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

The Secretary, United States Department of Housing and Urban Development, the Charging Party, on behalf of: JOSEPH ARCHIBALD, Complainant, v. RIVERBAY CORPORATION, VERNON COOPER, and HENRY T. MILBURN, JR. Respondents.	HUDALJ 11-F-052-FH-18 May 7, 2012

Appearances

For the Complainants: Henry Schoenfeld, Michael Posner, and Iris Springer-Elkerson, Attorneys, United States Department of Housing and Urban Development, New York, NY

For the Respondents: Jennifer Stewart, and Jeffrey Buss, Attorneys, Yonkers, NY

INITIAL DECISION AND ORDER

BEFORE: Alexander FERNÁNDEZ, Administrative Law Judge

On August 10, 2011, the Secretary of the United States Department of Housing and Urban Development ("HUD" or the "Charging Party") filed a *Charge of Discrimination* (the "Charge") against Riverbay Corporation, Vernon Cooper, and Henry T. Milburn, Jr. (collectively, "Respondents"). The Charge was filed on behalf of Joseph Archibald ("Complainant") and alleged that Respondents denied Complainant reasonable accommodations in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. Specifically, the Charging Party alleges that Respondents denied Complainant's request to keep his service animal in his co-op unit and unnecessarily detained and harassed Complainant and his wife on several occasions when they attempted to walk the animal. On September 15, 2011, Respondents filed their *Answer* to the Charge.

By Order of the Court, dated September 1, 2011, the hearing was set to commence on December 6, 2011, in New York, New York. The hearing began as scheduled and concluded on

December 8, 2011.[1] In accord with an order issued on December 15, 2011, post-hearing briefs were submitted by the parties on February 24, 2012, and on March 16, 2012, reply briefs were filed by the parties.

Applicable Law

The Fair Housing Act. On April 11, 1968, President Lyndon B. Johnson signed the Civil Rights Act of 1968. Federal Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 73, 81 (1968) (codified as amended at 42 U.S.C. §§ 3601-3631). Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act (the "Act" or "FHA"). The Act expanded on the Civil Rights Act of 1964, which prohibited discrimination regarding the sale, rental, and financing of housing based on race, color, religion, or national origin. Id.

The Act was amended in 1974 to prohibit sex-based discrimination. That same year, the United States Supreme Court ruled that defendants charged with violations of the Act had the right to a jury trial. Curtis v. Loether, 415 U.S. 189 (1974). Sometime later, Congress, hoping to prevent discrimination cases from flooding the judicial system, sought to improve the Act's governmental enforcement mechanism by amending the Act and providing for a system where Fair Housing complaints could be heard by HUD ALJs. Michael H. Schill & Samantha Friedman, *The Fair Housing Amendments Act of 1988: The First Decade*; CITYSCAPE: A JOURNAL OF POLICY DEVELOPMENT AND RESEARCH, vol. 4, 1999, U.S. Dept. of Housing and Urban Development Office of Policy Development and Research. The 1988 amendment also provided the opportunity for Congress to further expand the Act's protections, this time prohibiting discrimination based on familial status or disability. (Pub. L. 100-430, approved September 13, 1988.)

In defining the term "handicap," the Act copied near verbatim the definition used in the Rehabilitation Act of 1973, which defined the term as, "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 29 U.S.C. § 706. The FHA's definition expressly notes that use of or addiction to an illegal controlled substance (as defined in Section 102 of the Controlled Substances Act) does not constitute a disability. U.S. v. California Mobile Home Park Mgmt. Co., 107 F.3d 1374, 1380 (9th Cir. 1997).

When ascribing affirmative responsibilities to housing providers, Congress recognized that "more than a mere prohibition against disparate treatment was necessary in order that handicapped persons receive equal housing opportunities." HUD v. Dedham Hous. Auth., 1991 WL 442793, *5 (HUDALJ November 15, 1991) ("Dedham I") (citing H.R. No. 711.) Congress also used the 1988 amendment to repudiate the use of stereotypes and ignorance when dealing with individuals with disabilities, stating that "generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." H.R. No. 711, at 18.

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[1] Over the course of three days, the Court heard the testimony of: (1) Joseph Archibald, Complainant; (2) Crystal Lewis; (3) Jameelah Ricks; (4) Jo-Ann Frey; (5) Dr. B. Bernie Herron; (6) Joe Boiko; (7) Vernon Cooper, Respondent; (8) Christina Rodriguez; and (9) Dr. William B. Head.

Pursuant to the FHA, housing providers are prohibited from making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on handicap, or intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c). Additionally, the Act prohibits discriminating in the sale or rental of housing because of a handicap of a buyer or renter, anyone residing or intending to reside in the housing, or any person associated with a handicapped buyer or renter. 42 U.S.C. § 3604(f)(1).

Reasonable Accommodation. The FHA also prohibits housing providers from refusing residency to disabled persons, or placing conditions on their residency, because those persons may require reasonable accommodations. 42 U.S.C. § 3604(f)(2). Such 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); City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); see also *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, found online at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. Lapid-Laurel, LLC. v. Zoning Board of Adjustment to Tp. Scotch Plains, 284 F.3d 442, 459 (3d Cir. 2002); California Mobile Home Park, 107 F.3d at 1381.

To prove a prima facie case that a housing provider failed to provide a reasonable accommodation, the Complainant must show that: (1) the Complainant is disabled or is a person associated with a disabled person; (2) the Respondent knows of the disability or should be reasonably expected to know of it; (3) modification of existing premises or accommodation of the disability may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling; and (4) the Respondent refused permission for such modifications, or refused to make such accommodation. DuBois v. Ass'n of Apart. Owners of 2987 Kalahaua, 453 F.3d 1175, 1179 (9th Cir. 2006); Bryant Woods Inn, Inc., v. Howard County, Md., 124 F.3d 597, 603 (4th Cir. 1997); Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 336 (2d Cir. 1995).

Determining whether an accommodation is reasonable is fact-specific and requires a case-by-case analysis. Groner v. Golden Gate Gardens Apartments, 250 F.3d 1039, 1044 (6th Cir. 2001). The person making the request for the accommodation should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and the disability. California Mobile Home Park, 107 F.3d at 1381.

After a request for a reasonable accommodation is made, the burden shifts to the housing provider to propose solutions. HUD v. Jankowski Lee & Assoc., 1995 WL 399384 at *11, aff'd, 91 F.3d 891 (7th Cir. 1996). The housing provider need not honor an accommodation that would be unduly burdensome or require a fundamental alteration of the existing physical structure.

Majors v. Hous. Auth. of Cty. of Dekalb, Ga., 652 F.2d 454 (5th Cir. 1981); see generally *Discrimination Against Persons With Disabilities: Testing Guidance for Practitioners*, U.S. Dept. of Housing and Urban Development Office of Policy Development and Research, pp. 9-11, July 2005. The provider also need not honor the accommodation if an alternative, less obtrusive accommodation is available. Loren v. Sasser, 309 F.3d 1296, 1303 (11th Cir. 2002).

Retaliation. The Act further provides that "[i]t shall be 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, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617. To establish a *prima facie* case of retaliation under the FHA, HUD must establish:

> (1) that the Complainant was engaged in an activity protected by the Act; (2) that Respondents took some adverse action against Complainant; and (3) that there is a causal connection between the Complainant's protected activity and the Complainant's injury." HUD v. Holiday Manor Estates Club, 2 Fair Housing - Fair lending (P-H) ¶25,027, 25,298 (November 26, 1991).

HUD v. 1430 Seagirt Blvd. Corp., 1998 WL 70138 at *8 (HUDALJ Feb. 17, 1998).

Findings of Fact

Based on a thorough and careful analysis of the entire record, including evidence in the form of testimony and documents adduced at the hearing, the Court finds the facts as described below and further finds and takes cognizance of facts as described elsewhere in this Opinion.

Background and Pertinent Medical Conditions

1. Respondent Riverbay Corporation ("Riverbay" or "Co-op City") owns the housing cooperative commonly known as Co-op City. Riverbay is governed by a 15-member Board of Directors and has approximately 60,000 residents.

2. Riverbay is located on 433 acres in the Bronx, New York. It was constructed as part of the Mitchell-Lama housing program, and its resident shareholders are persons of low to moderate income.

3. Riverbay contains its own power plant and department of public safety, and has approximately 1,000 employees.

4. Respondent Vernon Cooper is Riverbay's General Manager and an employee of Marion Scott Real Estate Inc., the company that manages Co-op City.

5. As General Manager, Mr. Cooper is responsible for oversight over all of Riverbay's day-to-day operations. In addition, at all times relevant to the matters at bar, he reviewed recommendations for reasonable accommodations and made decisions on whether or not to

grant accommodation requests. Mr. Cooper held the General Manager position, with its commensurate duties, since at least 2008.

6. Respondent Henry T. Milburn, Jr. was a Deputy Chief of Public Safety at Riverbay from approximately January 16, 2001, until October 22, 2009.

7. On or about April 30, 2002, Complainant and Riverbay signed an occupancy agreement stating that keeping pets is prohibited at Riverbay.

8. Complainant is a resident-shareholder of Riverbay. Complainant has resided at Co-op City since approximately May 2002 to the present.

9. Complainant's apartment is a "dwelling" within the meaning of the Act, 42 U.S.C. § 3602(b), and his apartment is not exempt from any of the Act's substantive provisions.

