UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of GARY WYNN, Charging Party, v. 405 EAST 82nd STREET COOPERATIVE, INC. Respondent.	FHEO No. 02-08-0760-8

CHARGE OF DISCRIMINATION

JURISDICTION

1. On July 1, 2008, Gary Wynn ("Complainant") filed a verified complaint with the U.S. Department of Housing and Urban Development ("HUD"), alleging that Respondent refused to grant him a reasonable accommodation in violation of the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.* ("Act"). In particular, Complainant alleges that Respondent unlawfully denied his request to have a medically prescribed emotional support animal as a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2)(A), (f)(3)(B).

2. The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g) (1)-(2). The Secretary has delegated to the General Counsel (24 C.F.R. § 103.400 (a)(2)(i), 103.405), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441, 68442 (Nov. 18, 2008), the authority to issue such a Charge, following a determination of reasonable cause.

3. The Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C. § 3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

4. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person or a person residing in that dwelling after it is sold, rented or made available. 42 U.S.C. § 3604(f)(2)(A). 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. 42 U.S.C. § 3604(f)(3)(B).

PARTIES:

5. Complainant is a tenant-shareholder of Apartment 4D at 405 E. 82nd Street, New York, New York. He has been diagnosed with Dysthymic Disorder and Generalized Anxiety Disorder. Those disorders significantly impair Complainant's day-to-day functioning, causing him, among other things, to isolate himself, suffer sleep disturbance, gain weight, fatigue easily, become irritable and lack concentration.

6. Respondent is 405 East 82nd Street Cooperative, Inc. Corp., a private cooperative development with 55 cooperative apartments, located in Manhattan.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Respondent maintains a policy prohibiting dogs in its development.

8. On or about April 18, 2008, Complainant wrote to Respondent, advising that he would be moving back into his co-op apartment in June when his tenants would be moving out.

9. With his letter, Complainant enclosed a letter, dated April 14, 2008, from his psychologist, Dr. Stephen Zurrow. In his letter, Dr. Zurrow stated that he has treated Complainant for over a year for depression and anxiety and during that time Complainant has shown great improvement largely because of the companionship of Complainant's dog, Rosie. Dr. Zurrow stated that Rosie qualifies as a "service animal for Mr. Wynn" because she was integral in maintaining Complainant's mental health. Dr. Zurrow concluded his letter by stating "I believe it is crucial that Mr. Wynn be allowed to keep Rosie with him when he returns to his unit this summer."

10. On or about June 2, 2008, Respondent wrote Complainant stating that it did not have sufficient information and documentation regarding Complainant's mental impairments of chronic depression and anxiety to render a determination as to his request to retain his dog as an accommodation.

11. On or about June 6, 2008, Dr. Zurrow wrote to Respondent, elaborating that Complainant suffers from Dysthymic Disorder and Generalized Anxiety Disorder and

that those conditions had disrupted his sleep, causing him to be late for work and possibly jeopardizing his employment. Complainant's anxiety and depression also lead to weight gain, fatigue, irritability, loss of concentration and isolation. Indeed, Dr. Zurrow reported that this condition often caused Complainant to stay in bed all weekend.

12. In his June 6 letter, Dr. Zurrow also told Respondent that once Complainant obtained Rosie his "mood dramatically improved" and she distracted Complainant from the stress and anxiety of his demanding job. Dr. Zurrow wrote that Rosie was responsible for reducing Complainant's depression and that his apartment once again felt like a home and not like a "prison cell."

13. Dr. Zurrow further informed Respondent that Complainant's anxiety levels had increased, his mood seriously darkened, and his sleep and work had been adversely effected since Complainant had been "threatened with the possibility that you may not allow him to have Rosie" when he moves back to his apartment.

14. Dr. Zurrow concluded by stating that it was his professional opinion that if Complainant was forced to give up Rosie when he moved back to his co-op apartment he would experience "serious negative consequences to his mental and physical health" and that Complainant "needs Rosie to use and enjoy his home."

15. On or about June 25, 2008, Respondent told Complainant that he had not "submitted sufficient documentary evidence to establish a disability triggering entitlement to a reasonable accommodation for a pet."

