

**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,)	
Charging Party, on behalf of)	
Complainant Redact Name ,)	
Complainant,)	ALJ No.: _____
v.)	FHEO No. 02-16-4255-8
Milton James,)	
Respondent.)	
_____)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant **Redact Name** filed a complaint with the United States Department of Housing and Urban Development (“HUD”) on May 2, 2016, alleging that Respondent Milton James violated the Fair Housing Act as amended, 42 U.S.C. §§ 3601-19 (“the Act”), when he discriminated against her on the basis of her disability¹ and when he threatened and intimidated her because she engaged in protected activity.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g) (1) and (2). The Secretary has delegated to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has re-delegated to the Regional Counsel the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011).

The Regional 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 determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

¹ The Fair Housing Act uses the terms “handicap,” whereas this document uses the term “disability.” Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1988).

II. SUMMARY AND FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and the Determination of Reasonable Cause and No Reasonable Cause, Respondent is hereby charged with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate in the rental, or to otherwise make unavailable or deny, a dwelling to any renter because of a disability of that renter. 42 U.S.C. §§ 3604(f)(1)(A); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person. 42 U.S.C. §§ 3604(f)(2)(A); 24 C.F.R. § 100.202(b).
3. Discrimination under 42 U.S.C. § 3604(f)(2) includes the 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); 24 C.F.R. § 100.204.
4. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, any right granted or protected by Sections 803 to 806 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

B. PARTIES AND SUBJECT PROPERTY

5. At all times relevant to this Charge, Respondent owned and operated the property located at 303 Lenox Ave, Oneida, NY ("subject property"). The subject property is comprised of four units.
6. Complainant is a person with psychiatric and physical health conditions that substantially limit one or more of her major life activities. Complainant is, and at all times relevant to the Charge has been, an individual with a disability, as defined by the Act. 42 U.S.C. § 3602(h).
7. Complainant is an aggrieved person as defined by the Act, 42 U.S.C. § 3602(i).
8. The residential units at the subject property are "dwelling[s]," as defined by the Act, 42 U.S.C. § 3602(b).

C. FACTUAL ALLEGATIONS

9. In July 2015, Complainant wanted to rent an apartment.

10. In a letter dated July 1, 2015, **Redact Name**, LMSW, who had treated Complainant since 2014, informed prospective landlords that Complainant had certain limitations regarding her psychiatric condition and her ability to cope with stress. **Redact Name** prescribed an assistance animal to help Complainant cope with her disability, “and to enhance her ability to live independently and to fully use and enjoy the dwelling unit.”
11. In July 2015, Complainant had a dog she had acquired in or about 2012, a Pom-chi named **Redact Name** provides emotional support to Complainant that ameliorates the effects of her disabilities.
12. On or about July 28, 2015, Complainant met with a local non-profit, Community Action Partnership (“CAP”), for rental assistance. CAP assisted Complainant with locating an apartment to rent and agreed to pay her security deposit and the first month of rent with the understanding that she would find a job and pay her rent from her wages. At that time, **Redact Name** served as Complainant’s CAP caseworker.
13. Complainant informed Ms. **Redact Name** during the intake process at CAP that **Redact Name** was her assistance animal. In addition, Complainant told her that she had medical documentation to support her need for an assistance animal.
14. On July 31, 2015, Complainant and Ms. **Redact Name** met with Respondent to view the subject property. After viewing the apartment, Complainant, Respondent, and Ms. **Redact Name** signed a month-to-month lease agreement that commenced on August 1, 2015 (“Lease I”).
15. Lease I listed the unit rent as \$615 a month, utilities included, and the security deposit as \$615. The document does not set forth any other charges or fees. Lease I referred to four possible addendums to the lease, one of which applied to this lease agreement. Paragraph 19 of Lease I states that the parties agreed that Lease I and addendums, if applicable, “accurately reflect all terms and agreements between the Landlord and Tenant regarding the Leased Premises.”
16. According to Ms. **Redact Name**, she discussed Complainant’s assistance animal with Respondent prior to signing Lease I. Paragraph 13 of Lease I permits pets in the unit and Ms. **Redact Name** wrote the phrase “service animal” next to this paragraph. Ms. **Redact Name** made the “service animal” notation on Lease I in Respondent’s presence after discussing Complainant’s dog in order to prevent any future misunderstanding about **Redact Name**, namely that she was an assistance animal and not a pet. During this conversation, Ms. **Redact Name** also informed Respondent that it is illegal for him to charge Complainant any fee to keep **Redact Name** in the unit because **Redact Name** was not a pet, but, rather, was a “medical device.” Respondent acknowledged that he could not charge an extra fee for the animal, expressing concern only about whether the dog would bark too much.
17. At the time of the lease signing, Complainant offered to provide medical documentation to Respondent, but he said that he did not need to see any documentation.