10. On August 31, 2005, Dr. Bernie Herron, a psychiatrist, began treating Complainant.

11. For more than 50 years, Dr. Herron has owned a private general psychiatry practice catering to adults. For the past 20 to 25 years his practice has focused on psychiatry with an emphasis on emotional problems. He currently treats approximately 125 patients, 30% to 40% of whom are treated for depression. Approximately five or six of those patients have been provided a dog for therapeutic benefit.

12. During his initial visit with Complainant, Dr. Herron recognized that Complainant suffered from a major depressive disorder: "Major Depressive Disorder is a disorder of mood and other thinking, feeling that is characterized by certain characteristics, and Mr. Archibald showed those characteristics when I first examined him in 2005."

13. Complainant has suffered from Major Depressive Disorder since at least 2005. Moreover, several of Complainant's family members also suffer from depression. One of Complainant's sisters has been hospitalized due to her depression.

14. Complainant's disability caused him to have difficulty sleeping, difficulty concentrating, difficulty taking care of his day-to-day responsibilities, sexual problems, and a disturbance of his appetite. Dr. Herron has prescribed the anti-depressant Effexor to treat Complainant's depression.

15. Dr. Herron continued to treat Complainant and had seen him as a patient a total of 28 times between August 2005 and August 2011.

16. Dr. Herron's treatment of Complainant included supportive psychotherapy and medication. In June of 2006, Complainant was first prescribed Cialis, a medication for erectile dysfunction. In July of 2007, Dr. Herron first prescribed Lunesta, a sleeping aid, for Complainant.

17. Sometime before November 27, 2007, Complainant visited the Long Island Humane Society and the New Rochelle Humane Society.[2]

18. While at the New Rochelle Humane Society, Complainant informed employees there that he was interested in adopting a dog he had seen named "Figgy."

19. On or before November 9, 2007, Complainant met with Dr. Herron. During this session, Complainant and Dr. Herron discussed the possibility of using an animal as a different treatment option.

20. Dr. Herron observed Complainant's enthusiasm and interest in getting a dog, and was in favor of using an animal as a treatment option as it would increase Complainant's interest in being active and enable Complainant to become involved in life.

21. On November 9, 2007, Dr. Herron wrote a letter ("Herron Letter") to Riverbay (specifically, to Mr. Cooper) on behalf of Complainant. The *Herron Letter* stated:

> I am a physician, Board Certified in Psychiatry, and I have been treating Mr. Joseph Archibald for a depressive disorder since August 2005.
>
> At present he remains depressed. Inasmuch as animals have always been important to him and an important source of comfort, a pet would be of great help in dealing with his present problems. I understand that under usual circumstances dogs are not allowed in your housing complex. However, in my opinion, a pet would be extremely helpful in facilitating Mr. Archibald's recovery.
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> If any further information is necessary please get in touch with me.

22. On November 27, 2007, Complainant adopted Figgy from the New Rochelle Humane Society. Figgy is a Chihuahua mix weighing eight pounds.

23. Complainant feels that Figgy serves as "something to do, someone to come home to, somebody [that] is always there for [him], someone is there to always care for [him]. . . [Figgy] reminds me to do things for him. He takes my focus off how I feel, so having him around as a companion makes a huge difference."

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[2] Respondents make much ballyhoo over whether Complainant had selected Figgy prior to discussing the need for a support animal with Dr. Herron or after the need had been discussed. Although it is true that there is conflicting testimony and evidence on this point, the distinction is as meaningless as whether the chicken or the egg came first when one is deciding what to make for breakfast. Dr. Herron's testimony regarding Complainant's need for Figgy is unequivocal regardless of who thought a support animal would be a good idea. As explained supra, Dr. Herron, Complainant's treating physician, expressly stated in the *Herron Letter* that it would be "extremely helpful in facilitating [Complainant's] recovery" for Complainant to keep a dog in his apartment. Dr. Herron's credibility is not at issue and has not been put at issue by Respondents. Moreover, based on the Court's observations of Dr. Herron's demeanor, a review of his credentials, and his history of treating Complainant, the Court finds Dr. Herron's testimony to be credible and informative.

24. Dr. Herron noticed a "remarkable" change in Complainant after Complainant's adoption of Figgy. Complainant's mood changed and he lost his depressive appearance. Dr. Herron observed Complainant "lit up."

25. After Complainant adopted Figgy, Dr. Herron observed that Complainant had much more of an interest in life and activities, and his previous symptoms of depression were not evident.

Complainant's Reasonable Accommodation Request

26. On or around January 6, 2008, Complainant sent Riverbay a letter requesting an accommodation to its "no pets" policy. Riverbay responded by forwarding the *Application for Reasonable Accommodation of Dog Application Form* ("Dog Application Form") to Complainant.

27. After receiving the *Dog Application Form*, Complainant sent an e-mail to Riverbay employee Warren Mitchell. In the e-mail, Complainant expressed concerns about releasing his medical history to non-medical personnel. However, Complainant stated that he would provide medical documentation that specifically detailed his condition and length of treatment and consent to an interview with any mental health professional.

28. On or about January 7, 2008, Complainant submitted an application for a reasonable accommodation containing the following documents:

    a. The *Dog Application Form*, Certificate of Indemnification, Veterinary Information.

    b. The *Herron Letter*. See paragraph #21 supra.

    c. Adoption Contract from the New Rochelle Humane Society and Vaccinations.

29. Subsequently, Complainant supplemented his application with the following documents:

    a. A letter, written with regard to Figgy, dated January 18, 2008, from the City of New York's Department of Health and Mental Hygiene stating in part:

> The New York City Department of Health and Mental Hygiene is implementing a new procedure to more easily identifies [*sic*] Service Dogs. This numbered, brass tag clearly states that your dog is a Service Dog. As your dog is already listed as a Service Dog in our database, we are enclosing a gold colored Service Dog Tag that [*sic*] be place on your dog's collar along with your regular red colored License tag, which will be mailed separately.

b. A photograph of Figgy.

30. Complainant's reasonable accommodation application was forwarded to Jameelah Ricks, a paralegal working in the legal department for Riverbay. Upon receiving the application, Ms. Ricks contacted Complainant to set up an interview regarding his request for accommodation.

31. On February 5, 2008, Ms. Ricks, Riverbay Attorney Michael Munns, and Riverbay Ombudsman Joseph Boiko (an employee of Marion Scott Realty, Inc.) interviewed Complainant regarding his application.

32. At the interview, Complainant explained that he suffered from depression. He explained to the panel that he has difficulty sleeping and had been prescribed Ambien. He also explained that "[he] loses focus a lot, is forgetful, and that people on [his] floor think [he's] psycho."

33. Complainant also told the interview panel how Figgy helps to alleviate Complainant's depression. Specifically, Complainant told the interview panel that Figgy gets him out of bed, and gets Complainant going as Figgy needs to be cared for. Complainant also explained that Figgy is necessary as a form of therapy because Figgy provides reminders throughout the day.

34. The interview panel noted that Figgy had a service animal tag.

35. At the interview, the panel suggested the possibility of Complainant having a cat instead of a dog as an accommodation.

36. Mr. Boiko recommended a cat because dogs create noise and disturbances.

37. At the interview, the only additional documentation requested of Complainant was a picture of Figgy that Complainant later e-mailed to Mr. Boiko.

Respondents' Response to the Reasonable Accommodation Request

38. On or about February 8, 2008, Ms. Ricks prepared a memorandum summarizing the interview and recommending denial of the accommodation request. ("Denial Memorandum") In preparing the memorandum, Ms. Ricks considered everything that Complainant had submitted to Riverbay, including the letter from Dr. Herron, the application, the letter from the City of New York's Department of Health and Mental Hygiene, Complainant's comments during the interview and discussions with Mr. Munns and Mr. Boiko.

39. In recommending denial of the accommodation request, Mr. Boiko considered everything in the *Denial Memorandum*, but recalled in particular that "there was nothing definitive from the doctor that a dog was truly needed based on his illness."

40. The *Denial Memorandum* states, in pertinent parts:

> Joe Boiko and Jameelah Ricks recommend that you do not approve a dog accommodation to Mr. Archibald. Mr. Archibald reported that he was diagnosed as having chronic depression and has been treated for his depression for the past fifteen years. He submitted medical documentation from a psychiatrist, Dr. Herron, that stated he has been treating Mr. Archibald since August 2005. Dr. Herron [*sic*] documentation stated, [see *Herron Letter*, supra, paragraph #21]
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> . . .
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> Mr. Archibald presented a letter from the New York City Department of Health and Mental Hygiene stating that Figgy has a service dog tag number, license, and is listed as a service dog in the Dog License Unit Database of the city of New York. The requirement to qualify for a mental hygiene service dog tag is to fill out a dog license application and submit a doctor's note explaining the disability of the applicant. Once this information is received the dog license unit makes a determination as to whether the dog will be classified as a service animal.
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> . . .
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> Mr. Archibald does not have any problems with performing manual tasks nor does he suffer from the lack of daily functions such as walking, speaking, hearing, sitting or standing. The letter from his doctor states that he has been treating him for depression since August 2005 and "a pet would be of great help in dealing with his present problems." His doctor does not require that a service dog be used to help with his condition and refers to the animal as a pet and not a service or emotional support dog. . . .

41. Both Mr. Boiko and Ms. Ricks acknowledged that they have never received any formal training on the Fair Housing Act.

42. On April 10, 2008, after reading and considering the application materials and memorandum, Mr. Cooper denied Complainant's request. Mr. Cooper considered the full application package and the *Denial Memorandum*, while focusing on the *Herron Letter*.

