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

The Secretary, United States Department of Housing and Urban Development, Charging Party, on behalf of: CARLO GIMENEZ BIANCO, Complainant, v. CASTILLO CONDOMINIUM ASSOCIATION and CARLOS TORO VIZCARRONDO, Respondents.	HUDALJ 12-M-034-FH-9 July 17, 2014

Appearances

For Charging Party: Henry Schoenfeld, and Iris Springer-Elkerson, Attorneys, United States Department of Housing and Urban Development, New York, NY

For Respondents: Sigfredo A. Irizarry, Attorney, San Juan, Puerto Rico

INITIAL DECISION AND ORDER

BEFORE: J. Jeremiah MAHONEY, Administrative Law Judge

On March 29, 2012, 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 Castillo Condominium Association ("Condominio Castillo" or "Association") and Carlos Toro Vizcarrondo (collectively, "Respondents"). The *Charge* was filed on behalf of Carlo Gimenez Bianco ("Complainant")[1] and alleged that Respondents denied Complainant a reasonable accommodation in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. Specifically, the Charging Party alleged that Respondents denied Complainant's request

[1] Complainant's first name is frequently identified by both parties, and sporadically throughout the evidence, as "Carlos" rather than "Carlo." It is unclear from the record if the addition of the "s" was erroneous, or if Complainant went by the name "Carlos" at some point. Some time prior to the hearing, both parties changed the caption of this case to read "Secretary, Department of Housing and Urban Development, On Behalf of Carlos Gimenez Bianco, Complainant." The Court did not change the caption, and did not instruct either party to do so. During the hearing, Complainant identified himself as "Carlo Gimenez Bianco." The Court therefore retains that style in the caption and throughout this *decision*.

to keep a dog named "Bebo," a 14-pound Pug, in his condo unit as an emotional support animal. On May 30, 2012, Respondents filed their *Answer* to the *Charge*.

By Order of the Court, dated June 9, 2013, the hearing was set to commence on August 6, 2013.[2] The hearing, held in San Juan, Puerto Rico, began as scheduled and concluded on August 9, 2013. Appearing as witnesses during the four-day hearing were: Complainant, Dr. Pedro Fernandez, Irma Pillot, Dr. Roberto Unda, Francisco Cobian, Sonia Reyes, Noel Morales, Carlos Pino, Eduardo Figueroa, Gloria Rosado, Respondent Vizcarrondo, and Dr. Jose Franceschini. In accord with an *Order* issued on November 29, 2013, *Post-Hearing Briefs* were submitted by the parties on January 14, 2014. Both parties submitted reply briefs on February 7, 2014. The proceeding is thus ripe for decision.[3]

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). In 1988, 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 Administrative Law Judges. 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 handicap. Pub. L. 100-430, approved September 13, 1988.

In defining the term "handicap," the 1988 amendment copied nearly 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

[2] The hearing was originally scheduled to begin on June 24, 2012. However, for reasons ranging from settlement negotiations to damage caused by Hurricane Sandy, to medical problems, the hearing was rescheduled multiple times.

[3] The statutory goal for conduct of the hearing and issuance of an initial decision in Fair Housing cases was exceeded in this case for a variety of reasons, including extensions of time granted to both parties for good cause. This decision was not issued within 60 days of close of the record due to the length of the record and the time taken to consider and weigh the evidence and the respective positions of the parties.

having such an impairment, or (3) being regarded as having such an impairment." 29 U.S.C. § 706. 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.

Reasonable Accommodation. The FHA 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); U.S. v. California Mobile Home Park, 107 F.3d 1374, 1381 (9th Cir. 1997).

To prove a prima facie case that a housing provider has failed to provide a reasonable accommodation, the Charging Party 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 Complainant establishes his disability and requests a reasonable accommodation, 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).

In this case, when confronted with the Association's rule prohibiting pets on the premises, Complainant claimed a disability and requested an accommodation in the form of a waiver of the no-pets rule because Bebo was a companion animal needed to accommodate Complainant's disability.

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 *Initial Decision*.

On the dates of the hearing, Complainant was 76 years old. He appeared alert and responsive, and he was not accompanied by a companion animal. Complainant has been medically diagnosed with a heart condition, diabetes, an enlarged prostate gland, hypertension, and an essential familiar tremor. He is taking medication for each of these ailments. Other than the tremor, Complainant's health conditions are not apparent to an untrained observer.

