

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

Secretary, United States Department
of Housing and Urban Development, on behalf
of **NAME REDACTED**,

Charging Party,

v.

Aqua 388 Community Association, FirstService
Residential California, LLC, Rebecca Hawkins,
Christopher Harrington, and AQUA Maintenance
Corporation

Respondents.

HUDOHA No.
FHEO No. 09-18-1943-8

I. JURISDICTION

NAME REDACTED (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“Department” or “HUD”) on March 23, 2018 alleging that Aqua 388 Community Association (“AQUA 388” or “HOA”), FirstService Residential California, LLC (“FirstService”) (property management company), Rebecca Hawkins (“Hawkins”) (AQUA 388 Management Agent) and Christopher Harrington (“Harrington”) (AQUA 388 General Manager) (collectively, “Respondents”) discriminated against her on the basis of disability¹ by subjecting her to different terms and conditions and denying her reasonable accommodation requests for a van-accessible parking space that permits an eight-foot clearance on the passenger side of her vehicle in violation of subsections 804(f) of the Fair Housing Act, 42 U.S.C. 3601, et seq.² The date of the last alleged discriminatory act was May 25, 2017, and the discrimination was alleged to be ongoing. The complaint was timely filed on March 23, 2018. On May 31, 2022, Complainant amended her complaint to add AQUA Maintenance Corporation as a Respondent.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists

¹ The Act uses the term “handicap” instead of the term “disability.” However, both terms have the same legal meaning and may be used interchangeably.

² Complainant further alleged that Respondents retaliated against her for requesting a reasonable accommodation for accessible parking. The Department did not find reasonable cause to support that allegation.

to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(2). The Secretary has delegated this authority to the General Counsel (24 C.F.R. §§ 103.400-103.405), who has retained and re-delegated this authority to the Regional Counsel. 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region IX, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case and has authorized the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the findings contained in the Determination of Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

A. Legal Authority

1. 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 a dwelling, because of a disability of that person. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
2. Discrimination under subsection 804(f)(2) of the Act 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); 24 C.F.R. § 100.204(a).
3. Pursuant to the Act, an "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.

B. Parties and Subject Property

4. Complainant **NAME REDACTED** is an individual with a disability, as defined by the Act. 42 U.S.C. § 3602(h).
5. Complainant **NAME REDACTED** has paraplegia. Her disability makes her unable to walk, and therefore she relies on a motorized wheelchair. Complainant **NAME REDACTED**' physical disability is readily apparent.
6. Complainant **NAME REDACTED** is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).
7. The Subject Property is one of two neighboring high-rise condominium towers that are together called the Aqua Towers. It is located at **ADDRESS REDACTED**, Long Beach,

CA 90802 (“Subject Property”). The Subject Property consists of 556 condominium units.

8. The Subject Property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b).
9. The Subject Property offers 888 parking spaces for 556 units, located on three underground parking levels that are divided into areas with separate entrances. Parking spaces are assigned as exclusive easements to condominium owners upon purchase of a unit. The 888 spaces include 120 spaces located in a public parking lot, 56 visitor/guest parking spaces, and 19 parking spaces designated for persons with disabilities (“accessible parking spaces”). Of these 19 accessible spaces, only four are wide enough to be accessible for vans modified for wheelchairs (“van-accessible parking space”).
10. The Subject Property’s 19 accessible parking spaces are marked with blue painted parking lines and a “universal access” symbol. These spaces are available to residents on a first-come, first-served basis. None of the 19 accessible parking spaces are reservable.
11. At all times relevant to this Charge, Respondent AQUA 388 managed the common spaces of the Subject Property.
12. At all times relevant to this Charge, Respondent AQUA Maintenance Corporation managed the shared parking garage of the Subject Property.
13. At all times relevant to this Charge, Respondent FirstService was employed by Respondent AQUA 388 to manage the Subject Property. Respondent FirstService is a Limited Liability Company organized under the laws of California.
14. At all times relevant to this Charge, Respondent Harrington was the General Manager at the Subject Property and employed by FirstService.
15. At all times relevant to this Charge, Respondent Hawkins was the Management Agent at the Subject Property and employed by FirstService.
16. At all times relevant to this Charge, Complainant **NAME REDACTED** resided at the Subject Property.

C. Factual Allegations

17. Complainant purchased her condominium in the Subject Property in December 2016 and moved in on February 20, 2017.
18. Complainant drives a modified accessible van that she can only enter and exit via a ramp that extends from the passenger side of the vehicle. The van requires an eight-foot

clearance on the passenger side to allow the ramp to extend.³ If a car is parked on the passenger side of Complainant's van leaving less than eight feet of clearance, the ramp cannot be deployed, and Complainant cannot enter or exit her vehicle.

