

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

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The Secretary, United States Department of))
Housing and Urban Development,))
on behalf of))
))
NAME REDACTED , individually, and as))
legal guardian of))
NAME REDACTED , an aggrieved person,))
))
))
Charging Party,)	HUDOHA No. _____
)	FHEO No. 02-14-0068-8
)	
)	
v.)	
)	
Hudson Harbour Condominium Association, Inc.,)	
)	
)	
Respondent.)	
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CHARGE OF DISCRIMINATION

I. JURISDICTION

On November 12, 2013, **NAME REDACTED**, on behalf of herself and her mother, **NAME REDACTED**, for whom she is legal guardian (collectively “Complainants”) filed a verified complaint with the United States Department of Housing and Urban Development (“HUD”) alleging violations of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the “Act”). Complainant **NAME REDACTED** alleges that Hudson Harbour Condominium Association, Inc. (“Hudson Harbour”) discriminated against her and her mother on the basis of disability¹ when they refused to grant a reasonable accommodation request to allow them to use a prescribed assistance animal as intended. Specifically, while Respondent waived Hudson Harbour’s no pet policy, it would not modify requirements that demanded the 75 lbs. animal be carried in a crate or carrier in common areas and that Complainants only use a service door instead of the main entrance when with the dog.

¹ The Act uses the term “handicap.” This Charge uses the term “disability” unless quoting from the Act or applicable regulations. Both terms have the same legal meaning.

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); 24 C.F.R. § 103.400(a). 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 Region II, 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(g)(1) and (2)(A); 24 C.F.R. § 103.400(a).

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, Respondent is 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 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).
2. For the purposes of 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 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).

B. PARTIES AND SUBJECT PROPERTY

3. Complainant **NAME REDACTED** is a person with a disability as defined by 42 U.S.C. § 3602(h). She has physical impairments that substantially limit her ability to walk, see, and hear. Moreover, she has depression and dementia, which substantially limit her memory and other cognitive abilities.
4. Complainant **NAME REDACTED** is Complainant **NAME REDACTED** daughter and has been guardian of her mother’s person and property pursuant to an order of the Bergen County Surrogate Court of New Jersey since January 13, 2012; and, at all times relevant to this Charge, resided with her mother in a unit on the subject property.
5. The subject property, Hudson Harbour Condominiums, is a hi-rise condominium building with 246 units, located at 1203 River Road, in Edgewater, New Jersey. Respondent Hudson Harbour Condominium Association, Inc. is a privately held company that operates, and sets policies for, Hudson Harbour Condominium.

6. On or about May 2012, Complainants rented apartment **REDACTED** at the subject property from the unit owner **NAME REDACTED**. Complainants relocated to Apt **REDACTED** at the subject property on October 15, 2017 and are no longer renting from Mr. **NAME REDACTED**. The subject property is a “dwelling” as defined by 42 U.S.C. § 3602(b).
7. Complainants are aggrieved persons as defined by 42 U.S.C. § 3602(i) who have suffered damages as a result of Respondent’s conduct.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

8. Respondent has a “no pets” policy; however, in adopting its pet policy, Hudson Harbour allowed residents with pets before March 24, 2009 to be “grandfathered in.” Respondent’s pet policy states:
 - a. No pets or animals of any kind, other than registered grandfathered pets may be harbored or kept in any unit or allowed upon Hudson Harbour property.
 - b. Grandfathered pets (hereafter referred to as “pets”) must be completely in pet carriers or cages whenever in the common elements. (The heads of animals are not to be “popping” out of the carrier).
 - c. Pets must be taken in and out of the building in their carriers/cages through the west side service door.
 - d. Pets are not allowed in common areas such as the hallways except during transportation in or out of the building. Pets are never to be in the lobby or on the deck.
9. Complainant **NAME REDACTED** relies upon an assistance animal, a mixed-breed dog (beagle, Australian sheepad, and terrier) named **NAME REDACTED**, to mitigate limitations of her disabilities. Because of her mobility and sight issues, Complainant **NAME REDACTED** relies on **NAME REDACTED** to assist her in walking by leaning on the dog and using him to guide her. When at home alone, she relies on **NAME REDACTED** to alert her to someone at the door due to her loss of hearing, and for companionship, which is important to her emotional well-being.
10. On or about May 24, 2012, Complainant’s landlord, Mr. **NAME REDACTED**, wrote to Respondent’s board of directors to inform them that he was aware of, and approved of, the presence of **NAME REDACTED** as an assistance dog, in accordance with disability rights laws.
11. By letter dated May 25, 2012, Complainant **NAME REDACTED** informed Respondent that her mother has an emotional support animal that “has been prescribed by her doctor to support her with her illness.” Complainant **NAME REDACTED** included a letter from her mother’s psychiatrist, **NAME REDACTED**, confirming that he had prescribed a dog named **NAME REDACTED** as an emotional support animal for Complainant **NAME**