Complainant was born in San Juan, Puerto Rico, on February 6, 1937. He was raised in the Old San Juan and Condado areas of Puerto Rico. When he was a child, Complainant experienced the loss of an uncle who was killed in 1945 while serving in World War II. Complainant struggled emotionally to deal with that loss and the later loss of his grandfather, who passed away in 1952. Complainant attended schools in Puerto Rico until he was approximately 16 years old, when he moved to New York City to complete high school. He received bachelors and master's degrees from Hunter College, and worked for the City University of New York until his retirement.

In 1964, while living and working in New York, Complainant began a romantic relationship with Anthony ("Tony") Heitmuller. Their relationship continued until Tony's death after a protracted illness, on July 10, 1994. As a result of Tony's illness and impending death, Complainant began seeking psychiatric treatment from Dr. Karla Renthrop, who prescribed for him the anti-anxiety drugs Klonopin and Ativan. She did not prescribe any medication for depression and she did not diagnose Complainant with depression. Dr. Renthrop suggested that Complainant read the book On Death and Dying, by Dr. Elisabeth Kubler-Ross, which he did.[4] As his illness worsened, Tony purchased a poodle (named "Rhettskie") for Complainant to help take Complainant's mind off Tony's illness. Caring for Rhettskie required Complainant's

[4] On Death and Dying describes the five stages of grief, a psychiatric theory now widely referred to as the "Kubler-Ross Model."

attention and forced him to leave his home to go to the dog park, where he interacted with other people, which he would otherwise have not likely done.

In 1995, following Tony's death, Complainant moved back to Puerto Rico. He moved into unit 8-B, an efficiency unit in Condominio Castillo that he purchased for $68,000, and later converted into a one-bedroom unit.

In approximately 1997, Complainant began a romantic relationship with another man, whose identity is not specified in the record. In March of that year Complainant began receiving psychiatric treatment from Dr. Fernandez, a psychiatrist who maintains a private practice in the city of Mayaguez. The city is located on the west side of Puerto Rico, about a 2½ hour drive from San Juan. Dr. Fernandez relates that about 65% of his patients suffer from depression or anxiety.

Dr. Fernandez' notes from the initial March 1997 meeting with Complainant consist of one sentence and one sentence fragment, both relating to Complainant's then-boyfriend. Dr. Fernandez prescribed Klonopin (0.5mg) for Complainant. On April 2, 1997, Dr. Fernandez again met with Complainant. His notes on that occasion further described Complainant's relationship with his boyfriend. At some point after the April 1997 session, Dr. Fernandez prescribed Prozac for Complainant.[5]

Dr. Fernandez advised Complainant to terminate the romantic relationship because the other man was addicted to cocaine and had expressed jealousy and paranoia about Complainant's other friendships. Complainant himself feared the boyfriend could become violent, which aggravated Complainant's stress. Complainant eventually ended the relationship.

In a July 2009 therapy session, Dr. Fernandez noted that Complainant's "emotional condition has deteriorated to some extent, that is much more than expected." His notes from that session stated that Complainant "reported feeling very lonely and depressed," and felt "extremely anxious" due to problems at Condominio Castillo. Dr. Fernandez also noted he observed in Complainant:

a. psychomotor retardation
b. difficulty sleeping
c. decreased energy, appetite, and concentration
d. anhedonia[6]
e. feelings of worthlessness and hopelessness

The notes added that Complainant was not suicidal, made good eye contact, was coherent, and had "good hygiene and grooming." The notes indicated that Complainant was currently prescribed 20 milligrams of Prozac and the dosage would not be increased in response to his condition. Complainant was not hospitalized or placed under close observation as a result of the

[5] Prozac is an antidepressant medication.

[6] An anhedonic state is one where the individual loses interest in life or in activities that had once been considered pleasurable.

noted observations, and Dr. Fernandez made no subsequent notes describing any follow-up consultations related to the 2009 session.