43. A letter dated April 14, 2008, ("Denial Letter") from Mr. Cooper to Complainant, stated, in pertinent parts:

> You reported that your disabilities are: 1) Chronic depression; 2) Sleep Apnea; 3) Inability to focus; 4) Forgetfulness

Based on your application and the February 5, 2008 meeting it was determined:

> A) You are only willing to have a dog as an accommodation and you have had other animals but they have not offered the therapeutic effect or focal adjustment the service dog is trained to provide.
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> B) Your doctor (Dr. Bernie Herron) reported that a pet would be of great help in dealing with your present condition and a pet would be extremely helpful in facilitating your recovery. Your doctor also stated that animals have always been important to you as well as being an important source of comfort.
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> C) You have been diagnosed as being chronically depressed and currently taking several different medications.
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> D) You stated that your dog "Figgy" is a Chihuahua and Whip-It [*sic*] breed which causes "Figgy" to sleep for long periods of time. You also stated that the dog does not bark and was trained by you and your friend Calvin to solely cater to your needs and to be calm and submissive and remind you of your daily functions.

Your application reflects that having a dog would provide you with comfort and general well-being. However, based on Riverbay's view of your application and your interview, we conclude that the facts do not show that you have a disability which requires you to have a dog in order for you to use and enjoy your apartment and thereby require a reasonable dog accommodation. Even if you were disabled, Riverbay finds insufficient documentation that you need a dog to use or enjoy your Riverbay apartment.

I regret that Riverbay must deny your request to keep a dog.

44. Mr. Cooper reasoned that he should deny the accommodation request because the information provided to him did not state that Complainant was disabled. He testified: "The reason why I denied [Complainant's] request for a reasonable accommodation was because the information provided to me did not specifically state that Mr. Archibald had a disability. That was my rationale."

45. Mr. Cooper did not contact Dr. Herron or any other medical professional regarding Complainant's application package. Mr. Cooper did not receive any information refuting the information contained in Complainant's reasonable accommodation request.

46. Mr. Cooper felt that he did not have an obligation to request additional information or inform Complainant that additional information should be submitted prior to rendering his decision to deny the request. Mr. Cooper stated:

> And there was more information – I would like that the doctor would have provided more information about his disability, and when and why he had to have the animal to keep the apartment, because without that information, anyone can potentially get a letter from their physician that says "it would be helpful if this person can have an animal," and the concern is there would be a proliferation of animals throughout the complex, and we do not want to set that precedent.

47. At the time Mr. Cooper denied Complainant's reasonable accommodation request, he had not received any formal training on the Fair Housing Act.

48. The *Denial Letter* informed Complainant that he could appeal Mr. Cooper's decision within 30 days.

49. There is no indication in the record that Complainant appealed the denial.

Retaliation

50. Riverbay had been aware that Complainant had Figgy since January 2008.

51. During a six-month period in 2008, Riverbay refused to accept Complainant's monthly rental payments.

52. Complainant was distressed by Riverbay's refusal to accept his rental payments.

53. On August 2, 2008, Riverbay Public Safety Officer Julio Toro issued Complainant Community Complaint #31336 for "keeping or harboring a dog." Complainant showed Officer Toro that Figgy had a service tag issued by New York City. Officer Toro explained to Complainant that he would still be issued a summons as Figgy did not have a co-op tag.

54. On August 28, 2008, Complainant sent an e-mail to Respondent Henry Milburn asking that Riverbay police officers refrain from going to Complainant's home and stopping he and his wife for the purposes of issuing summons for keeping Figgy.

55. On August 30, 2008, Riverbay Public Safety Officer Marcelo Ahmed issued Complainant Community Complaint #32829 for "keeping or harboring a dog." Officer Ahmed indicated

to Complainant that he had been instructed to go to Complainant's home to issue the summons.

56. Complainant felt harassed by the summons Riverbay officers had issued him.

57. On September 15, 2008, Complainant went to the 46th Precinct and filed a complaint against Riverbay alleging harassment by its officers.

58. Complainant did not have any further interactions with Riverbay officers after he filed his complaint with the 46th Precinct.

59. Riverbay's harassment of Complainant and his wife caused contention between the couple.

60. In or about August or September 2008, Riverbay sent Complainant a 10-day Notice of Intention to Terminate Occupancy Agreement based on Complainant's keeping or harboring a dog.

61. On or around September 22, 2008, Complainant filed a housing discrimination complaint with the U.S. Department of Housing and Urban Development alleging that Riverbay and Mr. Cooper violated the Fair Housing Act for failure to make a reasonable accommodation.

62. On or about October 6, 2008, Riverbay filed a Holdover Petition in New York City Housing Court demanding that Complainant vacate his apartment based on his keeping or harboring a dog.

63. The Holdover Petition was served on Complainant by taping it to the door of his home.

64. Complainant felt embarrassed that the Holdover Petition was taped to his door because the Holdover Petition alleged Complainant owed $2,900 in back rent.

65. Between May 2008 and October 2008, Complainant's visits with Dr. Herron became more frequent because of the increase in difficulty with Riverbay.

66. Dr. Herron observed that the dispute with Riverbay created severe agitation and disruption in Complainant's mood and feelings. Complainant was suffering from anxiety that mainly arose from his dispute with Riverbay. Complainant was angry, upset, and concerned due to the situation with Riverbay and difficulties he was having in his marriage.

67. Complainant began suffering from chest pains and went to see a cardiologist.

68. On or about October 9, 2008, an angioplasty was performed on Complainant at Westchester Medical Center. The angioplasty revealed that Complainant's heart had no blockages. Complainant was responsible for paying approximately $9,000 of out-of-pocket expenses for the procedure.

69. On October 20, 2008, the holdover proceeding was settled and discontinued, and Complainant was permitted to keep Figgy pursuant to New York City's 90-day Pet Waiver Law.

70. On October 24, 2008, Dr. Herron began prescribing Alprazolam, a shorter-acting medication for panic attacks, for Complainant.

71. On or about December 15, 2008, Riverbay sent Complainant a letter stating that it would terminate his garage privileges on December 29, 2008 "UNLESS you become current and pay all amounts due."

72. After December 15, 2008, Riverbay waived all fees associated with the community complaints and housing court proceeding and accepted all other past due amounts, including fees it had previously refused, from Complainant. Complainant's garage privileges were not terminated.

73. On December 23, 2008 Ms. Ricks sent Complainant a letter stating that Riverbay had "approved a reasonable accommodation" to keep Figgy. The letter included a Riverbay service dog tag.

74. On January 9, 2009, Ms. Ricks sent Complainant a letter of correction stating, "for the record Riverbay did not grant you a reasonable dog accommodation. The eviction case was discontinued and Riverbay no longer contest [*sic*] you having 'Figgy' due to the 90 day pet waiver laws."

75. Complainant felt "shocked' when he received the January 9th letter from Ms. Ricks and was concerned that Riverbay would "come after [him] and Figgy."

76. On or around September 22, 2009, Complainant amended his complaint to add Henry T. Milburn, Jr. as a Respondent and to add an allegation that Respondents violated Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.

77. On August 10, 2011, HUD filed a *Charge of Discrimination* against Riverbay Corporation, Mr. Cooper, and Mr. Milburn.

Discussion

The Court has considered all issues raised and all documentary and testimonial evidence in the record and presented at hearing. Those issues not discussed here are not addressed because the Court finds they lack materiality or importance to the decision.

Congress passed Section 3604 in recognition that an affirmative obligation was necessary to ensure that disabled individuals receive equal housing opportunities. Dedham I; see also 42 U.S.C. § 3604.

Reasonable Accommodation. Complainant alleges Respondents discriminated against him by violating FHA § 3604 in denying his reasonable accommodation request. To prove a violation, Complainant must demonstrate, by a preponderance of the evidence, that: (1) Complainant has a handicap as defined by the FHA; (2) Respondents knew or should reasonably be expected to know of his handicap; (3) an accommodation of the handicap may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling; and (4) Respondent refused the request for the accommodation. Bentley v. Peace and Quiet Realty 2 LLC, 367 F. Supp. 2d 341 (E.D.N.Y. 2005) (citing United States v. California Mobile Home Park Mgmt. Co., 29 F.3d 1413, 1418 (9th Cir.1994)); Freeland v. Sisao LLC, 2008 WL 906746 *3 (E.D.N.Y. 2008).

Complainant is Disabled. First, the Charging Part must demonstrate that Complainant is disabled as defined by FHA § 3604(h). The subsection states:

> 'Handicap' means, with respect to a person –
>
> (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
>
> (2) a record of having such an impairment, or
>
> (3) being regarded as having such an impairment,
>
> but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

The term "mental impairment" includes mental or psychological disorders such as emotional or mental illnesses. 24 C.F.R. § 100.201(a)(2).

Under the FHA, depression is considered a "mental impairment" when it substantially limits a major life activity. Adams v. Rochester General Hosp., 977 F. Supp. 226 (W.D.N.Y. 1997) (finding that depression under the Americans with Disabilities Act ("ADA") must substantially limit a major life activity to qualify as a disability).[3] "Major life activities" include

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[3] "Due to the similarities between the statutes [ADA and FHA], we interpret them in tandem." Tsombanidis v. W. Haven Fire Dept., 352 F.3d 565, 573 (2d Cir. 2003); see also Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown, 294 F.3d 35, 46 (2d Cir. 2002).

