

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). 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. Complainants Maria Mostajo and Mark Schein are tenant-shareholders of Apartment 3F at 176 E. 71st Street, New York, New York 10021. They are the parents of Aaron Schein, an 11-year old boy with disabilities who resides with Complainants (the "Child"). The Child has been diagnosed with Autistic Spectrum Disorder (Asperger's Syndrome), a pervasive developmental disorder, and Central Auditory Processing Disorder. The Child's Asperger's Syndrome combined with his Central Auditory Processing Disorder significantly impair his day-to-day functioning, including his ability to learn, hear and care for himself.
6. Respondent is The Townsend House Corp. ("Townsend House"), a private cooperative development. Townsend House is a 20-story apartment building with 97 cooperative apartments and is located at 176 East 71st Street, New York, New York 10021.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Respondent maintains a policy prohibiting dogs and other pets in the building, even on a temporary basis. This policy is contained within Respondent's "House Rules," which constitute part of the shareholders' Proprietary Lease Agreement.
8. In or about February 2007, Complainants wrote a letter to Respondent requesting a reasonable accommodation for their son. Specifically, Complainants requested an exception to the no-pet policy to permit the Child to have a dog as a medically-prescribed emotional support animal.
9. Complainants' request informed Respondent of their son's medical condition and was accompanied by psychological reports to confirm the Child's diagnoses and literature outlining the benefits of such a dog.

10. In response to Respondent's concern that the documentation Complainants previously provided did not clearly state that the Child suffered a disability that required an emotional support animal, in April 2007, Complainants provided Respondent with two letters from the Child's medical providers addressing his disability and recommending a dog as an emotional support animal.
11. On August 1, 2007, David Berkey, counsel for Respondent, informed Complainants that Respondent asked to have an independent professional retained to confirm the Child's medical condition, provided Complainants consented and agreed to cover the expense. Complainants objected to having their son subjected to additional evaluation. They suggested to Mr. Berkey that the independent physician speak to the Child's doctors to obtain any information necessary to make his/her evaluation.
12. On December 5, 2007, Mr. Berkey informed Complainants that Respondent was considering retaining Dr. Nancy Crown, Ph.D. to evaluate the Child's medical condition.
13. On December 18, 2007, Mr. Berkey told Complainants that Respondent was ready to proceed, but required clarification on some issues. Among other things, Respondent wanted to know if Complainants agreed to cover the entire cost of the evaluation, not simply to "share" the cost with Respondent, as well as any legal fees incurred by Respondent in connection with reviewing the request for a reasonable accommodation.
14. In Dr. Crown's January 28, 2008 report, she opined that the Child's condition was a disability under the ADA and agreed with the previous psychologist's assessment of the Child's developmental disability and reasonable recommendation for a dog.
15. In or about March 2008, Mr. Berkey informed Complainants that Respondent had granted the request, but it was conditioned on Complainants' agreement to comply with the terms contained in a Pet License Agreement.
16. On May 23, 2008, Mr. Berkey provided Complainants with a revised Pet License Agreement.
17. The Pet License Agreement at issue contained unreasonable restrictions. In pertinent part, the Pet License Agreement provides:
 2. The term of this Agreement shall be for so long as [the Child] resides in the Apartment and a therapy animal is helpful for treatment of his disability. Should [the child] leave the apartment for an extended period of time (e.g., to attend preparatory school or college) the dog may not continue to be kept in the Apartment.
 3. It is specifically understood and agreed by and between LICENSOR and LICENSEES that this License Agreement and the privilege hereby granted is conditioned upon compliance by LICENSEES with the following terms and

conditions:

- (a) the dog is for the therapeutic treatment of [the Child] and he should be trained to and be capable of taking care of the dog;
- (b) the dog must weigh less than 10 pounds fully grown;
- (c) when transporting the dog in the building, the passenger elevator may not be used; the service elevator or the stairs shall be used to transport the dog between floors of the building;
- (d) when transporting the dog in the service elevator or public spaces of the building, it must be kept in a carrier case (in such event a leash is not required) or hand carried and on a leash and the dog may not be released from the carrier case or placed on the ground until it is inside your apartment or beyond the doorway of the doctors' offices located on either side of the building entryway;

