

**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

Redacted Name,

Complainant,

v.

Ithaca Renting, LLC d/b/a Ithaca Renting Company
f/k/a 130 Clinton, LLC, Fane Enterprises, Inc.,
and Kelly Geiger,

Respondents.

HUDOHA No. _____
FHEO No. 02-16-4291-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 20, 2016, **Redacted Name** (Complainant), an aggrieved person as defined in 42 U.S.C. § 3602(i) of the Fair Housing Act (the Act), filed a complaint with the U.S. Department of Housing and Urban Development (HUD) alleging violations of the Act based on disability. Complainant alleges that Ithaca Renting, LLC d/b/a Ithaca Renting Company (“IRC”) and f/k/a 130 Clinton, LLC, Fane Enterprises, Inc., and Kelly Geiger (collectively, “Respondents”), discriminated against her based on her disability in violation of the Act by denying her a reasonable accommodation. Specifically, Complainant alleges that Respondents unreasonably conditioned timely approval of her reasonable accommodation request upon her compliance with numerous unduly burdensome requirements thereby constructively denying her reasonable accommodation.

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)(2). The Secretary has delegated to the General Counsel, who has retained and re-delegated to Regional Counsel, the authority to issue such a Charge following a determination of

reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011). 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. *See* 42 U.S.C. § 3610(b).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD’s investigation of the allegations contained in the above-mentioned verified complaint and the Determination of Reasonable Cause, Respondents are charged with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate against any person in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. For the purposes of 42 U.S.C. §§ 3604(f)(1) and (f)(2), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).
4. It is unlawful to make inquiry as to the nature and severity of a disability of a person who resides in a dwelling after it is rented. 24 CFR § 100.202 (c).

B. PARTIES AND SUBJECT PROPERTY

5. Complainant **Redacted Name** is a person with a disability, as defined by the Act. 42 U.S.C. § 3602(h). Complainant has a mental illness that makes it difficult for her to deal with anxiety and stress, resulting in mental and physical harm. Her mental illness substantially interferes with her major life activities of learning/working, eating, and sleeping. The effects and symptoms of Complainant’s illness are ameliorated when she has a support animal and are exacerbated when she is without one.
6. Complainant is an aggrieved person as defined by 42 U.S.C. § 3602 (i), and has suffered damages as a result of Respondents’ conduct.

7. The subject property, **Redacted Name**, is located in Ithaca, New York, part of a collection of properties operated by IRC and primarily rented to students in the city's universities and colleges. The subject property is a "dwelling" as defined by the Act, 42 U.S.C. § 3602(b). Complainant resided there from August 2014 to August 2016.
8. Fane Enterprises, Inc. is the owner of the subject property.
9. IRC is a property management and real estate development company in Ithaca, NY.
10. Kelly Geiger is a rental manager for IRC.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

11. Complainant lived at **Redacted Name**, Ithaca, NY 14805, another property operated by IRC, between August 2011 and August 2014 while she attended Cornell University. This property had a "no pets" policy. In September 2011, Complainant resided with a cat prescribed as an assistance animal. Because of the no-pet policy, Complainant was told to remove the animal from the apartment. Complainant complied with that request.
12. Between 2011 and 2014, **Redacted Name** experienced an exacerbation of the symptoms of her disability. Because of this exacerbation, her treating doctor recommended that she obtain an assistance animal for emotional support.
13. In July 2014, Complainant obtained a cat as an assistance animal.
14. Complainant moved to the subject property in August 2014. The lease that Complainant signed contained a "no pets" clause.
15. On September 8, 2014, Kelly Geiger, the rental manager, emailed Complainant to inform her that she was in violation of the "no pets" policy by harboring a cat.
16. Complainant then requested a reasonable accommodation to IRC's pet policy to keep the cat as an assistance animal. She provided a letter dated September 11, 2014 from her medical provider, **Redacted Name**, MD MPH, verifying her disability and her need for an assistance animal for emotional support.
17. Complainant received no written response to her request, but no further action was taken by Respondents to remove the cat.
18. In or around March 2015, Complainant's cat died. Complainant then acquired a dog, Pip, as her assistance animal. Pip was a puppy when Complainant acquired him. Pip is a Beagle/Australian Shepard mix.