Between 1997 and the present, Complainant and Dr. Fernandez estimate they had approximately 10-15 conversations per year, which both describe as psychiatric therapy sessions. The sessions usually took place telephonically, or at Complainant's residence at Condominio Castillo. On rare occasions, sessions were held in Dr. Fernandez' office in Mayaguez. Complainant and Dr. Fernandez also interacted socially, as Dr. Fernandez and his wife are personal friends of Complainant. Dr. Fernandez and his family have stayed in Complainant's condo unit as his guests. On occasions when Complainant left Puerto Rico for extended periods, he would sometimes leave his condo keys with Dr. Fernandez' wife and instruct Condominio Castillo personnel to contact Dr. Fernandez if there were any condo-related emergencies. Although Complainant has health insurance, Dr. Fernandez has never sought payment from the insurance company, and does not seek payment from Complainant directly.

In December 2009, a friend gave Complainant a dog (named "Bebo") as a gift. At the time, Complainant was living alone in his unit at Condominio Castillo. Complainant did not inform anyone on the Condominio Castillo Board ("Board") that he intended to keep a dog in his residence, and he did not request permission to get a dog prior to bringing Bebo into the condominium. Complainant had not previously owned a dog while residing at Condominio Castillo, and was unaware that, in 2004, Condominio Castillo amended its bylaws to prohibit residents from owning pets.[7]

For its part, Condominio Castillo was unaware of Bebo being kept by Complainant in his condo unit until April 2, 2010, when the Board received a letter from another resident, Noel Rosado, informing the Association that Complainant owned and kept on-premises a dog named Bebo. At a Board meeting on April 6, 2010, the Board discussed Mr. Rosado's letter and decided to send Complainant a letter warning him that he could not keep Bebo in his unit.

The letter, sent on April 12, 2010, informed Complainant that he was in violation of Chapter 8, Articles 1 and 2 of the condominium's bylaws, and that he would be assessed a $100 fine if he did not remove Bebo from his unit within 30 days. The letter also stated that "[f]or you to be able to keep your pet, the regulation would have to be amended."

On April 21, 2010, at Complainant's urging, Dr. Unda (Complainant's primary care physician since 2009) sent the Board a letter expressing his opinion that Bebo was "very important" for Complainant's mental health, and that removal of the dog would adversely affect Complainant's health. The letter did not mention depression or anxiety and did not specifically identify Complainant's disability. It also did not mention the Fair Housing Act.

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[7] Prior to 2004, Section 1104(b) of Condominio Castillo's bylaws permitted birds and goldfish as pets on the "garden level" of the building, and allowed dogs and other pets on the other floors. The only exception to the new "no pets" policy was for those tenants who had pets at Condominio Castillo prior to the enactment of the amended bylaws.

On April 24, 2010, Complainant sent the Board a letter asserting that Bebo was a "companion animal," as defined by the Fair Housing Act, and thus was exempt from the no-pets policy. Attached to that letter was a letter from Dr. Fernandez stating that Complainant was his patient and asserting that Complainant "meets the definition of disability under 'Americans with Disabilities Act,' the 'Fair Housing Act,' and the 'Rehabilitation Act of 1973.'" The letter noted that Complainant "has certain limitation such as coping with stress/anxiety." The letter did not state that "stress/anxiety" was a disability, and did not specifically identify depression or any other disability. Dr. Fernandez' letter also stated that he was "recommending and prescribing an emotional support animal that will assist [Complainant] in coping with his disability."

Dr. Fernandez' letter asserted that Bebo was "essential" for Complainant's emotional health, and asked the letter's recipient[8] to contact him if there were any questions "concerning my recommendation that [Complainant] have an emotional support animal." Dr. Fernandez' letter was in the format of an e-mail, sent to Complainant. Although there was a signature line, the letter was not signed because Dr. Fernandez did not know how to affix a signature to an electronic document. Nobody from Condominio Castillo ever contacted Dr. Fernandez with regard to the letter.

On May 3, 2010, Complainant filed a complaint with Puerto Rico's Department of Consumer Affairs ("DACO"), challenging the Association's amended bylaws as applied to him.

At its meeting on May 18, 2010, the Board noted that Complainant had not removed Bebo from the building within the 30-day deadline stated in the April 12, 2010, letter. The Board discussed Dr. Fernandez' letter, and decided that it was not valid because it was not signed and because Dr. Fernandez was known to be a personal friend of Complainant. The Board voted to fine Complainant $100 for violating the condominium's bylaws.

At that time, Condominio Castillo did not have a reasonable accommodation policy in effect, and no member of the Board had received training about the Fair Housing Act. However, the Board did have a procedure for resolving conflicts that arose within the Association.