* * * *

- (f) the terrace may not be used to exercise the dog or for playing ball or other similar games with the dog;
- (g) the dog may not be left alone in the apartment for more than two (2) consecutive hours;

* * * *

- (i) should the dog be walked by professional dog walkers, they shall not tie up any animals on the building property or on the sidewalks in front of the building at any location inside area bounded by the doorways of the doctor's offices located on either side of the building entryway;

* * * *

- (k) the dog may not be replaced by LICENSEE unless the prior written consent of LICENSOR is obtained pursuant to a new license agreement, which consent shall not be unreasonably withheld or delayed;

- (l) LICENSEES must register the dog with the New York City Department of Health and Mental Hygiene (A Board of Health) or other such agency having jurisdiction thereof and provide LICENSOR with proof of such registration;

* * * *

- (n) LICENSEES shall provide LICENSOR with proof of the existence of a Homeowner's Insurance policy providing liability coverage in the face amount of not less than \$1,000,000.00 for bodily injury and property damage or in such other amounts as may be established by the board in its reasonable discretion from time to time.

* * * *

- 6. LICENSOR, in its reasonable discretion, shall have the right to determine that the dog licensed by it shall be muzzled at such time as the dog is present in a building service elevator, public hallway, stairwell, lobby or other such areas of the property of LICENSOR as may be designated.

- 18. Complainants objected to restrictions imposed by the Pet License Agreement and provided alternate language for Respondent's consideration.

19. On June 23, 2008, Complainant Schein met with Respondent's Board of Directors to discuss the terms of the Pet License Agreement, including Complainants' objections.
20. On June 30, 2008, after consideration of Complainants' objections and suggested language, Respondent informed Complainants that it was only willing to adjust the weight limit to that of a fully grown dog up to 25 pounds. Respondent refused to modify or remove any other restriction.
21. The delay since February 2007, in providing Complainants with a timely response to their reasonable request has prevented treatment for the Child. More specifically, the continued delay caused Complainants to lose opportunities to select an appropriate dog for the Child. It also caused Complainants to lose the opportunity for the Child and dog to attend a training program that was available during the Summer of 2007 and 2008, which would have allowed Complainants to avoid any interference with the Child's regular school year.
22. Respondent has billed Complainants for the legal services it received in order to review the request for a reasonable accommodation, as well as for the cost associated with Dr. Crown's evaluation of the Child.

FAIR HOUSING ACT VIOLATIONS:

23. Respondent has violated the Act because the unreasonable restrictions placed on Complainants, as well as the unreasonable delay in providing Complainants with a timely response to the request, constitute a discriminatory refusal to make a reasonable accommodation in their rules, policies, practices, or services, when such an accommodation was necessary to afford Complainants and the minor Child an equal opportunity to use and enjoy their dwelling. 42 U.S.C. §§ 3604(f)(2), (f)(3)(B); *see also* 24 C.F.R. § 100.204(a).

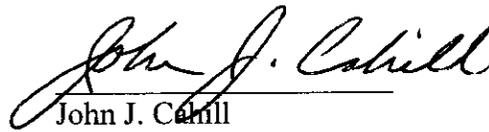
CONCLUSION:

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), (f)(3)(B) and prays that an order be issued that:

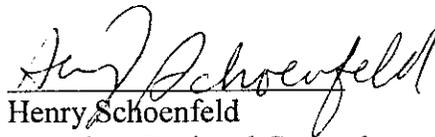
1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;
2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of disability 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 implementing, applying or otherwise enforcing any policy or practice requiring aggrieved persons to bear costs associated with making a request for a reasonable accommodation;
4. Awards such damages pursuant to 42 U.S.C. §3612(g) (3) as will fully compensate Complainants 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).

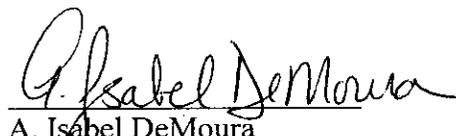
Respectfully submitted,



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