

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HB33MV-65675

H.G.,)
)
 Complainant,)
)
 v.)
)
 Wilkin Management Group, Inc.,)
 and Landmark East Corporation,)
)
 Respondents.)

Administrative Action
FINDING OF PROBABLE CAUSE

On November 10, 2015, Bergen County resident H.G. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about August 10, 2015, and continuing until after the instant complaint was filed, Landmark East Corporation (Landmark) and its property management service, Wilkin Management Group, Inc. (collectively Respondents) refused his request to have his emotional support animal (ESA), a five pound Yorkshire Terrier, reside with him in his unit as a reasonable accommodation for his disabilities in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

Respondents jointly administer and enforce the "Governing Documents," i.e., Landmark's rules, policies, and procedures governing the cooperative apartment building in which Complainant resides. Respondents denied the allegations of discrimination in their entirety. They claim that the Governing Documents prohibit shareholders from harboring "pets" in the unit. They also claim that Complainant violated the Governing Documents, made material misrepresentations during the application process and at the time of closing, and did not provide relevant documentation regarding the ESA to Respondents, including a physician's certification, which Respondents claim is required by local housing rules. DCR investigated the matter and now finds—for purposes of this disposition only—as follows.

Landmark owns a cooperative apartment building in Ridgefield Park. Complainant is a former Rhode Island resident who moved to New Jersey to accept a new job.

On June 29, 2015, Complainant purchased from Landmark the 314 shares allocated to apartment 3N.

On July 20, 2015, Complainant sent a letter to Respondents that stated in part:

This is to inform you that I have recently purchased Apt 3N at 205 Bergen Turnpike, Ridgefield Park, NJ. This is "The Landmark East Property." My therapist has recommended that I obtain a support dog for my disability. This dog is not a pet but rather a medically prescribed support dog allowed to me for my disability. This animal helps me with daily functions and is necessary for me to cope with everyday life.

Complainant attached a letter from a clinical psychologist, Jo-Ann L. Donatelli, Ph.D., dated June 2, 2015, which stated as follows:

[Complainant] is my patient and I am very familiar with his history and with the functional limitations imposed by his anxiety and depression. Due to this emotional disability, [Complainant] has certain limitations coping with what would otherwise be considered normal, but significant day-to-day situations. To help alleviate these challenges and to enhance his day-to-day functionality, I have prescribed [Complainant] to obtain an emotional support animal. The presence of this animal is necessary for the emotional/mental health of [Complainant] because the animal's presence will mitigate the symptoms he is currently experiencing.

On August 7, 2015, Complainant moved into the apartment with the dog.

On August 10, 2015, the attorney for Landmark East sent a letter to Complainant that stated as follows:

In reference to the above captioned matter, as you are aware the undersigned represents the interest of Landmark East Corporation and I am in receipt of your correspondence, dated July 20th 2015, concerning your request that the Board of Directors allow you to have a "support dog" at the site.

As you are aware, the Association's Governing Documents expressly prohibit unit owners harboring animals at the property. In fact, as part of the condition of your approval to purchase the unit, you executed a document where you certified that if approved, you would not harbor a pet in your apartment; copy of the letter is attached hereto. The approval from the Admission Committee authorizing you to purchase your unit was in part conditioned, upon you executing that document. It is also my understanding that at the time of closing, you re-executed a no pet/sublet letter, a copy of which is attached hereto.

Notwithstanding the fact that you represented and certified that you would not harbor an animal on the site, you now have a letter dated June 2nd, 2015 from Jo-Ann Donatelli, Ph.D. indicating that you are a patient of hers and that you have various functional limitations, as a result of anxiety and depression and she is suggesting you have an emotional support animal.

The Board is extremely disturbed over the fact that, it appears that you intentionally misled them and fraudulently signed a document knowing full well in advance of the closing and at the time of application that you wanted to have a dog, and that you consciously failed to disclose any of this information to the Board, knowing full well that harboring an animal was clearly in violation of the Associations' Governing Documents.

Based on the fact that you obviously knowingly concealed this information and made material misrepresentations of fact to the Board in the application process and at the time of closing, the Board is denying your request.

Also, you need a physician's verification request form from a licensed physician, which you can obtain from the Local Housing Authority.

If you would like to dispute the Board's finding, you can request Alternative Dispute Resolution hearing, which will be at your sole cost and expense and we can provide you with the relevant information on how to make a request from the Community's Association Institute, who will select an arbitrator to hear the matter.

Should you have any questions or comments, please feel free to contact me.

Complainant told DCR that on or around this same date, he asked the superintendent of his building about keeping the ESA, and that the superintendent replied, "I don't care if you are blind. There are no dogs allowed."

On August 18, 2015, Complainant obtained a note from Christine Healy, DO, Leonia Medical Associates, which stated:

[Complainant] is my patient. I have treated him over the past 3 years and am familiar with his history and with the functional limitations imposed by his anxiety and depression. In Rhode Island, [Complainant] had been seeing Dr. Jo-Ann Donatelli for anxiety and depression. To assist [Complainant] with these challenges and to improve his day-to-day functioning, [Complainant] was prescribed an emotional support animal. [Complainant's] symptoms have been improved with this emotional support dog. He also continues to participate in counseling and community group support meetings. Because of [Complainant's] diagnoses and personal improvement with his emotional support animal, the presence of this animal is necessary for his emotional/mental health.