18. Upon moving into the Subject Property, Respondent required Complainant to sign a second month-to-month lease (“Lease II”) and an addendum entitled “Lease Addendum For Dog In Apartment.” Lease II set forth the same rent and security deposit as Lease I. Paragraph 12 of Lease II provides in relevant part: “NO pets shall be brought on the premises, for any reason, without written consent of the owner.” This paragraph also specifies that a pet fee of \$50 would be added to the monthly rent if the owner allowed the tenant to have a pet in the unit. In addition to the monthly pet fee, Lease II added a “cleaning charge” of \$575 to clean the apartment when the tenant vacates the unit and a “pet security deposit” of \$350.00 to paint and deodorize the unit.
19. Lease II does not contain a provision that allows exceptions as a reasonable accommodation for a person with a disability.
20. Respondent does not have a written or established policy or procedure for making reasonable accommodations for individuals who require service or assistance animals because of a disability.
21. In the Lease Addendum, Respondent acknowledged that an assistance dog would be staying in the apartment. The Lease Addendum reads, in pertinent part:

This is an addendum to allow a service dog in this apartment with [Complainant] at **Redact Address**, Oneida, NY 13421. This dog is being allowed to stay in this apartment without a dog fee which, [sic] is usually charged for all dogs in this building. This agreement is being signed by the tenant with the understanding that if there is any kind of a problem with this dog, including excessive barking, odor problems and/or any other kind of problems of any kind. [sic] The tenant hereby under stands [sic] that the \$50.00 dog fee, which is usually charged, will be charged for this dog starting from the first day of this rental agreement. The tenant also under stands [sic] that she cannot tell anyone including other tenants in this building that the fee is not being charged at this time, or else the fee will be charged to her at the rate of \$50.00 per month, starting from the first day of this rental agreement (August 1, 2015).

22. Complainant’s initial rent and security deposit were paid by CAP on August 3, 2015.
23. In a handwritten note dated August 5, 2015, Respondent informed Complainant that **Redact Name** had been “barking constantly,” and that she would need to find a way to keep the dog quiet or she would have to vacate the unit. Complainant was not aware of this barking, but to avoid possible eviction, Complainant began dropping **Redact Name** off to stay with a friend, **Redact Name**.
24. Respondent did not send similar notes regarding **Redact Name** alleged barking during the remainder of Complainant’s tenancy, and Complainant’s neighbors, who Respondent identified as having complained about the noise, have denied complaining about the

dog's barking.

25. According to Complainant's friend, [Redact Name], Complainant was in tears when she brought [Redact Name] to stay with her because the landlord had threatened to evict her if she did not get rid of the dog. [Redact Name] kept [Redact Name] with her during most of Complainant's tenancy; Complainant brought her back to her apartment on weekends. [Redact Name] states that the dog did not bark an unusual amount while under her care, and any barking that did occur was in reaction to someone at the front door or another dog in [Redact Name] household barking. [Redact Name] recalled that Complainant was distraught when she visited with [Redact Name]: she cried and felt hopeless because she could not fix the situation; she missed her dog; and she did not want to leave her dog.
26. Complainant's September rent was paid by CAP on August 15, 2015.
27. On or around September 1, 2015, Complainant obtained employment. Respondent subsequently became aware of this new source of income. In a letter dated September 7, 2015, Respondent told Complainant that he had waived the \$50 monthly pet fee because he was under the impression that she could not afford to pay the pet fee because she was receiving rental assistance from CAP. Respondent added that he had learned that she was now employed and had applied for additional rental assistance from HUD. Respondent stated that if she was going to receive rental assistance from HUD and had income from her employment, then the prior agreement was void. He demanded that she immediately pay the \$50 monthly pet fee like other tenants or find another place to live. Respondent reminded Complainant that the Lease Addendum stated that it would be void if he discovered any problem with the dog, such as noise, which he had heard about already. He told Complainant that he had been trying to help her, but she did not need his help and therefore the fee was immediately due and payable.
28. Complainant did not pay Respondent the \$50 monthly pet fee.
29. At some point in September 2015, Complainant informed Respondent that she had lost her job.
30. On September 21, 2015, Respondent received a notice from CAP that it would be paying the rent for October.
31. On September 29, 2015, Respondent gave Complainant a notice terminating her tenancy. The notice, which did not provide a reason for the termination, demanded that she vacate the unit by October 31, 2015.
32. On October 16, 2015, Respondent sent a letter to CAP regarding the October rent.
33. On October 22, 2015, Respondent served Complainant with a notice of non-payment of her October rent. This notice stated that she had three days to pay the rent or Respondent would commence eviction proceedings.