Because the FHA and its implementing regulations do not define "substantially limit," the Court looks to the ADA and its regulations for guidance. Pursuant to the ADA, an impairment substantially limits a major life activity if a person is:

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
>
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

29 C.F.R. § 1630.2(j)(1).

". . . functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 24 C.F.R. § 100.201(b). Courts have expanded this list by finding that sleeping, interacting with others, concentrating, and engaging in sexual relations constitute major life activities. See Felix v. New York City Transit Auth., 324 F.3d 102 (2d Cir. 2003) (plaintiff's insomnia limits her major life activity of sleeping); Carpenter v. Potter, 91 Fed. Appx.705 (2d Cir. 2003) (sleeping can be considered a major life activity); Pack v. Kmart Corp., 166 F.3d 1300 (10th Cir. 1999) (finding that "sleeping" qualifies as a major life activity because it is a basic activity that the average person in the general population can perform with little or no difficulty); Colwell v. Suffolk County Police Dept., 158 F.3d 635, 643 (2d Cir. 1998) (ability to sleep is a major life activity); Stamm v. New York City Transit Auth., 2011 WL 1315935 (E.D.N.Y. 2011) (engaging in sexual activities is "undoubtedly" a major life activity); LaBella v. New York City Admin. for Children's Serv., 2005 WL 2077192 (E.D.N.Y. 2005) (ability to care for oneself, to interact with others, to concentrate and to sleep are major life activities); Sussle v. Sirina Prot. Sys. Corp., 269 F. Supp. 2d 285, 299 (S.D.N.Y. 2003) (finding that engaging in sexual relations is a major life activity);Zale v. Sikorsky Aircraft Corp., No. 97 Civ. 125 (JBA), 2000 WL 306943 at *4 (D. Conn. 2000) ("concluded that the ability to interact and communicate with others may constitute a major life activity within the meaning of the ADA); DeMar v. Car–Freshner Corp., 49 F. Supp. 2d 84, 90 (N.D.N.Y. 1999) (ability to "concentrate, learn, and work is considered a major life activity under the ADA). Here, the issue is whether Complainant has a mental impairment that substantially limits at least one major life activity.

For more than 50 years, Dr. Herron has had a privately owned general psychiatry practice that caters to adults. For the past 20 to 25 years Dr. Herron's practice has concentrated on psychiatry with an emphasis on different emotional problems. He currently treats approximately 125 patients, about 30% to 40% of whom are treated for depression. Approximately five or six of those patients have been provided a dog for therapeutic benefit. On August 31, 2005, Dr. Herron began treating the Complainant for a Major Depressive Disorder ("MDD");[4] sometime that year Dr. Herron prescribed Effexor for Complainant's treatment.[5] Indeed, even at their initial meeting Dr. Herron recognized that Complainant "showed [the] characteristics" of an individual who exhibited said disorder. Dr. Herron also treated Complainant for anxiety.[6]

The record is replete with evidence and testimony that supports Complainant's MDD diagnosis. Complainant has several family members who also have depression, including his

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[4] Complainant began taking medication for chronic depression in 2003 or 2004, under the care of another physician.

[5] At the hearing, Respondents presented their own expert to rebut Dr. Herron's diagnosis. Respondents' expert, however, never interviewed Complainant, never spoke to Complainant's wife, and never spoke to Dr. Herron. He was tasked to undertake a "review of Dr. Herron's report and medical records in order to challenge [Dr. Herron's] conclusions and testimony." Indeed, when asked at the hearing whether or not "it would have been beneficial if [Respondents' expert had had] the opportunity to engage in a conversation with Dr. Herron, so he could explain why he believed that Complainant suffered from a major depressive disorder," he answered: "That is a good question, Counselor. I think it is always helpful to have more information."

Based on his testimony at trial, the information he reviewed, and his composure and demeanor while testifying, I find that Respondents' expert's testimony lacks credibility and is therefore discounted by the Court.

[6] Their patient/doctor relationship continued through all pertinent times.

mother, an uncle, and two sisters, one of whom was hospitalized for depression. Before adopting Figgy, Complainant's depression caused him to suffer severe mood swings. According to his wife, "[h]e would be fine one minute, and the next minute he would be crying or be angry." He cries every day. Complainant has chronic insomnia. His wife observed that before getting Figgy, "he was not sleeping." Because Complainant's chronic depression caused "disturbance of sleep," Dr. Herron began prescribing him Lunesta in July of 2007; prior to that Complainant had taken Ambien. Complainant always has a feeling of general malaise. His chronic depression also disturbs his appetite.[7]

Based on the above, the Court finds that Complainant has, and had at all pertinent times a MDD. What remains is whether or not Complainant's MDD limits at least one major life activity. Each one of Complainant's proffered activities is taken in turn.

First, Complainant's MDD and anxiety substantially limit his ability to interact with others. A person's ability to interact with others is substantially limited if the person's physical or mental impairment "limits the fundamental ability to communicate with others." Jacques v. DiMarzio, Inc., 386 F.3d 192, 203 (2d Cir. 2004); Bragdon v. Abbott, 524 U.S. 624 (1998) ("The [ADA] addresses substantial limitations on major life activities, not utter inabilities.")

As a result of his depression, Complainant could not motivate himself to go out and do things. He became antisocial. He avoided meeting new people and is estranged from his siblings. Complainant would spend most of his time at home watching television mindlessly. Complainant was a loner and believes that people on his floor think he is "psycho." These beliefs led to Complainant's isolation. His depression has caused problems in his marriage, and, as a result, Complainant and his wife are separated and seeking divorce.

Respondents argue that Complainant's inability to interact with others was not substantially limited because he "had active friendships during this period, traveling with a friend to Vietnam, going on fishing trips, and taking multiple trips with a friend to locate a dog." Respondents' allegations exaggerate and mischaracterize Complainant's interactions with others because most of the interactions occurred after Complainant had adopted Figgy. Additionally, although Complainant did, in fact, visit animal shelters with a friend, he only did so on two occasions and Dr. Herron noted that Complainant's enthusiasm and interest in the prospect of getting a dog indicated that having a dog would improve Complainant's mood.

Respondents failed to produce evidence of Complainant's ability to interact with others that is either unrelated to, or occurring before, Figgy's adoption. Complainant established that MDD and anxiety substantially limit his ability to interact with others. Accordingly, the Court finds Complainant's ability to interact with others was substantially limited by his MDD. Jacques, 386 F.3d at 203-04.

Second, Complainant's MDD limits his ability to care for himself. The ability to care for oneself is a major life activity that "encompasses normal activities of daily living; including feeding oneself, driving, grooming, and cleaning home." Ryan v. Grae and Rybicki, P.C., 135 F.3d 867 (2d Cir. 1998) (citing ADA regulations and quoting Dutcher v. Ingalls Shipbuilding, 53

[7] Further examples are provided infra, as they demonstrate how Complainant's major life activities are impacted.

F.3d 723, 726 (5th Cir. 1995)). Dr. Herron noted that "[Complainant's] depressed state leads to inattention to necessary household chores." Dr. Herron also noted that Complainant has financial problems that do not stem from over spending or a lack of resources, but rather from his lack of energy to pay the bills. Complainant also explained that, because of his depressive moods, he lacked the will to bathe and had to rely on his wife to care for him.[8] Complainant and Dr. Herron's unrebutted testimony establish that Complainant's disorder substantially limited his ability to care for himself by engaging in normal activities such as bathing and cleaning his home.

Third, Complainant's depression affected Complainant's ability to sleep. The ability to sleep is "undoubtedly a major life activity." Colwell v. Suffolk County Police Dept., 158 F.3d 635 (2d Cir. 1998). Dr. Herron noted that Complainant had difficulty falling asleep and remaining asleep. Dr. Herron characterized Complainant as suffering from chronic insomnia. Mrs. Archibald also observed Complainant was not sleeping. At one point, Complainant was taking Ambien for his insomnia. During his treatment of Complainant, Dr. Herron prescribed the sleep-aid Lunesta.[9]

Complainant had to rely on prescription medication to treat his chronic insomnia. Even then, his wife observed that Complainant was not sleeping. His treating physician testified that this insomnia was the result of Complainant's MDD. Accordingly, the Court finds Complainant's MDD substantially limited Complainant's ability to sleep.

Fourth, Complainant's disorder also substantially limited his ability to engage in sexual activity. Courts have recognized that "engaging in sexual relations, just like procreation, is a major life activity." Sussle v. Sirina Prot. Sys. Corp., 269 F. Supp. 2d 285 at 298 (citing McAlindin v. County of San Diego, 192 F.3d 1226 (9th Cir. 1999)). A Major Depressive Disorder can be found to substantially limit one's ability to engage in sexual activity by significantly restricting the condition, manner or duration under which one engages in sexual activity as compared to the condition, manner or duration under which the average person in the general population engages in a sexual activity. See 29 C.F.R. § 1630.2(j)(1).

Complainant testified that he suffered from sexual dysfunction. Complainant explained that he would feel so depressed that he lost his libido and could not be intimate with women. Dr. Herron testified that Complainant suffered from severe erectile dysfunction, which was a result of his depression. Furthermore, Dr. Herron explained that erectile dysfunction is "severe" when

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[8] Again, Respondents fail to produce any evidence to rebut the Charging Party's evidence that Complainant's MDD substantially limited his ability care for himself. Although Respondents note that, at the hearing, Complainant "appeared clean and well-groomed," this is an observation of Complainant after he adopted Figgy.