Accordingly, on May 18, 2010, the Board appointed Board member Gloria Rosado, a nurse and friend of Complainant, to contact Complainant and arrange for him to meet with the Board's Conciliation Committee to attempt to resolve the conflict. The Conciliation Committee consisted of Ms. Rosado as chair, and two other Condominio Castillo residents as members.[9] Having discussed the animosity between the Complainant and Respondent Vizcarrondo, the Board President, the Board chose this course of action — rather than the alternative of having Complainant meet with the Board as a whole — as more likely to result in a successful

[8] The letter was addressed "To Whom It May Concern," not to the Board itself, nor to any individual member of the Board.

[9] Ms. Rosado owns units in Condominio Castillo, but no longer resides there. Neal Rosado, her brother, continues to reside in Condominio Castillo, and he wrote the letter to the Board reporting Bebo's presence in the facility.

outcome.[10] The Conciliation Committee could not make any decisions, but it was authorized to make recommendations to the Board.

Ms. Rosado communicated with Complainant that evening by phone, explained the conciliation process, and identified the three people who would meet with Complainant the following Thursday. Complainant said he would let her know whether he would proceed with the meeting. The following week, on the evening before the scheduled Conciliation Committee meeting, Complainant informed Ms. Rosado that he would not meet with the Conciliation Committee. He did not provide a reason for his decision.

On May 20, 2010, DACO issued a Cease and Desist Order to the Board, prohibiting the Board from imposing the $100 fine or forcing the removal of Bebo until the DACO case was resolved. On May 21, 2010 — prior to receiving the DACO Cease and Desist Order — the Board sent Complainant its letter imposing the $100 fine. Upon receipt of the DACO order, the Board informed Complainant that the fine would be held in abeyance pursuant to the DACO order. On March 3, 2011, DACO issued a ruling upholding the bylaws, and thus finding against Complainant.

On March 18, 2011, Complainant finalized the purchase of a condo unit at Condominio Mundo Feliz, in Isla Verde, Puerto Rico. Complainant had keys to the Condominio Mundo Feliz condo unit prior to the closing, and had been moving items into the unit and fixing it up for several months prior to the closing. Complainant eventually moved out of his condo unit at Condominio Castillo, completing his move to his new condo unit at Mundo Feliz.[11]

Although the Board had ordered removal of Bebo from Complainant's residence, and imposed a $100 fine for the dog's non-removal, in fact Bebo remained with Complainant in the Condominio Castillo residence until Complainant moved out. The fine was never collected.

On April 5, 2011, Complainant was admitted to the emergency room on the orders of Dr. Unda. In a contemporaneously written Medical Certificate, Dr. Unda stated that Complainant had "presented an episode of extreme anxiety, chest pain, and tachycardia today as a result of an event that took place today in his condominium, as was told to me today." There is no reference to this medical incident in Dr. Fernandez' notes.

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[10] On October 2, 2009, Dr. Fernandez signed a document supporting a protection order against Respondent Vizcarrondo on behalf of Complainant. The document stated that, on September 29, 2009, Respondent Vizcarrondo had verbally and physically threatened Complainant. Ms. Joanna Di Marco, a resident of Condominio Castillo and a friend of Complainant, was present at the September 2009 incident. Ms. Di Marco has joined Complainant in several of his legal clashes with Respondent Vizcarrondo, and she was present and admonished once for disruptive behavior during the hearing in this matter. Respondent Vizcarrondo was elected president of the Board in March 2010 and has served in that position since that time. He had served as treasurer and president of the Board from approximately 2003 until 2007. Complainant and Respondent Vizcarrondo have a long-standing antagonistic relationship that has previously resulted in legal complaints filed against each other by both parties. For example, Complainant at one point sued Respondent Vizcarrondo for allegedly removing an anti-parking device from Complainant's parking space. The suit was later dismissed as stale and Complainant was ordered to pay $500 for Respondent Vizcarrondo's attorney's fees.

[11] Complainant sold his Condominio Castillo condo unit on October 4, 2011.

On April 19, 2011, Complainant filed his complaint with HUD.