34. Complainant was not able to find an apartment that she could afford prior to October 31, 2015.
35. On November 3, 2015, CAP paid the October rent for Complainant.
36. On or around November 11, 2015, Complainant received a text message from her neighbor, CC. In this text, CC told Complainant that Respondent had asked her if Complainant had moved out yet, and if not, to tell Complainant to get out and that he would call the sheriff. In order to avoid being homeless, on November 15, 2015, Complainant moved into an apartment that was later determined to be infested with bedbugs.
37. By letter dated December 15, 2015, Respondent informed Complainant of an alleged outstanding balance and attached a statement detailing the alleged arrearage. According to the attached statement, Respondent claimed that the total amount due was \$1491.50: damages to apartment of \$265; dog security deposit of \$350; 4 months pet fee of \$200; back rent/late fee for November of \$676.50. After deducting the security deposit and adding the air conditioner charge for August, Respondent claimed the amount owed was \$926.50. In his letter, Respondent explained that "[t]here is a \$350.00 non-refundable security deposit for your dog. The dog fee due is from the agreement you signed that stated you would be liable for the monthly dog fee, from day one, if there were any problems with the dog such as barking etc. That is one of the reasons you were asked to vacate this apartment." In conclusion, Respondent added, "If you want to take this to court I will be counter suing [sic] for \$1491.50 in back rent and damages, as per the rental agreement."
38. In a document dated October 1, 2015, and signed by Complainant's medical provider, **Redact Name**, M.D., for submission to the Social Security Administration, Dr. **Redact Name** opined that Complainant was unable to work due to her physical and mental impairments.
39. In treatment plan notes dated March 28, 2017, Complainant's social worker, **Redact Name**, LCSW, noted that Complainant continues to struggle with her psychiatric condition, but that her dog is helping Complainant cope with the condition.
40. During HUD's investigation of this case, Complainant's treating physician, **Redact Name**, M.D., informed HUD that Complainant was being treated by medications for her psychiatric condition; she also noted that Complainant's psychiatric condition had worsened. According to Dr. **Redact Name**, **Redact Name** helps Complainant relax, encourages her to socialize by needing to take walks, lifts her spirits if she is depressed or anxious, and provides comfort and companionship giving her a sense of purpose. Dr. **Redact Name** opined that Complainant's dog is a medical necessity and that it is in her best interest to keep her assistance animal.

D. LEGAL ALLEGATIONS

41. As described in the paragraphs above, Respondent violated the Act by discriminating

against Complainant on the basis of disability when he made her rental unit unavailable to her by pursuing her eviction rather than making the requested reasonable accommodation. 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B); 24 C.F.R. §§ 100.202(a) and 100.204.

42. As described in the paragraphs above, Respondent discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when he refused to make the reasonable accommodation requested by Complainant. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204.
43. As described in the paragraphs above, Respondent's actions coerced, intimidated, threatened or interfered with Complainant's exercise or enjoyment of, and on account of her having exercised, her rights under the Act. 42 U.S.C. §§ 3617; 24 C.F.R. § 100.400(b).
44. As a result of Respondent's discriminatory and retaliatory conduct, Complainant suffered actual damages, including out-of-pocket expenses, inconvenience, and emotional distress.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), 3604(f)(3)(B), and 3617 of the Act, and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Act, as amended, 42 U.S.C. §§ 3601-19;
2. Enjoins Respondent, his agents, officers, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling;
3. Mandates that Respondent, his agents, officers, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
4. Awards such monetary damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
5. Assesses a civil penalty against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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