[9] Respondents acknowledge that the medical record supports the conclusion that Complainant had difficulty sleeping. However, Respondents claim "Mr. Archibald himself attributed this difficulty to sleep apnea, rather than depression." Respondents' assertion misstates the evidence in the record. In answer to the question, "Do you or the disabled individual have any problems with ... sleeping," Ms. Ricks noted that Complainant answered in the affirmative and wrote the following, "yes, insomniact [*sic*], prescribed ambien." Ms. Rick's notations did not refer to sleep apnea. Indeed, Dr. Herron's testimony directly links Complainant's inability to sleep with his MDD diagnosis: "Certainly, I had in quotes 'hurting.' That is his description. He has a chronic feeling that he has not reached a point in his life where he is satisfied with his accomplishments. He cries easily and has difficulty falling asleep, remaining asleep, eats a lot and has passive suicidal ideas."

a person is unable to have an erection that can result in sexual intercourse. On three occasions, Dr. Herron prescribed Cialis to treat Complainant's severe erectile dysfunction.[10]

The Court does not find it necessary to educate the parties as to why Complainant's erectile dysfunction would substantially limit his ability to engage in sexual activity. Although Complainant is able to engage in sexual activity, his depression requires him to take medication in order to do so. Absent evidence that the average person in the general population requires medication to engage in sexual activity, the Court finds that Complainant's MDD substantially limits his ability to engage in sexual activity.

Last, Complainant's depression affects his ability to focus or concentrate. "Concentrating" is considered a major life activity by many courts. See Car-Freshner Corp., 49 F. Supp. 2d at 89 (citing EEOC regulations recognizing "concentrating" as a major life activity); but see Pack v. Kmart Corp., 166 F.3d at 1305 (holding that concentration is not a major life activity because it is not an activity). In order to prove that his disorder causes his ability to concentrate to be substantially limited, Complainant must demonstrate that he is substantially limited in comparison to the general population. Car-Freshner Corp., 49 F. Supp. 2d at 91.

Complainant claims his disorder causes him to dwell on his feelings of malaise, which results in his inability to focus on other matters. Dr. Herron also noted that Complainant's depression prevented him from thinking clearly. Such statements merely indicate the negative effect that Complainant's MDD has on Complainant's ability to concentrate. The statements are insufficient to show that Complainant's MDD substantially limited his ability to concentrate, because they are too general and do not demonstrate the limitation was significant as compared to the general population. See Car-Freshner Corp., 49 F. Supp. 2d at 91.

Although HUD has failed to establish that Complainant's MDD and anxiety substantially limit his ability to concentrate, HUD has established that Complainant is substantially limited in the following major life activities: ability to interact with others, ability to care for himself, ability to sleep, and ability to engage in sexual activity. Consequently, Complainant is handicapped as defined in FHA § 3604(h).

Respondents Knew or Were Reasonably Expected to Know of Complainant's Disability. After the Charging Party has established that Complainant is disabled under the Act, the Charging Party must thereafter demonstrate that Respondents knew of the disability or were reasonably expected to know of it. Peace & Quiet Realty, 367 F. Supp. 2d at 345; Taylor v. Harbour Pointe Homeowners Ass'n, 2011 WL 673903 (W.D.N.Y. 2011). The Charging Party argues that Respondents knew Complainant was disabled based upon the unrebutted information provided in the request for reasonable accommodation and that Respondents should have engaged in the interactive process if they were skeptical as to Complainant's disability or the necessity of the accommodation.

[10] Respondents acknowledge that Complainant is able to perform sexually with the assistance of Cialis, but they also note that Dr. Herron's treatment notes do not indicate an inability to perform sexually. Dr. Herron's treatment notes include three different occasions where Cialis was prescribed to Complainant. Dr. Herron also explained that Cialis is prescribed when a patient is treated for erectile dysfunction.

Upon receiving a reasonable accommodation request, a landlord is obligated to engage in an "interactive process" to resolve the request. HUD v. Astralis Condo. Ass'n, 2009 WL 6869727 (HUDALJ 2009), aff'd, 620 F.3d 62 (1st Cir. 2010); see also Parker v. Columbia Pictures Industries, 204 F.3d 326, 338 (2d Cir. 2000). The "interactive process" involves the cooperation by both the landlord and tenant in identifying the causes of the difficulty the tenant is having and exploring possible accommodations. Jankowski Lee, 1995 WL 399384 at *11. Landlords may be required to question the disabled status of a tenant or ask for proof of disability if the landlords doubt a tenant's claim of being disabled. Hubbard v. Samson Mgmt. Corp., 994 F. Supp. 187, 192 (S.D.N.Y. 1998); see also Jankowski Lee, 91 F.3d at 895 (if a landlord is skeptical of a tenant's alleged disability . . . it is incumbent upon the landlord to request documentation or open a dialogue"); Astralis Condo. Ass'n, 2009 WL 6869727 at *12. "It is not, however, required that the Complainant speak 'magic words' to provide some minimum level of documentation of his disability to avail himself of the protections of the law." Astralis, 2009 WL 6869727 at *16 (citation omitted); Lowrey v. Hazelwood School Dist., 244 F.3d 654 (8th Cir. 2001); Jones v. United Parcel Serv., 214 F.3d 402 (3d Cir. 2000).[11]

Respondents Riverbay and Cooper maintain that they denied Complainant's reasonable accommodation request because they believed that the information they reviewed did not demonstrate that Complainant had a disability; i.e. that a dog was necessary for Complainant's use and enjoyment of his dwelling. For the reasons stated below, the Court finds that Respondents Riverbay and Cooper failed to fully engage in the interactive process and either knew or were reasonably expected to know of Complainant's disability.

In making the determination to deny Complainant's request, Mr. Cooper stated that he considered the *Denial Memorandum* and all the information included in Complainant's reasonable accommodation request. That information included the *Dog Application Form*, the *Herron Letter*, the letter from the City of New York's Department of Health and Mental Hygiene, a picture of Figgy, and Complainant's comments during the interview with the panel. A quick review of the information before Mr. Cooper is in order.[12]

On the *Dog Application Form*, Complainant stated that the nature of his disability was "chronic depression." He also indicated that Figgy helps him by restoring Complainant's focus and alleviating his anxiety. The *Herron Letter* explained that Dr. Herron had been treating Complainant since August of 2005 and "[a]t present he remains depressed." More specifically, the *Herron Letter* states as follows:

> I am a physician, Board Certified in Psychiatry, and I have been treating Mr. Joseph Archibald for a depressive disorder since August 2005.

[11] As an ancillary argument, Respondents claim that Complainant "frustrated Riverbay's interactive process by failing to appeal the denial." Respondents argue that had Complainant affected his right to an appeal before Riverbay's review board, he "would have had an opportunity to submit additional information with the knowledge that Riverbay viewed his initial submission as insufficient." Respondent's argument fails because the interactive process is not triggered upon the denial of a reasonable accommodation request, but upon the making of that same request. DiMarzio, 200 F. Supp. 2d at 169.

[12] A more thorough discussion is contained in the Fact section of this Opinion.

> At the present he remains depressed. Inasmuch as animals have always been important to him and an important source of comfort, a pet would be of great help in dealing with his present problems. I understand that under usual circumstances dogs are not allowed in your housing complex. However, in my opinion, a pet would be extremely helpful in facilitation Mr. Archibald's recover.
>
> If further information is necessary please get in touch with me.

During Complainant's meeting with the interview panel, Complainant explained that he suffers from depression and that he has difficulty sleeping, breathing, and thinking. Ms. Ricks testified that she wrote down all of Complainant's statements during the interview.

Even when faced with the pressing weight of this considerable evidence of disability, Mr. Cooper denied Complainant's request for a reasonable accommodation. Mr. Cooper testified:

> . . . the doctor's letter [the Herron Letter] was the basis for my not approving his application. The doctor's letter did not specifically say "it had to be a dog." The letter did not say "he was disabled."

Mr. Cooper added:

> The letter from the physician did not indicate he was disabled. It did not indicate he had to have the animal in order to be able to use and enjoy the apartment. The letter said "having the animal would be helpful to him."
>
> Riverbay has a development corporation where 55 to 60,000 people reside. We have a policy where animals are not allowed, and suffice it to say that oftentimes people will try to get around the lease agreement if they are able to, and I have to determine whether or not the request is a legitimate one, or one that should be considered under the circumstances. And I felt based on the information, it was not one I should grant.

Mr. Cooper reasoned he "would like that the doctor would have provided more information about [Complainant's] disability, and when and why he had to have the animal to keep the apartment," because Mr. Cooper was concerned there would be a "proliferation of animals throughout the complex" if he accepted letters from doctors that merely indicate the helpfulness of a tenant having an animal.[13]

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[13] The Court does not mean to imply that Mr. Cooper should have blindly accepted Complainant's assertions without question. Nor does the Court imply that Riverbay would not have been within its rights to question Dr. Herron pointedly about the statements made in the *Herron Letter*. If there was doubt with regard to a claim for a reasonable accommodation, Riverbay was able to engage in the interactive process to confirm or alleviate its concerns. See infra.

As noted supra, the FHA's statutory scheme imposes a requirement to engage in the interactive process to resolve requests for accommodation. Jankowski Lee, 1995 WL 399384 at *11; Astralis Condo. Ass'n, 2009 WL 6869727 at *13. Mere suspicion that an individual may not actually be disabled is not sufficient to deny an accommodation without further inquiry. Id. Moreover, if the interactive process breaks down, "courts should look for signs of failure to participate in good faith or failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary." Young v. Cent. Square Cent. Sch. Dist., 213 F. Supp. 2d 202, 214 (N.D.N.Y. 2002) (quoting Worthington v. City of New Haven, 1999 WL 958627, *13 (D. Conn. 1999)).

Through his testimony and actions, Mr. Cooper demonstrates that when reviewing Complainant's request, Mr. Cooper still had unanswered questions. Mr. Cooper was skeptical about Complainant's disability, his proffered use of a dog, and Complainant's overall reasonable accommodation request. Mr. Cooper was skeptical, even though he had not received or reviewed any evidence contradicting anything that was provided to him by Complainant. Nonetheless, Mr. Cooper denied Complainant's reasonable accommodation request.