19. When Complainant purchased her unit, she was deeded parking space W-120. Complainant's deeded parking space is not a designated accessible parking space and does not have eight feet of clearance on either side of it. Because Complainant must use a wheelchair due to her disability, the parking space provided to her was not usable.
20. On January 3, 2017, prior to moving in, at an in-person meeting with Respondent Hawkins at the AQUA 388 HOA office, Complainant made her first reasonable accommodation request for an accessible parking space. Complainant explained to Hawkins that she drives a modified vehicle with a ramp. She explained that her deeded parking space was located between two other spaces and would not be usable if a car parked next to her space on the passenger side of her vehicle. Complainant asked Hawkins to introduce her to neighbors with parking spaces located at the end of the parking lane or that were located next to an access aisle, and to help her make informal arrangements to switch the usage of her deeded parking space with that of such a neighbor.
21. At this meeting, Hawkins told Complainant that there was no one that Complainant could switch her parking space with, but she would consult her manager, Harrington, about the request. Neither Respondent Harrington nor Hawkins got in touch with Complainant after this meeting.
22. On January 21, 2017, Complainant made her second reasonable accommodation request for accessible parking to Respondent Hawkins. Complainant emailed Hawkins, "[i]s there any way I can secure a handicap spot on any floor?"
23. On the same date, Hawkins emailed Complainant in response, stating "[s]ince each parking space is already owned by a unit owner, there would not be an open space available for a handicap parking space."
24. Two hours later, on January 21, 2017, Complainant made her third reasonable accommodation request for accessible parking to Respondent Hawkins. Complainant emailed Hawkins, "[h]ere are two accommodation requests for handicap parking and doorbell." She submitted an "Architectural Modification" request form, on which she requested, "[h]aving permanent access to a handicap parking spot with enough space for accessible van (access aisle 96" wide)."
25. On January 24, 2017, Hawkins forwarded Complainant's email to Respondent Harrington. Harrington sent Complainant an email copying Hawkins and Daniel Verona ("Verona"), FirstService Residential California, LLC's Assistant General Manager, denying Complainant's reasonable accommodation requests. His email stated in pertinent part that

³ The Uniform Federal Accessibility Standards ("UFAS") provide that an accessible parking space for a van designed for a person with a disability should have an adjacent access aisle at least 96 inches wide, which is equivalent to eight feet of clearance.

“the Association does not assign handicap parking spaces to individual owners. All handicap spaces are on a first come, first serve basis. If you are having issues with finding parking on your parking level, we may be able to program your gate remote so that it functions on all 3 garage levels.”⁴

26. On or around February 15, 2017, Complainant made her fourth reasonable accommodation request for permanent accessible parking to Respondents during an in-person meeting with Harrington and Verona. During the meeting, Complainant explained that she drives a modified vehicle that is equipped with a ramp and that her deeded parking space is in between two other spaces, rendering it unusable to her if a vehicle was parked next to it on the passenger side of her space.
27. At the meeting, Harrington again denied Complainant’s reasonable accommodation request by informing Complainant that the parking spaces are deeded to units and that the AQUA 388 could not give her another parking space.
28. On or around February 20, 2017, Complainant moved into her unit. From that point on, Complainant was often forced to drive around all three parking garages, sometimes for hours, circling and waiting in her car, looking for any parking space that had clearance on the passenger side. Some nights Complainant would have to eat dinner in her car while waiting for a parking space to become available.
29. On or around May 25, 2017, Complainant made her fifth reasonable accommodation request for accessible parking during an AQUA 388 HOA Board meeting. At the meeting, Complainant gave each of the Board Members a folder containing a letter she wrote dated May 25, 2017, related exhibits, and a copy of her business card. The May 25, 2017 letter states in pertinent part, “[p]lease let this memorandum serves [sic] as a formal request for reasonable accommodation for accessible parking space and home modification inside my unit...Due to the fact that I have permanent disability (paraplegic) that required the use of power wheelchair and driving a modified accessible van with 8ft clearance parking space requirement on the passenger side. I have made numerous (in person and in emails) requests for reasonable accommodations for parking spot, and home modification to HOA office.” Complainant read aloud this letter to the Board Members during the meeting. The Board Members did not respond to her request at the meeting.
30. On May 31, 2017, Respondents’ attorney sent Complainant a letter in response to her May 25, 2017, letter, denying her reasonable accommodation request for accessible parking. Among other things, the denial stated: “[T]here does not appear to be any nexus between the accommodation you have requested and your disability. While clearly your mobility is impaired, you use a power wheelchair, so proximity is not an issue.” The denial also stated: “You are asking the Board to prioritize your disability above the disability of other

