to [REDACTED] and shortly thereafter she filed the complaint...

Respondents also told DCR:

...Pets are not permitted in any of the apartments at Valley Gardens because there is very little land for any animal to exercise or be "walked." The apartments are not very big so we felt that it would be unfair to "coop" it up. Most tenants are opposed to living so closely to pets because they fear foul odors, barking, other noises, allergies and parasites. Animal food on the outside premises would certainly attract rodents...

During the investigation, Complainant gave DCR a copy of a letter from [REDACTED], [REDACTED] which stated as follows:

[REDACTED]

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<sup>2</sup>DCR places no weight on the certificate from the Emotional Support Animal Registration of America in determining whether [REDACTED] is, in fact, an emotional support animal. Emotional Support Animal Registration of America operates a website where individuals can register their own animals as emotional support animals and, for a fee, obtain a certificate that an animal has been registered on the website. Emotional Support Animal Registration of America is not affiliated with the federal government and there are no federal or New Jersey state agencies that certify animals as emotional support animals. It is not equivalent to a certification from a treating medical or mental health provider.



## Analysis

At the conclusion of an investigation, the DCR 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.

The LAD is remedial legislation designed to root out the “cancer of discrimination.” Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996). The New Jersey Legislature declared that “discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State.” N.J.S.A. 10:5-3. Similarly, the New Jersey Supreme Court has declared that “Freedom from discrimination is one of the fundamental principles of our society.” L.W. v. Toms River, 189 N.J. 381, 399 (2007).

The LAD prohibits housing discrimination based on disability. N.J.S.A. 10:5-12(g) & (h). Disability discrimination includes refusing “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.” Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 312 (App. Div. 2004) (quoting N.J.A.C. 13:13-3.4(2))(quotations omitted); see also N.J.S.A. 10:5-4.1. The duty to provide a reasonable accommodation “does not entail the obligation to do everything humanly possible to accommodate a disabled person.” Oras, supra, 373 N.J. Super. at 315; see generally Tynan v. Vicinage 13, 351 N.J. Super. 385, 397 (App. Div. 2002) (noting that the obligation to provide reasonable accommodations “does not require acquiescence to the [person]’s every demand.”).

Instead, it is necessary to weigh the cost to the landlord against the benefit that the tenant accrues from the accommodation. Ibid. The LAD obligates Respondent to modify the terms of the lease to reasonably accommodate Complainant’s disability unless doing so would “impose undue financial and administrative burdens on the landlord or if the requested accommodation

would fundamentally alter the nature of the landlord's operation." See Sycamore Ridge Apartments v. L.M.G., 2012 N.J. Super. Unpub. LEXIS 1313, \*23 (App. Div. June 14, 2012).

Complainant reports that [REDACTED] According to her doctor, [REDACTED] Complainant's doctor states that "having her canine as a companion provides significant symptom relief." Two separate medical providers have opined that Complainant would benefit from an ESA. Respondent does not contest that Complainant suffers from a disability, or that the ESA would assist to alleviate symptoms of her [REDACTED]. Instead, it merely explained the reason for its "no pets" policy.

Respondents offered several reasons for their professed inability to allow Complainant to keep the ESA in the complex. Respondents cite a lack of open space around the apartment building for a dog to exercise. Photographs of the building's exterior and an overhead schematic of the neighborhood contained in the record demonstrate otherwise. There appears to be ample grassy areas adjacent to the building and a tree-lined neighborhood with sidewalks where dogs can be walked. Respondents also characterizes the apartment units as being so small that it would be unfair to any dog to live in one. However, Complainant and her husband have lived together in several of the complex's units for over seven years, and the proposed ESA would be six pounds when fully grown.

Respondents are also concerned that the building's frame construction will allow noise and odors from Complainant's unit to "reverberate" throughout the building and interfere with other tenants' enjoyment. They make a general statement that "most tenants are opposed to living so closely to pets because they fear foul odors, barking, other noises, allergies, and parasites." Photographs show a brick-clad apartment building which appears sturdy and in good repair. No evidence was provided indicating that any tenants hold these views or that these conditions will invariably result from the housing of a small dog. Moreover, if Complainant were permitted to keep the ESA, Respondents could require that Complainant appropriately clean up after the dog and ensure the ESA does not make unnecessary noise so as to interfere with the neighbors. At this point, Respondents' objections appear based on a range of possible circumstance that could happen, rather than specific concerns as to the conduct of Complainant or her ESA.

Respondents have not provided sufficient evidence that Complainant's request was unreasonable or that granting her request would impose an undue burden on its operations. For these reasons, there are reasonable grounds for suspicion strong enough "to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2. Thus, the matter should proceed to the next step to adjudication on the merits.



DATE: January 4, 2019

Rachel Wainer Apter, Director  
NJ DIVISION ON CIVIL RIGHTS