The Court is particularly troubled by Mr. Cooper's apparent fixation over the need for the *Herron Letter* to contain the word "disability" or a special incantation invoking "use and enjoyment of the apartment." The need for "magic words" has long been held unnecessary. Jankowski Lee, 1995 WL 399384 at *11; Astralis Condo. Ass'n, 2009 WL 6869727 at *12. Traditionally, magic words serve the wizards that knew them. Muggles[14] who do not know them cannot cast spells. At bar, how could Complainant know that in order to receive a reasonable accommodation, his request had to comply with Mr. Cooper's particular needs? He could not; unless, Mr. Cooper used the interactive process.[15]

The Court finds, that based on the above, Respondents Cooper and Riverbay failed to participate in good faith in the interactive process. Had they done so, they could have reasonably confirmed Complainant's disability.

Respondents also devote numerous pages to sketching a fantastical cloak-and-dagger argument of "secret operation" and "bad faith" alleging that HUD engaged in misconduct during the investigative phase of its case and that, therefore, the *Charge* should be dismissed. Respondents posit their argument on the existence of a notation in the investigative file made by a HUD intern who functioned in an investigative capacity for a few weeks. That Intern concluded that "[b]ased on the information received to date, this case would be considered no

[14] The term "muggle" was first introduced by author J.K. Rowling in her highly popular Harry Potter book series. The term refers to anyone who is born without magical powers, i.e., the vast majority of the humans in the Harry Potter universe. The Oxford Dictionary officially recognized the term in 2003, defining it as "a person who is not conversant with a particular activity or skill."

[15] Interestingly, Mr. Cooper ignored all of the *other* information contained in the reasonable accommodation request. Upon review of the testimony and exhibits, the Court is dismayed at what appears to be a greater regard for Riverbay's No Dog Policy, over Complainant's request for a reasonable accommodation. Although the Court acknowledges that there may be people that try to "get around the lease agreement," by requesting an accommodation to keep a dog, Riverbay's abandonment of the interactive process to enforce its No Dog Policy is simply inexcusable. Mr. Cooper's position, "that the information should have been provided properly the first time," is untenable. The FHA was established to protect against such abuses.

reasonable cause [to file a charge]."[16] Based on the Intern's statement, Respondents would have had HUD pack up the investigative file and summarily conclude its investigation of Riverbay, determining that no reasonable cause to bring a charge existed. HUD, however, did not pack up the file.

In accordance with HUD's internal procedures, a HUD investigator sent Dr. Herron a standard medical questionnaire to independently verify Complainant's claims. After reviewing Dr. Herron's responses, the investigator determined that HUD needed clarification because Dr. Herron had indicated that Complainant did not have substantial limitations in any major life activities, but that a dog was also medically necessary for Complainant, suggesting that Complainant had a disability under the Act. HUD also determined that, despite Dr. Herron's response regarding substantial limitations, much of Dr. Herron's other responses indicated that Complainant had a disability and, therefore, a follow-up letter was warranted. As a result, HUD engaged in a colloquy with Dr. Herron (both written and oral), during the investigative phase of HUD's case and asked Dr. Herron to "clarify what limitations with respect to daily living are posed by Mr. Archibald's chronic depression." Dr. Herron responded, in part:

> Mr. Archibald's disorder plays a central role in his inability to marry successfully and carry on a sexual role in a relationship with a woman. His depression resulted in a severe erectile dysfunction and has led to problems in forming and maintaining relationships with women and family members. He is subject to unexpected bouts of crying and episodes of panic. He is overweight because he uses eating as a way of self-medicating for his depression. He has become indifferent to his personal hygiene and when that becomes a problem it is necessary for another person to actually bathe him. His depressed state leads to inattention to necessary household chores and is the main factor in his chronic insomnia.

It is axiomatic that the FHA requires HUD to conduct an investigation. Relevant information must be gathered during the investigation, and a determination that reasonable cause exists to believe that the Act was violated must be "based on the totality of the factual circumstances known." 24 C.F.R. § 103.400(a)(2). "Reasonable cause" is determined by the FHEO Regional Director. See 24 C.F.R. § 103.400(a)(2); 76 Fed. Reg. 73990 (Nov. 29, 2011) (Delegation of Authority). Reasonable cause is not determined by an investigator at HUD.[17] Once reasonable cause is determined, a *Charge of Discrimination* is issued by counsel and litigation is initiated. See 24 C.F.R. §§ 103.400(a)(2)(i); 103.405. Ultimately, a conclusion as to whether or not the Act is violated is made by the trier of fact; in this case, an ALJ. See 42 U.S.C.

[16] Respondents also point to a segment of testimony where a HUD investigator appears to state that the FHA was not violated, but in the very next sentence states that Respondents had enough information to grant Complainant an accommodation. That conflicting testimony is equivocal at best and is discounted.

[17] HUD correctly notes that the Intern's notation would normally never see the light of day but for what appears to have been HUD's voluntary production in the discovery process. "The deliberative process privilege rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance 'the quality of agency decisions,' by protecting open and frank discussion among those who make them within the Government. . . ." United States Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 8-9 (2001) (citation omitted).

§ 3612(g)(3). Ironically, what Respondents term "secret operation" and "bad faith" illustrate a good example of the interactive process that Respondents Riverbay and Cooper should have followed at bar.

The Reasonable Accommodation was Necessary. After establishing that Complainant is disabled and that Respondents knew or reasonably should have known of Complainant's disability, the Charging Party must demonstrate that Complainant's requested reasonable accommodation is necessary. Peace & Quiet Realty, 367 F. Supp. 2d at 345.

The FHA requires "changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling." Tsombanidis, 352 F.3d at 578 (citing Shapiro, 51 F.3d at 333). To prove that Respondents failed to comply with this requirement, the Charging Party must demonstrate that Complainant would be denied an equal opportunity to use and enjoy the housing of his choice without the accommodation. Id. at 578 (quoting Smith & Lee Assocs., Inc. v. City of Taylor, 102 F.3d 781, 795 (6th Cir.1996)). Of importance is whether the "desired accommodation will affirmatively enhance a disabled plaintiff's qualify of life by ameliorating the effects of the disability." Quad Enterprises Co., LLC v. Town of Southold, 369 Fed. Appx. 202, 207-208 (2d Cir. 2010) (quoting Bronk v. Ineichen, 54 F.3d 425, 429 (7th Cir. 1995)); see, e.g., Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 861 (S.D. Ohio 2009) (animal "which ameliorates the effects of a mental or emotional disability" qualifies as a reasonable accommodation under the Act).

Figgy ameliorates many of the effects of Complainant's MDD. As noted *supra*, Complainant suffers from MDD, which substantially limits his ability to interact with others, sleep, engage in sexual activities, and care for himself. Dr. Herron noted, however, that after adopting Figgy "the most remarkable change in [Complainant's] treatment" occurred. Dr. Herron explained that, "[a] a marked change in [Complainant's] mood [occurred] when he first described his reaction to the dog, and he lost his depressive appearance and sort of lit up." Figgy eased Complainant's feelings of malaise and motivated Complainant to leave his home.

Dr. Herron also noticed that Complainant "had much more of an interest in life and activities, and did not show the evidence of depression, depressive mood." Mrs. Archibald recognized that after adopting Figgy, Complainant was sleeping more, would be more social, and the changes in his mood were less extreme.[18] Such facts demonstrate the ameliorative effects Figgy had on Complainant's MDD.

Complainant also expounded on the ways in which Figgy alleviates his depression. He explained that Figgy made "all the difference" in improving his mood, and that Figgy allowed him to be a part of society instead of simply staying at home in emotional pain. He explained that the need to care for Figgy helped him get out of bed and get going every day. He also made

[18] In a letter Dr. Herron wrote to HUD he states: "the pleasure, satisfaction and companionship that his dog gives [Complainant], is an essential part of the treatment for his depression and the limitations that result from his disorder." Interestingly, Mr. Cooper testified that had Dr. Herron's letter to HUD been included in Complainant's reasonable accommodation request, Mr. Cooper would have approved the request. As Mr. Cooper failed to engage in the interactive process, Dr. Herron was unable to supply him with this information at the time of Complainant's application for a reasonable accommodation.

clear that Figgy allowed him to have social interactions he would not otherwise have because Figgy is an excuse to speak to people or have people speak to him. He further elaborated that Figgy helped restore his focus on the outside world. Figgy, would pace back and forth to notify him when someone was at the door, and would provide him reminders throughout the day.

Accordingly, the Court finds that Figgy is a necessary, reasonable accommodation.

Respondents Vernon Cooper and Riverbay Denied Complainant's Reasonable Accommodation Request. A successful claim of discrimination for failure to provide a reasonable accommodation requires that the request for such accommodation be denied. Mazza v. Bratton, 108 F. Supp. 2d 167, 176 (E.D.N.Y. 2000). In this case, it is undisputed that Respondents Riverbay and Cooper denied Complainant's request for a reasonable accommodation.

Retaliation. The FHA "safeguards members of the protected class from coercion, intimidation, threats, or interference in the exercise or enjoyment of their FHA rights." Frazier v. Rominger, 27 F.3d 828, 833 (2d Cir. 1994). Specifically, the FHA states that

> It shall be 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, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617. To establish a *prima facie* case of retaliation under the FHA, the Charging Party must establish that (1) Complainant was engaged in a protected activity, (2) Respondents were aware of this activity, (3) Respondents took adverse action against Complainant, and (4) a causal connection exists between the protected activity and the adverse action. Elmowitz v. Executive Towers at Lido, LLC, 571 F. Supp. 2d 370, 376 (E.D.N.Y. 2008).