⁴ In his email of January 24, 2017, Harrington also responded to Complainant’s requests regarding her windows, video doorbell, and shower. Harrington stated that further information was needed for the windows and doorbell, asked Complainant to contact the City regarding what kind of window was allowed, and requested a completed Design Review application regarding Complainant’s request for modification to her shower. Complainant did not receive an answer from the City and did not provide the requested information to Harrington.

residents because of your work schedule, which is simply not reasonable. The Association is obligated to treat all residents with handicap parking placards the same. While the Association informs us that it regularly verifies that vehicles parked in handicapped parking display valid handicap placards, the Association is not permitted under the FHA to question or make judgments upon a resident's need for a handicap parking placard or to single out some residents as deserving preferred access to handicap parking spaces. Accordingly, the Association cannot assign you your own handicap parking space.”

31. On March 2, 2018, in response to resident complaints, including complaints from Complainant, about misuse of the accessible parking spaces in the Subject Property's garage, the AQUA Maintenance Corporation instituted new rules stating, in pertinent part, that: “1) no vehicle may be parked in disabled person parking space without displaying a valid state-issued disabled parking placard; 2) Vehicles displaying a Valid Placard may be parked in the same disabled parking space in the Residential Garage for up to three (3) consecutive days, after which time such vehicle must be moved to another disabled parking space or elsewhere;⁵ and 3) A resident may not park more vehicles in the garage at the same time than the actual number of parking spaces deeded to the unit.”
32. On March 23, 2018, Complainant filed her complaint with the Department.
33. On or around May 16, 2018, May 21, 2018 and June 24, 2018, Respondents issued Complainant parking citations for parking her vehicle in space 153, a van-accessible disabled parking space, for more than three days without moving it.
34. On June 27, 2018, Complainant made her sixth reasonable accommodation request for an accessible parking space in in an email response to Harrington. She wrote: “[h]ere is one more request for parking accommodation; I'm requesting any permanent accessible parking spot that has minimum of 8ft clearance until the pending investigation/litigation is completed.”
35. On June 28, 2018, Harrington replied via email that he would place Complainant's request on the next meeting agenda for AQUA Maintenance Corporation. However, Complainant did not receive communication from Respondents related to her request. She continued to park her van in any available accessible parking space.
36. On January 27, 2019, Respondents issued Complainant a fourth parking citation for parking her vehicle in space 153, a van-accessible disabled parking space, for more than three days without moving it. The parking citations caused Complainant additional stress and frustration.

⁵ This provision of the rules is in contravention of California Vehicle Code 22511.5, which states, in pertinent part: “A disabled person or disabled veteran displaying special license plates issued under Section 5007 or a distinguishing placard issued under Section 22511.55 or 22511.59 is allowed to park for unlimited periods in any of the following zones: [...] (A) In any restricted zone described in paragraph (5) of subdivision (a) of Section 21458 [parking limited exclusively to the vehicles of disabled persons and disabled veterans.]”

37. In an email to the Department dated May 7, 2019, Respondents' attorney again denied Complainant's reasonable accommodation request, writing in relevant part, "[i]f we could switch spaces among owners, we would, but just because one owner happens to have a wide space deeded to them when they purchased their unit doesn't mean we have any power over that. Ms. **NAME REDACTED** could have purchased a unit with a space wide enough for her to park her van in ... but she didn't."

38. Section 2.9.5 of Respondents' Covenants, Conditions, Restrictions and Reservation of Easements ("CC&Rs") "Unassigned Parking," in relevant part, indicates that residents have a right to re-assign, exchange or transfer unassigned parking spaces. It states that nothing prohibits residents from:

... either temporarily or permanently exchanging or transferring their Pre-Assigned Parking Spaces, Additional Exclusive Parking Spaces or Exclusive Use Garages with other Owners in the Community (or the Master Association) provided that the affected Owners give the Master Association prior written notice of the proposed exchange or transfer (including the names of the affected Owners, their Unit Numbers, and the assigned numbers of the exclusive easement areas that will be exchanged or transferred), and provided further that the Master Association must confirm in writing delivered to each affected Owner that the exchange or transfer will not cause either Owner to violate the exclusive parking space maximums imposed on the Community by the Coastal Commission Restrictions and this Master Declaration and summarized in Section 2.8.5 below [...].