Motions in Limine

Both parties have filed *Motions in Limine* seeking to exclude the expert witness reports submitted by the opposing party. Both *Motions* take pains to point out the procedural, legal, and analytical failings of the other party's reports. Not surprisingly, they also gloss over the deficiencies in their own submissions. For example, HUD's *Motion* alleges that Respondent's expert report, written by Dr. Franceschini, "does not indicate the use of any reliable medical principles or methods of expertise for the speculative conclusions that he draws." The *Motion* blasts the report for "failure to properly identify and discuss all nine … symptoms [of Major Depressive Disorder]…" However, there are no principles or methods identified in HUD's expert report either, written by Dr. Fernandez, the treating psychiatrist. Indeed, Dr. Fernandez' report is largely a synopsis of the present legal proceeding rather than an analysis of Complainant's psychological condition. The report contains no definitions and no explanation of its diagnoses. It also fails to identify or discuss the relevant symptoms, and makes only passing references to Complainant's symptoms before concluding that he suffers from depression and anxiety.

Respondents, for their part, argue that Dr. Fernandez cannot offer objective expert testimony while simultaneously testifying as Complainant's personal psychiatrist. Additionally, they note that Dr. Unda and Dr. Nicholas Dubois were not properly presented as expert witnesses prior to the hearing, as required by the *Fifth Notice of Hearing and Order*.[12] Respondents ignore the fact that the report of Dr. Franceschini, their expert, did not strictly comply with the *Fifth Notice of Hearing and Order* either. Moreover, his report also draws legal conclusions and attempts to undercut the credibility of Complainant and Dr. Fernandez. HUD accurately complains that the report thus intrudes into the Administrative Law Judge's domain. In short, neither party can cast stones against the opposing party's report without opening its own report to similar criticism.

The Court has heard a lot of psychiatric testimony in 30 years on the bench, but is not schooled in psychiatric medicine, so it sees no value in excluding reports created by those who are. The reports offer useful insight into the relevant medical conditions and the standards of practice in this field. They therefore aid the Court in understanding the evidence. This does not mean the reports must be taken as gospel. The Court is free to discount or disregard any aspect of the reports that are inaccurate, subjective, irrelevant, or otherwise unhelpful. Accordingly the *Motions in Limine* are **DENIED**.

[12] The motion to exclude Dr. Dubois' testimony is moot, as he was never called to testify during the hearing and his report was not entered as an official trial exhibit. Additionally, the Court directed HUD to limit its examination of Dr. Unda to information he knew as Complainant's primary care physician. He therefore did not offer anything that could be considered "expert" testimony with regard to Complainant's mental health condition.

Discussion

HUD alleges Respondents violated 42 U.S.C. § 3604 by denying Complainant's reasonable accommodation request. To prove a violation, the Charging Party must demonstrate, by a preponderance of the evidence, that: (1) Complainant has a disability as defined by the FHA; (2) Respondents knew or should reasonably be expected to know of his disability; (3) an accommodation of the disability is necessary to afford Complainant an equal opportunity to use and enjoy the dwelling; and (4) Respondents refused the request for the accommodation. HUD v. Riverbay Corp., Vernon Cooper, and Henry T. Milburn, Jr., 2012 WL 1655364 (May 7, 2012) (upheld on Secretarial review, June 6, 2012); Bentley v. Peace and Quiet Realty 2 LLC, 367 F. Supp. 2d 341 (E.D.N.Y. 2005); Freeland v. Sisao LLC, 2008 WL 906746 *3 (E.D.N.Y. 2008).

The Charging Party must therefore first demonstrate that Complainant is actually handicapped. The Fair Housing Act defines the term "handicap"[13] as:

> (1) a physical or mental impairment that substantially limits one or more of a person's major life activities;
>
> (2) a record of having such an impairment; or
>
> (3) being regarded as having such an impairment,

42 U.S.C. § 3602(h).

The term "mental impairment" includes mental or psychological disorders such as emotional or mental illnesses. 24 C.F.R. § 100.201(a)(2). Courts have long recognized that depression and anxiety are legitimate mental impairments for purposes of both the Fair Housing Act and the Americans with Disabilities Act ("ADA"). Adams v. Rochester General Hosp., 977 F. Supp. 226 (W.D.N.Y. 1997) (finding that depression, under the ADA, must substantially limit a major life activity to qualify as a disability).[14] "Major life activities" include "… 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

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[13] The statute uses the term "handicap." However, in the years since its passage, that term has fallen out of favor, as it has acquired a somewhat negative social connotation. The Court therefore generally prefers the term "disabled."