19. In or around June 2015, IRC became aware of the dog and Respondent Geiger emailed Complainant on June 8, 2015, requesting “updated paperwork right away from your licensed physician stating that a ‘dog’ is now the approved support animal required for your care.”
20. Complainant resubmitted the original letter from Dr. [Redacted Name] dated September 11, 2014. In that letter Dr. [Redacted Name] wrote that “I am prescribing Ms. [Redacted Name] the use of an emotional support animal to assist her in coping with her disability.” The letter did not specify the type of animal and mentions neither a cat nor a dog.
21. Complainant provided no further documentation to IRC. Respondent IRC did not communicate further with Complainant, who began a new annual lease in August 2015.
22. When Complainant inquired in October 2015 about renewing her lease for an additional year, Respondents Geiger and IRC again began to object to the presence of Pip. As a result, Complainant provided an unsigned letter from her mental health counselor, [Redacted Name], MA MHC-LP, dated October 28, 2015, in support of her reasonable accommodation request.
23. Ms. [Redacted Name] noted in the letter that “[a]n important part of [Complainant’s] treatment . . . has been the relationship she has developed with her therapeutic animal, her dog, Pip The dog supported [Complainant] through her illness, and continues to provide [Complainant] with a sense of hopefulness, while providing reciprocal emotional support, which is important for [Complainant’s] well being and recovery.”
24. On the next day, October 29, 2015, Respondent Geiger emailed Complainant a “new Service Animal Policy.” Geiger stated, “I need all of the required information and pet deposit which will be an additional \$500.”
25. The new Service Animal Policy requirements included indemnification of IRC, proof of insurance, and certification of training for the animal. Complainant was also required to provide intrusive medical information such as a Diagnostic and Statistical Manual of Mental Disorders (“DSM”) diagnosis, a detailed description of symptoms, a history of treatments and hospitalizations, a list of medications, anticipated prognosis, and a signed HIPAA authorization for each treating healthcare professional permitting the landlord to contact the treating professional for any additional information or clarification.
26. Respondents additionally required that Complainant obtain a vest for Pip indicating it was an assistance animal and present said vest to IRC for approval.
27. As an addendum to the new Service Animal policy, there was a “Psychiatric Support Animal Agreement.” This agreement imposed even more burdensome requirements on assistance animals for mental disabilities or emotional support, which Respondents referred to as Psychiatric Support Animals or PSAs.

28. Complainant did not provide the required information or sign the PSA Agreement. On November 20, 2015, Respondent Geiger emailed Complainant informing her that “the dog needs to be removed from the premises because the required documentation needed based on the service animal paperwork I gave you is not complete.” The email instructed her to contact Nathan Lyman, IRC’s attorney, for “further details as to exactly what you need in order to have the dog on the property.”
29. On November 23, 2015, Complainant emailed Mr. Lyman as instructed. She agreed to provide a signed copy of the letter from her therapist [Redacted Name], which had been submitted without signature. In addition, she stated that she had already provided Geiger with copies of her dog’s license, license tag, identification tag, vaccination record, and medical history from the veterinarian as required by the Service Animal Requirements.
30. Mr. Lyman replied to Complainant by email on the same day. He cited numerous deficiencies and missing items. Specifically, Mr. Lyman expressed that he still expected Complainant to provide information regarding her diagnosis, symptoms, treatment and hospitalization history, functional limitations, medications, prognosis, signed HIPAA releases, and proof of the dog’s training.
31. Complainant, through her attorney, Elizabeth Reiter, wrote to Mr. Lyman on November 30, 2015 for reconsideration of Complainant’s reasonable accommodation request. Ms. Reiter objected to the additional information required by Respondents, such as private medical history, training certification, and the demand for a pet deposit.
32. Mr. Lyman replied to Ms. Reiter by email on December 1, 2015, stating that the only medical documentation provided was “well over a year old.” He reiterated IRC policy that not only must Complainant provide current medical documentation in support of her request, but that she must resubmit such documentation on an annual basis.
33. On the same day, Ms. Reiter provided Lyman with a letter from Complainant’s medical provider [Redacted Name], FPMHNP dated November 20, 2015, verifying her diagnoses and her current and ongoing need for an assistance animal. [Redacted Name] wrote that “[w]hen [an] emotional support animal has been removed in the past, relapse has occurred.”
34. Complainant asserts that there was no further communication from Respondents about the request directly to Complainant or through Ms. Reiter. Complainant concluded that her lease would not be renewed without the provision of the requested documentation, and so decided to seek alternative housing arrangements.
35. During August 2016, Complainant moved out of the unit believing that the lease would not be renewed without her acceding to IRC’s intrusive and excessive conditions.

36. As a result of Respondents' discriminatory conduct, Complainant has suffered actual damages including but limited to, emotional distress, loss of housing opportunity, inconvenience, and economic loss.

III. FAIR HOUSING ACT VIOLATIONS

1. As described in the paragraphs above, Respondents discriminated against Complainant in the sale or rental of a dwelling based on disability when they refused to grant her request for a reasonable accommodation and thereby made housing unavailable to her. 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B); 24 C.F.R. §§ 100.202(a) and 100.204(a).
2. As described in the paragraphs above, Respondents discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when they refused to grant her request for a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).
3. As described in the paragraphs above, Respondents discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when they made inquiry as to the nature and severity of her disability. 42 U.S.C. § 3604(f)(2); 24 CFR § 100.202 (c).

IV. CONCLUSION:

WHEREFORE, the Secretary of HUD, through the office of the 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)(1) and (f)(2), as defined by § 3604(f)(3)(B), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate Sections 804(f)(1) and (f)(2), as defined by Section 804(f)(3)(B) of the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating on the basis of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling;
3. Mandates Respondents, their agents, 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. Enjoins Respondents from maintaining, publicizing, or enforcing IRC's current support animal policy or any other substitute policy that seeks overly intrusive medical or personal information or places overly burdensome conditions upon approval of a support animal.


5. Awards such damages as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
6. Assesses a civil penalty of \$16,000 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
7. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3)

Respectfully submitted this 7th day of July 2020


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