Complainant told DCR that he did not submit the second note to Respondents because he was unable to locate the "physician's verification request form" that Landmark's attorney said he was required to provide despite visiting the Ridgefield Park Housing Authority and Bergen County Office of Housing.

On August 19, 2015, Landmark sent a Notice of Violation to Complainant, stating that he was in violation of the "no pets" restriction and that his account would be fined \$25 per week while the dog remained in the unit.

Complainant called Landmark's attorney to discuss the letter. During that conversation, Complainant discussed the difference between a pet and an ESA. Complainant claims that he told Landmark's attorney that because the dog was medically necessary, Respondents were obligated to grant an exception from the "no pets" rule or to at least explain why granting such an exception would be unduly burdensome.

Following that conversation, Landmark's attorney sent a letter to Complainant dated August 28, 2015, which stated in part as follows:

. . . Notwithstanding the fact that you concealed relevant information and made material misrepresentations to the Board, based on the same, the Board denied your request to have a "service dog" and require that you submit a physician's verification request form from a licensed physician and also, if you disputed the Board's decision denying your request, you have the right to an Alternate Disputed Resolution procedure, as established by the Association. The Board has not received any response from you whatsoever concerning this fact and in fact, you are still harboring the dog.

Please be advised that I have been instructed that effective seven (7) days of the date of this correspondence, we will terminate your interest in the Stock and Proprietary Lease and your property will be sold at a public auction. Please be guided accordingly.

After Complainant received the August 28, 2015 letter, he retained counsel so that he could move for a preliminary injunction to prevent Respondents from terminating his stock interest, Proprietary Lease, and selling his property at auction.

On September 4, 2015, Complainant's attorney sent a copy of a civil complaint to be filed in the United States District Court for the District of New Jersey, to Landmark's attorney.

The complaint contained exhibits including the August 18, 2015 note from Dr. Healy. However, Complainant's attorney never actually filed the complaint in federal court.

On November 10, 2015, Complainant initiated the instant administrative action with DCR.

On February 23, 2016, Respondents sent a letter to Complainant stating that his "medical comfort dog" could reside in his unit and his account was cleared of pet fines. Complainant continued pursuing his action with DCR to recover financial losses arising out of Respondents' alleged violation of the LAD.

Analysis

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 "[f]reedom from discrimination is one of the fundamental principles of our society." L.W. v. Toms River, 189 N.J. 381, 399 (2007).

Among other proscriptions, the LAD bans housing discrimination based on disability. N.J.S.A. 10:5-12(g); N.J.S.A. 10:5-4.1. Disability discrimination includes a refusal 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." N.J.A.C. 13:13-3.4(f)(2).

A request to relax a no-pets policy to allow an ESA is a request for a reasonable accommodation. Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302, 315 (App. Div. 2004) ("Whether a pet is of sufficient assistance to a tenant to require a landlord to relax its pet policy so as to reasonably accommodate the tenant's disability requires a fact-sensitive examination.") In such cases, appropriate considerations include whether the occupant or

prospective occupant has a disability-related need for the animal, whether the animal would alleviate one or more identified symptoms, and whether granting the request would result in an undue financial burden or fundamentally alter the nature of the housing provider's operations. Id. at 315-16 (Janush v. Charities Housing Devel. Corp., 169 F. Supp. 1133 (N.D. Cal. 2000) (discussing request for birds and cats that provide companionship)).

Here, Respondents do not allege that allowing the ESA would have created an undue burden. Nor is there any persuasive evidence that Respondents evaluated the request and supporting documentation from Complainant's treating psychologist using the general principles applicable to reasonable accommodation analysis. See generally N.J.A.C. 13:13-3.4 (f)(2). There is no evidence that Respondents undertook a "fact-sensitive examination." Oras, supra, 373 N.J. Super. at 315. Instead, it appears that they simply relied on their Governing Documents, which prohibit members from "harboring" pets, accused Complainant of fraud, and threatened to sell his property at a public auction.

To the extent that Respondents contend that Complainant waived his right to an accommodation, such would run afoul of Oras, supra, where the Court stated, "A landlord may not relieve itself of [its legal] responsibilities by having a tenant waive his right to a reasonable accommodation of his disability in a lease." 373 N.J. Super. at 315.

At the conclusion of an investigation, DCR 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 DCR 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.

Here, there was no persuasive evidence that Respondents attempted to meet their legal responsibility 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,” N.J.A.C. 13:13-3.4(f)(2), until months after they were served with the DCR complaint. And it appears that the delay in properly addressing the accommodation request led to financial and other harms for Complainant. Thus, the Director is satisfied at this threshold stage of the process that the evidence supports a “reasonable ground of suspicion” to warrant a cautious person in the belief that the matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56. Accordingly, it is found that probable cause exists to support Complainant’s allegations of disability discrimination.¹

DATE: 6-10-16



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS

¹ Respondents also argue that Complainant filed an action based on the same claims in the United States District Court for District of New Jersey. That is not correct. Complainant discharged his attorney after the papers were served on Respondents but before the action was filed in the District Court.