A protected activity under the FHA includes an "action taken to protest or oppose statutorily prohibited discrimination." Miller v. Bd. of Managers of Whispering Pines at Colonial Woods Condo. II, 457 F. Supp. 2d 126, 131 (E.D.N.Y. 2006) (quoting Cruz v. Coach Stores, 202 F.3d 560, 566 (2d Cir. 2000)). An eviction proceeding can constitute an "adverse action" under the retaliation provision of the FHA. Reyes v. Fairfield Prop., 661 F. Supp. 2d 249, 267 (E.D.N.Y. 2009). A "causal connection" can be demonstrated indirectly by "showing that the protected activity was closely followed in time by the adverse action" but the "adverse action need not occur immediately following the protected activity, and there is no bright line outer limit to the time." Joseph's House & Shelter, Inc. v. City of Troy, N.Y., 641 F. Supp. 2d 154, 159 (N.D.N.Y. 2009).

Complainant engaged in a protected activity by requesting a reasonable accommodation. Complainant further engaged in a protected activity on September 22, 2008, when he filed a housing discrimination complaint with HUD alleging Respondents Riverbay and Vernon Cooper

violated the Fair Housing Act. Additionally, the Court finds Respondents took the following adverse actions against Complainant that were causally linked to the protected activity:

1. On October 6, 2008, Riverbay filed a Holdover Petition in New York City Housing Court demanding that Complainant vacate his apartment based on his keeping or harboring Figgy. By this time, Riverbay was already aware that the 90-day period required under New York City's Pet Waiver Law had passed and Complainant's harboring of Figgy within his apartment was lawful. The Holdover Petition was served on Complainant by taping it to the door of his home. Complainant felt embarrassed that the Holdover Petition was taped to his door because it alleged Complainant owed $2,900 in back rent. The holdover proceeding was ultimately settled and discontinued as Complainant was allowed to keep Figgy pursuant to the 90-day Pet Waiver Law.

2. On or about December 15, 2008, Riverbay sent Complainant a letter stating he owed over two months of carrying charges. Complainant was behind on his rent payments because Riverbay refused to accept any payments for a six-month period in 2008. The letter stated that Riverbay would terminate his garage privileges on December 29, 2008 "UNLESS you become current and pay all amounts due." Complainant was advised that if he attempted to park in the garage or lot after the termination of his garage privileges, his car would be towed. He would also be prohibited from applying for a new parking lease for a minimum of six months. If Complainant did not bring his account up to date by December 29th, he would have to turn in his garage sticker and access card. If he failed to turn in those items by December 29th, his apartment account would be assessed an additional $30 administrative fee.

3. Riverbay public safety officers visited Complainant's home on at least two occasions in order to question Complainant about Figgy, issued two Community Complaints for harboring a dog; and stopped Complainant's wife in the hallway for walking Figgy. These interactions with the officers left Complainant feeling frustrated, embarrassed and depressed.

Conclusion

Based on the foregoing discussion and analysis, the Court holds that Respondents Riverbay and Vernon Cooper violated 42 U.S.C. § 3604(f)(3)(B), and 42 U.S.C. § 3617.

Remedy

After a finding that Respondents have engaged in a discriminatory housing practice, the Court is authorized to issue an order providing appropriate relief. 42 U.S.C. § 3612(g)(3). Such relief may include "actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent." Id.

Complainant's Damages. Actual damages may include both out-of-pocket expenses and damages for intangible injuries including embarrassment, humiliation, and emotional distress caused by the discrimination. HUD v. Blackwell, Fair Housing - Fair Lending (P-H) § 25,001, 25,005 (HUDALJ Dec. 21, 1989), aff'd, 908 F. 2d 864 (11th Cir. 1990) (Blackwell I); HUD v. Godlewski, 2007 WL 4578540 (Dec. 21, 2007). Damages for emotional distress may be based on inferences drawn from the circumstances of the act of discrimination, as well as on testimonial proof. Blackwell I. "Because emotional injuries are by nature qualitative and difficult to quantify, courts have awarded damages for emotional harm without requiring proof of the actual dollar value of the injury." Godlewski, 2007 WL 4578540, at *2. The record demonstrates that Complainant suffered out-of-pocket expenses and intangible injuries.

Actual Damages. With regard to out-of-pocket expenses incurred by Complainant, the Court finds that he incurred $ 8,930.78 in out-of-pocket expenses for an angioplasty. The refusal to accept Complainant's carrying charges, the visits from Riverbay's public safety officers, the issuance of two Community Complaints, and the filing of the Holdover Petition caused Complainant severe anxiety.

A few days after the Holdover Petition was filed, Complainant underwent an angioplasty. Complainant was having chest pains and he thought he was on the verge of a heart attack. The procedure revealed that Complainant's heart had no blockages and the likely cause of Complainant's chest pains was anxiety. It was Dr. Herron's impression that Complainant's severe anxiety was primarily caused by his dispute with Riverbay. The Court, therefore, infers that Respondents' discriminatory actions caused Complainant to feel severe anxiety, which resulted in Complainant incurring $8,930.78 in expenses for the angioplasty procedure.[19]

Damages for Intangible Injuries. The Court also finds that Complainant is entitled to damages to compensate for his embarrassment and emotional distress caused by Riverbay's

[19] Complainant also alleges he accumulated $3,821.52 in hotel bills in order to escape the harassment by Riverbay. Complainant's claim for damages fails on proof. In support of his claim, the Charging Party submits copies of credit card statements that reflect charges from on-line travel agencies demonstrating that hotel rooms were purchased without specification as to the dates of stay. Moreover, nothing in the testimonial evidence establishes Complainant's state of mind during any of the claimed hotel stays or, for that matter, delineates the specific occurrences. At no time during any of Complainant's interactions with Riverbay was Complainant forcibly removed from his place of abode, nor was he prevented or discouraged from entry. Interestingly, Complainant apparently continued to stay at hotels well over a year after Riverbay security officers stopped visiting his home. For example, the record reflects a hotel stay payment on March 26, 2010.

discriminatory actions. For example, Complainant testified about how he felt when Riverbay's public safety officers issued him a summons for having a dog:

> Q. How did this interaction with public safety make you feel?
>
> A. Later the next day some of my neighbors who noticed that we were out in the hallway asked me, why did Co-op City stop me? It was embarrassing to have my neighbors ask me, why was I in the hallway with Co-op City police. I am not friendly with my neighbors, but it was embarrassing.

Complainant also testified as to his embarrassment from receiving the Holdover Petition that was taped to his door:

> Q. How did receiving this notice of petition taped to your door make you feel?
>
> A. It was embarrassing to have something taped to my door for people to see, saying that I owed $2,900 in back rent, which they refused to take. It was a stressful time. They were not accepting my carrying charges. They were not allowing me to pay my carrying charges.

In addition, Complainant did experience severe anxiety as delineated supra. The severe anxiety, which required the need for an angioplasty, is particularly troubling to the Court. Complainant underwent a risky medical procedure brought on by Riverbay's refusal to participate in the interactive process. Accordingly, the Court finds that Complainant is entitled to damages in the amount of $38,930.78 [$30,000.00 (intangible) + $8,930.78 (actual)]. See Ragin v. New York Times Co., 923 F.2d 995, 1005 (2d Cir. 1991); Broome v. Biondi, 17 F. Supp. 2d 211, 225 (S.D.N.Y. 1997)

Civil Penalty. Respondents may also be assessed a civil penalty to "vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Court is authorized to assess a civil penalty against Respondents in an amount not to exceed:

> (1) $16,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.
>
> (2) $37,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or

> local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.
>
> (3) $65,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of filing of the charge.

24 C.F.R. § 180.671.

In determining the amount of the penalty, the Court considers the following factors: (i) whether Respondent has previously been adjudged to have committed unlawful housing discrimination; (ii) Respondent's financial resources; (iii) the nature and circumstances of the violation; (iv) the degree of that Respondent's culpability; (v) the goal of deterrence; and (vi) other matters as justice may require. 24 C.F.R. § 180.671(c)(1).

Civil Penalty against Respondent Riverbay. In this case, the Charging Party requests a civil penalty of $37,500 against Respondent Riverbay. The Charging Party claims that Riverbay was "adjudged" to have committed a discriminatory housing practice within the five-year period preceding the filing of the *Charge*. See, Rose v. Co-op City of New York, NYC HRC Compl. 1020824 (Nov. 18, 2010). In Rose, the New York City Commission on Human Rights held Respondents Riverbay and Cooper to have committed a discriminatory housing practice on November 18, 2010, which is within five years prior to the filing of the instant *Charge* on August 10, 2011. Respondents argue the Court is authorized to impose a civil penalty of no more than $16,000, because the decision in Rose was an administrative decision that does not become final until either the time to challenge the determination expires with no challenge, or a reviewing Court affirms or reverses it.

An administrative proceeding does not become final until either the time to challenge the determination expires with no challenge, or the reviewing body affirms or reverses it. Here, although the Commission made its decision in November 2010, Riverbay had filed its Article 78 petition within the time provided for judicial review. Accordingly, the determination did not become final, and it cannot be said that Riverbay had been "adjudged" to have discriminated, until the New York State Supreme Court entered its decision in September 2011, after the instant *Charge*. Therefore, the administrative decision in Rose became final on September 21, 2011.[20]

[20] The Court's interpretation is supported by sound policy reasons. If the Court imposes a penalty as if Respondents were adjudged to have committed a prior discriminatory practice, and Respondents are later exonerated from having committed said discriminatory practice, the basis for the Court's imposition of the higher penalty vanishes. The regulatory language is very specific: the adjudications have to be made "preceding the date of filing of the charge." Imposing a higher penalty before a final adjudication only serves to tempt due process.