[14] "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).

finding that sleeping, interacting with others, and concentrating all constitute major life activities. See Felix v. New York City Transit Auth., 324 F.3d 102 (2d Cir. 2003) (plaintiff's insomnia limits the major life activity of sleeping); Carpenter v. Potter, 91 Fed. Appx.705 (2d Cir. 2003) (sleeping can be considered 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); 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).

The preliminary question is whether the Charging Party has proven by a preponderance of the evidence that Complainant in fact suffered from a mental impairment when he sought the accommodation to keep Bebo as a companion animal. Dr. Fernandez has diagnosed Complainant with Major Depressive Disorder-Recurrent, Severe Without Psychotic Features,[15] and Generalized Anxiety Disorder.[16] Dr. Fernandez has been Complainant's psychiatrist since 1997, and reports holding therapy sessions with Complainant 10 to 15 times per year, on average, since that time. By virtue of his extended observation of Complainant — from 1997 to the present time — Dr. Fernandez would appear to be the individual best suited to determine whether Complainant's mental health problems rise to the level of a "mental impairment." Dr. Fernandez states that they do.

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[15] Major Depressive Disorder–Recurrent is defined as "two or more Major Depressive Episodes (each separated by at least 2 months in which criteria are not met for a Major Depressive Episode)." An event is considered a Major Depressive Episode if at least five of the following symptoms have been present for the same two-week period and represent a change from previous functioning:

1. Depressed mood
2. Diminished interest or pleasure in most or all activities
3. Significant weight loss or weight gain/decrease or increase in appetite
4. Insomnia or hypersomnia
5. Psychomotor agitation or retardation (observable by others)
6. Fatigue or loss of energy nearly every day
7. Feelings of worthlessness or excessive or inappropriate guilt
8. Diminished ability to think or concentrate
9. Recurrent thoughts of death, recurrent suicidal ideation

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision ("DSM IV"), published by the American Psychiatric Association.

The disorder is considered "Severe-Without Psychotic Features" if several symptoms in excess of those needed to make the diagnosis are present, and those symptoms markedly interfere with occupational or social functioning. Id.

[16] Generalized Anxiety Disorder ("GAD") is defined as excessive anxiety or worry that is difficult to control and is present more days than not for a period of at least six months. The anxiety is associated with at least three of the following six recognized symptoms:

1. Restlessness
2. Easily fatigued
3. Difficulty concentrating
4. Irritability
5. Muscle tension
6. Difficulty falling or staying asleep, or restless and unsatisfying sleep

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision ("DSM IV"), published by the American Psychiatric Association.

The credible, corroborated testimony of a treating psychiatrist is generally afforded great, if not controlling, weight on this issue. Indeed, if the treating physician's testimony is controverted, the Administrative Law Judge must provide "specific, legitimate reasons … supported by substantial evidence" to properly reject the testimony. Orn v. Astrue, 495 F.3d 625, 632-34 (9th Cir. 2007). Here, the matter is complicated by the lack of substantial corroboration, and by the fact that Dr. Fernandez is more than simply Complainant's psychiatrist. Dr. Fernandez has also been Complainant's close personal friend for a dozen years or more. Respondents argue that this friendship taints Dr. Fernandez' objectivity to such a degree that the Court cannot reasonably rely on his testimony. The Court agrees. The timing and circumstances of Dr. Fernandez' alleged prescription of an emotional support animal underscore that his primary motivation was to help his friend circumvent Condominio Castillo's no-pets policy and, in the process, defeat Complainant's nemesis, Respondent Vizcarrondo. Given Dr. Fernandez' personal investment in the outcome of this case, it is impossible to take him fully at his word that Complainant in fact suffered from anxiety and depression during the relevant time period. The Court must therefore look for other, more reliable evidence for corroboration of this diagnosis. The natural starting point for such an investigation would be Dr. Fernandez' treatment notes.