The CC&Rs also provide that "...unassigned parking spaces in the Residential Garage will be conveyed in fee to the Master Association to be held as a pool of unassigned parking, subject to the requirements of this Master Declaration and Coastal Commission Deed Restrictions, and further subject to the Master Association's right to re-assign, exchange and transfer unassigned parking spaces with Owners at its sole discretion."⁶

39. At no time did Respondents discuss these provisions in the CC&Rs with Complainant or otherwise explain the rules or requirements about switching parking spaces among residents despite Complainant's initial request to switch spaces.

40. On or about August 29, 2019, Respondents' attorney provided Complainant with a Reasonable Accommodation Agreement ("Agreement"). The Agreement offered Complainant the "exclusive" right to use van-accessible parking space 153 without removal of the universal access symbol painted on the floor of the space or the sign attached to the wall in front of the space. Respondents presented her with two options: pursuant to the first option the HOA would add a reserved sign on the space and Respondents would "be responsible for ticketing and/or removing unauthorized vehicles parked in PS-153."; and pursuant to the second option, the HOA would not add a reserved sign and Complainant "will be solely responsible for removing vehicles parked without authorization."

⁶ The term "unassigned parking spaces" is not defined in the CC&Rs.

41. On October 23, 2019, in a letter from her attorney, Complainant declined to enter into the Agreement, and pointed out the potential for confusion and enforcement complications in Respondents' proposal to grant her exclusive right to use space 153 without removing the universal accessible symbol and markings.⁷
42. On October 29, 2019, Respondents' attorney wrote to Complainant's attorney in pertinent part that the "Association is ready, willing and able to grant the particular handicapped parking space to Ms. **NAME REDACTED** for so long as she lives in the building. The Association is also obligated to maintain a certain number of handicapped parking spaces and has no other space in the building available to create space from. Therefore, this particular space must remain marked as a handicapped parking space, but, the Association ... would mark such handicapped parking space as "reserved" in such a way that no other owner or visitor would think to park there." He also wrote that Complainant "has insisted that all markings of the parking space be removed so that it is no longer a handicapped parking space, but is simply a space within the parking structure. The Association similarly cannot do this because then it would be removing a handicapped parking space from its facility in contravention of the law, since it is obligated to maintain a certain number of handicapped spaces."
43. On or about February 13, 2020, Respondents installed a sign on parking space 153, stating "Space 153 is RESERVED – Unauthorized vehicles will be towed." However, they did not remove the universal handicap symbols, which are located on both the wall in front of the parking space as well as on the ground inside the parking space. The lines painted on the side of the space that indicate accessibility are still painted blue.
44. On or about February 13, 2020, Complainant began using space 153, even though the universal accessible symbols remain. Complainant asserts that because of the universal accessible symbols, anyone with a valid handicap plate or placard can legally park in the space. She remains in fear that someone will park in her parking space when she leaves the subject property, which has occurred at least once, and will result in her driving around for an unknown amount of time to find a place that will allow her to reliably exit and re-enter her vehicle.
45. As a result of Respondents' discriminatory conduct, Complainant has suffered actual damages, including, but not limited to physical and emotional distress, inconvenience, and frustration.

D. Fair Housing Act Violations

46. Respondents violated the Act by discriminating against Complainant **NAME REDACTED** in the terms, conditions, or privileges of Complainant **NAME REDACTED**'s residency by denying Complainant's reasonable accommodation requests, when such an

⁷ Per California Vehicle Code 22511.8, an owner or person in possession of a privately owned parking facility cannot remove a vehicle from a designated accessible space if the vehicle displays a disabled license plate or distinguishing placard issued pursuant to CVC Section 22511.55 or 22511.59.

accommodation was necessary to afford Complainant an equal opportunity to use and enjoy the dwelling. 42 U.S.C. § 3604(f)(2) and (f)(3)(B); 24 C.F.R. § 100.202(b)(3) and § 100.204.

III. CONCLUSION

47. WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of Sections 3604(f) of the Act and requests that an order be issued that:

- a. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. § 3601, *et seq.*;
- b. Enjoins Respondents, their agents, employees, successors, and all others in active concert or participation with any of them, from discriminating against any person because of disability in any aspect of the sale, rental, use, or enjoyment of a dwelling;
- c. Awards such damages as will fully compensate Complainant for the damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3);
- d. Awards a civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
- e. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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September 27, 2022