There is evidence in the record that "Riverbay has suffered some [financial] losses in recent years." And, the Court is sympathetic to the fact that Riverbay is composed of shareholders who are already "carrying the burdens of a difficult economy . . . capital improvements . . . and annual maintenance increases for six of the last seven years." However, this is not Riverbay's first time at the dance. While, it is true that the Court cannot impose a higher penalty than $16,000 as delineated in 24 C.F.R. § 180.671(a) (1); the Court is not constrained by 24 C.F.R. § 180.671(c) (1) from looking at Riverbay's past violations in maximizing the penalties the Court can assess.[21] As stated supra, Riverbay has recently run afoul of the New York City Commission on Human Rights. Moreover, Riverbay found itself in a nearly identical situation in the Exelberth case in 1995. The Exelberth Consent Order requires Riverbay to give deference to an individual's own assessment of his disability and need for a reasonable accommodation—an obligation Riverbay ignored here. In a 2011, case, Riverbay discriminated against a prospective tenant, this one a veteran, again, because of a service animal. Hernandez v. Riverbay, New York State Division of Housing and Community Renewal (Nov. 28, 2011). These three examples offer a keen insight into Riverbay's practices and policies. As such, they lend great weight to the imposition of a maximum penalty. The Court's consideration, however, does not end here.

As noted supra, Riverbay has not acted in good faith at bar. Permeating the entire record is a blatant disregard for the interactive process and an elevation of Riverbay's No Dog Policy above the needs of the disabled. Riverbay's assurances of "on the job training" regarding disability matters fall short. The testimony established that although there were forms to fill out, boxes to check, and interviews to conduct, disability matters were handled as form over substance with no particular understanding of legal requirements. Ordering a penalty of less than the maximum would be "a painless sanction [with] little deterrent effect." Krueger v. HUD, 115 F.3d 487, 493 (7th Cir. 1997); see also Blackwell I, 908 F.2d at 873 (upholding maximum civil penalty after considering goal of deterrence). Accordingly, the Court assesses a civil penalty against Respondent Riverbay in the amount of $16,000. 24 C.F.R. § 180.671(a)(1).

Civil Penalty against Respondent Vernon Cooper. For the reasons stated in the previous subsection, the maximum penalty the Court is authorized to assess is $16,000.[22]

Respondents have not produced any evidence requiring a mitigation of the assessed civil penalty on the basis of Mr. Cooper's financial circumstances.

For the reasons stated in the previous subsection, the Court assesses a civil penalty against Respondent Cooper in the amount of $16,000. 24 C.F.R. § 180.671(a)(1).[23] More

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[21] The language of 24 C.F.R. § 180.671(c) (1) does not require that the prior adjudications occur within a specific time period prior to the filing of the *Charge*.

[22] Charging Party also seeks a civil penalty in the amount of $5,000 against Respondent Cooper in his individual capacity.

[23] Respondents argue that Respondents Cooper and Milburn are entitled to dismissal of the claims against them in their individual capacities, because they were agents for a disclosed principal. Respondents' argument does not fall

specifically, Mr. Cooper had the ultimate authority to grant or deny Complainant's reasonable accommodation request. As the gatekeeper for a reasonable accommodation, it was imperative that he ensured that Riverbay acted in good faith. See Krueger v. HUD, 115 F.3d at 493.

ORDER[24]

Based on the foregoing, it is **HEREBY DECLARED AND ORDERED:**

1. Respondent Henry T. Milburn, Jr., is **DISMISSED** from this action.[25]

2. Respondents Riverbay and Vernon Cooper have violated 42 U.S.C. § 3604(f)(3)(B), and 42 U.S.C. § 3617.

3. Within thirty (30) days of the date on which this Order becomes final, Respondents shall pay to Complainant the sum of $38,930.78.

4. Within thirty (30) days of the date on which this Order becomes final, Respondent Riverbay shall pay to the Secretary the sum of $16,000.00 in Civil Money Penalties.

5. Within thirty (30) days of the date on which this Order becomes final, Respondent Vernon Cooper shall pay to the Secretary the sum of $16,000.00 in Civil Money Penalties.

6. Respondent Riverbay, its officers, members, agents, employees, and successors are enjoined from discriminating because of disability against any person in any aspect of the rental, sale, use or enjoyment of a dwelling.

7. Respondent Cooper is enjoined from discriminating because of disability against any person in any aspect of the rental, sale, use or enjoyment of a dwelling.

8. Respondent Riverbay, its officers, members, agents, employees, and successors are enjoined from coercing, intimidating, threatening or interfering with Complainants' exercise or enjoyment of rights granted or protected by the FHA.

9. Respondent Cooper is enjoined from coercing, intimidating, threatening or interfering with Complainants' exercise or enjoyment of rights granted or protected by the FHA.

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under any of the enumerated exceptions under Section 3603(b). Further, the Second Circuit has held that agents of a disclosed principal cannot be liable for acts of the principal *unless the agents have participated or personally profited in the wrong*. Lax v. 29 Woodmere Blvd. Owners, Inc., 812 F. Supp. 2d 228, 240 (E.D.N.Y. 2011).

[24] Respondents have submitted a document entitled "Reasonable Accommodation Policy" that was adopted in December 2011. The Charging Party maintains that the Policy violates the FHA and urges the Court to substitute a different policy in its place. Such matters are not pled within the four corners of the Complaint and are not at issue here. The Court urges the parties to engage in consultation regarding Respondents' Reasonable Accommodation Policy to avoid what could be further litigation.

[25] The Charging Party has not produced any evidence tying him to the discriminatory acts.

10. HUD will provide, at no cost to Respondents, training on Fair Housing issues, including reasonable accommodation requirements and the FHA. This training will be open to all Co-op City residents and will be provided on Co-Op City premises in a suitable location provided by Respondents. The date for the training will be set by HUD in cooperation with Respondents—multiple dates may be used at HUD's discretion. Training must be completed within 180 days of the date on which this Order becomes final. HUD will make training materials available to those residents who wish to attend the training but are unavailable to attend.

11. Any Riverbay employee who receives, processes, reviews, or makes any determination with regard to any reasonable accommodation must attend the training specified in paragraph #10.

12. Once the training established in paragraph #10 is exhausted, Riverbay will establish quarterly training for new employees who receive, process, review or make determinations with regard to any reasonable accommodation. This includes established employees who attain new duties. Riverbay shall continue this training for a period of five (5) years. Of course, Riverbay may continue the training after that time as well. The training will be "classroom-style" training and will cover, at least, the material covered in the training provided in paragraph #10.

13. For a period of five (5) years after the date on which this Order becomes final, Respondents shall submit quarterly reports to HUD's New York Regional Office containing as follows:

    i. A list of all persons, including contact information, who inquired about or applied for a reasonable accommodation; whether or not the request was an initial request or a request for a renewal of an accommodation.

    ii. The type of reasonable accommodation sought.

    iii. Whether or not, in each instance the accommodation was sought and/or granted.

    iv. The date of the request and the reviewer or reviewers; the decision maker.

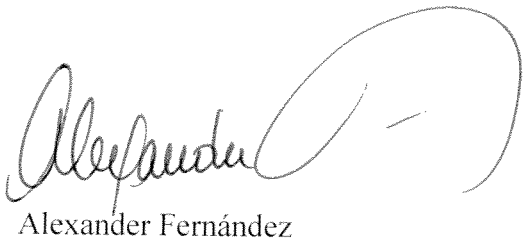
    v. If the request is denied, the reason for the denial.

    vi. Whether a denied request was appealed and the outcome of the appeal, including the rationale.[26]

14. Respondents will grant Complainant's request for a reasonable accommodation, pursuant to federal law, and will honor that request for as long as Complainant requires the accommodation. Complainant will not be subject to a renewal of

[26] The information must be provided in log format; starting on the first day of the calendar quarter after this Order becomes final.

accommodation request for a period of at least five (5) years from the date on which this Order becomes final.



Alexander Fernández
Administrative Law Judge

Notice of appeal rights. The appeal procedure is set forth in detail in 24 C.F.R. § 180.675 (2009). This Initial Decision and Order may be appealed by any party to the Secretary of HUD by petition for review. Any petition for review must be received by the Secretary within 15 days after the date of this Initial Decision and Order. Any statement in opposition to a petition for review must be received by the Secretary within 22 days after issuance of this Initial Decision and Order.

Service of appeal documents. Any petition for review or statement in opposition must be served upon the Secretary by mail, facsimile, or electronic means at the following:

U.S. Department of Housing and Urban Development
Attention: Secretarial Review Clerk
451 7th Street S.W., Room 2130
Washington, DC 20410
Facsimile: (202) 708-0019
Scanned electronic document: secretarialreview@hud.gov

Copies of appeal documents. Copies of any Petition for Review or statement in opposition shall also be served on the opposing party(s), and on the HUD Office of Administrative Law Judges.

Finality of decision. The agency decision becomes final as indicated in 24 C.F.R. § 180.680.

Judicial review of final decision. Any party adversely affected by a final decision may file a petition in the appropriate United States Court of Appeals for review of the decision under 42 U.S.C. 3612(i). The petition must be filed within 30 days after the date of issuance of the final decision.