REDACTED. Dr. **NAME REDACTED** indicated that **NAME REDACTED** was part of her medical treatment program and that the dog was to be with her at all times.

12. On or about June 8, 2012, Complainants' attorney sent Respondent's attorney, Hubert Cutolo, a certification letter signed by Dr. **NAME REDACTED** attesting to the fact that Complainant **NAME REDACTED** is disabled as defined by the Act and that her request for an accommodation was necessary due to her disability.
13. Respondent granted Complainants' request to keep **NAME REDACTED**, which was confirmed by letter dated October 17, 2012 from Mr. Cutolo, but Respondent told Complainants that notwithstanding the granting of their request, they had to comply with Hudson Harbour's rules concerning pets. Specifically, Complainants "[were to] ensure that **NAME REDACTED** will be kept in carriers while entering or exiting the unit."
14. In a November 12, 2012 follow-up letter, Mr. Cutolo provided Complainants' attorney with Hudson Harbour's rules concerning pets with which Complainants were expected to comply.
15. Complainants did not abide by the conditions as they believed them to be unlawful and burdensome.
16. In letters dated April 4, 2013 and April 12, 2013, Mr. Cutolo wrote to Complainant's counsel and demanded that Complainants comply with the rule about keeping **NAME REDACTED** in a carrier, no matter which elevator or entrance they used (rear service elevator or main elevator). These letters specified that they would be levied a fine for each violation beginning April 20, 2013. Because of these letters, Complainant and her mother began exiting and entering the building by the west side service door and not the lobby, rather than put **NAME REDACTED** in a carrier.
17. By letter dated May 24, 2013 to Mr. Cutolo, Complainants' attorney sent letters from three of Complainant **NAME REDACTED** physicians explaining that her disability prevents her from using a carrier for her 75-pound assistance animal.
18. In a letter dated May 31, 2013, Respondent acknowledged receipt of Complainants' request for the reasonable accommodation to not use a carrier, but denied the request. Mr. Cutolo wrote, "**NAME REDACTED** is the only person that has been observed walking the dog. Accordingly, any time that **NAME REDACTED** walks the dog, she must keep the dog in the carrier while in the building of the Association. If **NAME REDACTED** violates the foregoing rule and regulation, the Association will levy a fine for each violation." Because of her mother's mobility issues, Complainant **NAME REDACTED** had the primary responsibility of walking the dog in the mornings and evening.
19. On or about October 15, 2013, Respondent sent a letter to **NAME REDACTED** and Complainants issuing a \$100 fine because Complainant **NAME REDACTED** "continues to walk the dog on the Hudson Harbour premises without the dog being placed in a pet

carrier” as required by Respondent Hudson Harbour’s rules. In the October 15th letter, Respondent emphasized that its “Board of Directors had granted a reasonable accommodation to [**NAME REDACTED**] tenant **NAME REDACTED** [sic],” rather than to Complainant **NAME REDACTED**. (Emphasis in original).

20. Complainant’s mother mobility issues were further exacerbated by the requirement to exit the building through the west side service door, as it involved an extensive walk from the main entrance. Complainant **NAME REDACTED** has missed many doctors’ appointments because she is afraid to leave the property because of the stress she feels when with her dog.
21. As a result of Respondents’ discriminatory actions, Complainants have suffered actual damages, including, but not limited to, out-of-pocket expenses and emotional distress.

III. FAIR HOUSING ACT VIOLATIONS

22. 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 it 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).

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)(2), as defined by § 3604(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 Sections 804(f)(2), as defined by Section 804(f)(3)(B), and Section 818 of 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 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 Respondent, its 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. Awards such damages 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 under 42 U.S.C. § 3612(g)(3).

Respectfully submitted this 28 day of September 2018.

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