16. By letter dated June 27, 2008, the City of New York's Department of Health and Mental Hygiene informed Complainant that Rosie had been registered and listed as "a Service Dog in New York City Department of Health & Mental Hygiene (NYC DOHMH) database." The City of New York enclosed a gold colored Service Dog tag with its letter, informing Complainant that it had provided the Service Dog tag and a regular New York dog license tag without charge because Rosie assisted a person "with a documented disability."

17. On or about July 17, 2008, Respondent served Complainant with a "NOTICE OF INTENT TO TERMINATE LEASE" because in the early part of July 2008, Complainant violated "the February 10, 2004 House Rules, Rule #1, which prohibits a pet in the building without the prior written permission of the Board of Directors...."

18. Thereafter, Respondent commenced a summary proceeding in state court to evict Complainant from his apartment because Rosie was living with him. In or about November, 2008, the court dismissed the proceeding because Respondent continued to collect maintenance fees from Complainant after he was served with an eviction notice. Respondent has filed a Notice with the court indicating it intended to appeal the dismissal.

FAIR HOUSING ACT VIOLATIONS:

19. Respondent has violated the Act because the unreasonable delay in providing Complainant with a timely response to his request to have Rosie live with him, as well as Respondent's attempt to evict Complainant from his home because he moved into his apartment with Rosie, constitutes a discriminatory refusal to make a reasonable accommodation in Respondent's rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant an equal opportunity to use and enjoy his dwelling. 42 U.S.C. § 3604(f)(2)(A); *see also id.* at § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

CONCLUSION:

WHEREFORE, the Secretary of HUD, through the Office of General Counsel and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 (f) (2)(A) and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;

2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of disability against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g)(3);

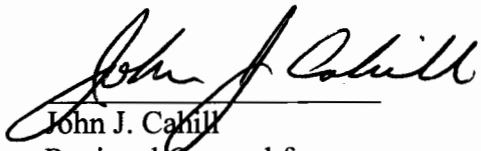
3. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from taking steps to evict Complainant from his apartment because he keeps Rosie, or another service animal, in his apartment.

4. Awards such damages pursuant to 42 U.S.C. §3612(g)(3) as will fully compensate Complainant for emotional distress, including embarrassment and humiliation, inconvenience, and economic loss caused by Respondent's discriminatory conduct;

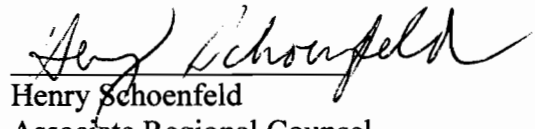
5. Awards a civil penalty against Respondent for violation of the Act, pursuant to 42 U.S.C. §3612(g)(3); and

6. Awards such additional relief as may be appropriate under 42 U.S.C. §3612(g)(3).

Respectfully submitted,



John J. Cahill
Regional Counsel for
New York/New Jersey



Henry Schoenfeld
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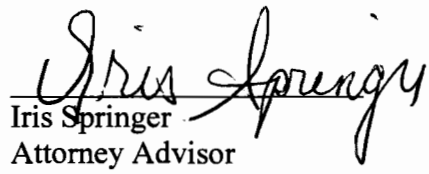

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Date: January 22, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Charge of Discrimination," "Notice," and "Determination" in Gary Wynn v. 405 East 82nd Street Cooperative, Inc. FHEO No.02-08-0760-8 were sent to the following individuals in the manner indicated:

By Overnight Mail and Fax:

Chief Court Clerk
Office of Administrative Law Judges
409 Third Street SW, Suite 201
Washington DC 20024
Fax: 202-619-7304

By Overnight Mail:

Complainant:

Gary Wynn
405 East 82nd Street
Apt.#4D
New York, NY 10028

Complainant Representative:

Karen Copeland
Attorney at Law
521 Fifth Avenue
Suite 1700
New York, NY 10175
Phone: 212-560-7154
Fax: 516-594-9061

By Overnight Mail:

Respondent:

Coopertive Board, 405 East 82nd Street Cooperative, Inc.
c/o M. Wenig, Esq.
26 Court Street
Brooklyn, NY 11242
Phone: 718-797-5700

Respondent Representative:

Meryl L. Wenig
Wenig Saltiel & Greene
26 Court Street
Brooklyn, NY 11242
Phone: 718-797-5700
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on this 22nd day of January, 2009.

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