

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

SHELLY HORWITZ,

v.

40 WEST 75TH STREET, LLC.,

Respondent.

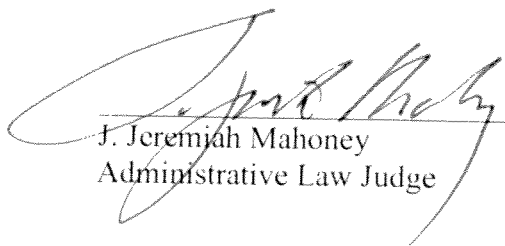
HUDALJ 10-M-097-FH/10

May 20, 2010

APPROVAL OF INITIAL DECISION AND CONSENT ORDER

The attached INITIAL DECISION AND CONSENT ORDER, (consisting of 7 pages including Attachment "A"), incorporates the parties' settlement agreement, and bears signatures of the parties, including the Complainant on whose behalf the charge was issued. By its terms, the consent order completely settles the issues in the above-captioned case, and it appears to be in the public interest.

Accordingly, the signature of the presiding Administrative Law Judge (ALJ) has been affixed thereto.


J. Jeremiah Mahoney
Administrative Law Judge

Complainant is a person with a handicap within the meaning of the Act. 42 U.S.C. § 3602(h).

Respondent 40 West 75th Street LLC is the owner of a 10-unit apartment building located at 40 West 75th Street, New York, NY 10023.

Complainant resides in Apartment 1-A located at 40 West 75th Street, New York, NY, a multi-family apartment building owned and operated by Respondent.

The lease for Complainant's apartment contains a clause prohibiting "dogs, cats or other animals or pets." On or about March 30, 2009, Complainant's husband moved into her apartment with his dog Scooter. In June 2009, Respondent served Complainant with a Ten Day Notice to Cure, informing Complainant that her tenancy would terminate on June 29, 2009, unless she removed Scooter from her apartment.

By letter dated June 17, 2009, Complainant's attorney Karen Copeland, responding to the Notice To Cure, informed Respondent, among other things, that (1) Scooter was registered as a service dog with the City of New York Department of Health Office of Veterinary Services; (2) Complainant suffers from chronic depression; and (3) Complainant requests a reasonable accommodation to retain Scooter in her home as an emotional support animal.

Along with her letter, Ms. Copeland enclosed a letter, dated March 31, 2009, from Complainant's psychiatrist, Dr. Graham. Dr. Graham verified that he was treating Complainant for depression and an important part of her therapy was the love and affection of her dog. Dr. Graham concluded that it is an "important medical necessity for her to have the animal with her and her husband in her apartment."

Complainant's request to retain Scooter as a reasonable accommodation, was supported by a psychiatrist's verification that Scooter was an "important medical necessity." Respondent initially refused to grant Complainant's request to permit Scooter to remain in the apartment.

Respondent denies any and all allegations of discrimination and denies that it has engaged in any discriminatory actions or practices in violation of the Act.

The parties have agreed to resolve the above -captioned case without the need for a hearing before an Administrative Law Judge. Therefore, without a hearing or adjudication, the parties have consented, as indicated by the signatures of the parties and counsel at the end of this document, to the entry of this order.

This Order does not constitute a decision or finding that the Respondent, its agents, employees, successors or assigns have engaged in any discriminatory housing practices, and by signing this document, Respondent does not admit any violation of the Fair Housing Act or any other applicable State or Local Fair Housing Law.

II. STANDARDS AND POLICIES

It is Ordered that:

Respondent, its agents, employees, successors and assigns, and all other persons in active concert or participation with them, in the management or operation of its business enterprise shall not:

- (1) Retaliate, coerce, intimidate or interfere with any individual because of their exercise or enjoyment of any right granted or protected by the Fair Housing Act.

- (2) Make statements, print, or publish, or cause to be made printed or published any notice, statement, or advertisement which would indicate preferences, limitations or discrimination against any individual (s) in the rental of property based upon any of the protected classes under the Act, including but not limited to disabilities.
- (3) Discriminate in the provisions of services, or facilities against persons with disabilities or any other protected class pursuant to the provisions of the Act.
- (4) Refuse 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.

III. SETTLEMENT PROVISIONS

It is FURTHER ORDERED that:

Respondent shall:

- (1) Grant Complainant a reasonable accommodation to keep an emotional support animal in her home.
- (2) Institute the new reasonable accommodation policy attached to this agreement as Exhibit A.
- (3) Attend a Fair Housing Training conducted by HUD at no cost to the Respondent within 90 days after this Consent Order is approved by an Administrative Law Judge.
- (4) Credit Complainant \$10,000 towards her outstanding arrears totaling \$20,064.

Complainant shall:

- (1) Apply reasonable pet control techniques so that her support animal does not constitute a nuisance to other residents.
- (2) Insure that the premises are kept clean, safe and maintained so no additional expenses will be incurred by the Respondent as a result of keeping a support animal on the premises.
- (3) Pay Respondent \$10,064 in full satisfaction of her outstanding arrears immediately upon Respondent signing this agreement.

In consideration of and as a condition of Respondent's performance of obligation set forth above, the Secretary agrees to waive any Civil Penalty.

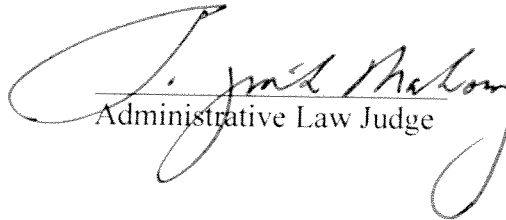
IV. ADMINISTRATION

This Order is entered into pursuant to section 812 (g)(3) of the Fair Housing Act and the regulations codified at 24 CFR § 180.450, and shall become final upon expiration of thirty days or affirmance by the Secretary within that time.

The signatures of the parties to the Consent Order constitute a waiver of any right to withdraw their consent during the thirty day Secretarial review period and a waiver of any right to challenge the validity of this Consent Order at any time. The signatures of HUD and Respondent to this Consent Order further constitute a waiver of any right to apply for attorney's fees or costs pursuant to 42 U.S.C. § 3612 (p) and 24 CFR § 180.705.

This Order shall remain in effect for a period of two (2) years following the date this Order becomes final, pursuant to 42 U.S.C. § 3612 (h) and 24 CFR § 180.680. The United States Court of Appeals has jurisdiction to enforce this Order, if necessary. See 42 U.S.C. § 3612 (j)(m).

SO ORDERED THIS 20TH DAY OF MAY 2010


Administrative Law Judge