Such an investigation, however, is frustrated at the outset. Despite engaging in perhaps 200 or more counseling sessions with Complainant over the course of approximately 16 years, Dr. Fernandez has almost no documentation describing Complainant's psychiatric condition or treatment.[17] The record contains only two fragmentary notes from 1997, and one more thorough note from 2009. When asked at the hearing to explain the note-taking practices in the industry, as well as his own note-taking policy, Dr. Fernandez responded that "I cannot tell you for other specialists, but usually [psychiatrists] take records." He also affirmed that "usually, I take notes." Dr. Franceschini confirms that note-taking is the norm among psychiatrists. Dr. Fernandez' lack of notes for Complainant is thus inconsistent with his standard practice and the practice in the industry. He explained further that he generally did not take notes during his counseling sessions with Complainant when those sessions occurred over the phone or at Complainant's residence at Condominio Castillo. He also stated that Complainant would often call him at home while Complainant was in Tunisia or New York, and would call late at night or on weekends, when Dr. Fernandez did not have access to his notes.

This explanation implies that Dr. Fernandez only takes medical notes when he is conducting a therapy session in his office. If so, it is an odd restriction in this case, because his office in Mayaguez is a 2½-hour drive from Complainant's home in San Juan. It is easily foreseeable that an elderly patient like Complainant would rarely make such a trip when he could simply call Dr. Fernandez on the phone. Moreover, Dr. Fernandez could easily jot down notes while talking on the phone or visiting Complainant at his home. Those notes could later be transcribed and elaborated upon when he returned to his office. He would then have had a record of his thoughts and impressions taken during the therapy session, rather than have to rely on later

[17] Dr. Fernandez testified that he generally had 10-15 counseling sessions with Complainant per year. Over the course of 16 years, this would amount to between 160 and 240 counseling sessions. Neither Complainant nor Dr. Fernandez could provide a more accurate figure; an ambiguity that could have been resolved had Dr. Fernandez kept notes of his professional sessions with Complainant.

recollections of those conversations. Even under the best of circumstances, memories can fail or be colored by later events. That is precisely why contemporaneous notes are so valuable.

Dr. Fernandez also offered a second rationale for his sparse note-taking: he feared the notes could be used in future litigation "for a character assassination" against Complainant. He provided no explanation why he held this belief or why such a belief would justify the omission of treatment notes. He offered only an opaque statement that, in some cases, "the safest way to make notes is no notes." He suggested, without elaboration, that this might be the case for patients who were somehow involved with the federal government. Complainant, however, has no such governmental association. There is no readily identifiable basis for Dr. Fernandez to engage in clandestine treatment. Moreover, there is no evidence in the record that Complainant was involved in or even contemplating any litigation at the time he initially sought treatment from Dr. Fernandez. Even if litigation was imminent or foreseeable, as HUD's own counsel pointed out on direct examination, the notes could not have been used in the way Dr. Fernandez feared because they would almost assuredly be protected by the doctor-patient privilege.

Dr. Fernandez' explanations for the departure from his general note-taking practice are dubious, at best. During the hearing, he admitted that "[I]t doesn't make much sense, but I don't want another person to understand what is happening with that patient." The current paucity of documentation is therefore a deliberate decision, calculated to make Dr. Fernandez the sole figure capable of speaking authoritatively about Complainant's mental health. Given his friendship with Complainant, the Court has ample reason to question the veracity of Dr. Fernandez' uncorroborated statements. Dr. Fernandez' notes, such as they are, do little to corroborate facts supporting his conclusory diagnoses in this matter.

For example, the note from March 19, 1997 — Dr. Fernandez' first session with Complainant — reads, in its entirety:

> Sixty years old male patient that is presenting conflicts with his lover, who is a very jealous person and dependent on cocaine. He gets scared when his lover […]
>
> Rx: Klonopin 0.5mg po bid — Patient has the medication at home.

The note provides no description of Complainant's symptoms. It gives no indication why Complainant was prescribed Klonopin. The note also does not mention Tony's death or Complainant's subsequent depression, even though Dr. Fernandez testified that, during that session, he identified Tony's illness and death as a previous depressive event.[18] If true, there is no indication when that depressive event ended, or whether Complainant was ever prescribed an anti-depressant to combat it.

The next note, taken about two weeks later, reads, in its entirety:

[18] Notably, the DSM-IV states that one of the criteria for diagnosing a Major Depressive Episode is that the symptoms "are not better accounted for by bereavement, i.e., after the loss of a loved one." None of Dr. Fernandez' records mention Tony's death, much less why Complainant's symptoms went beyond his grief at that loss.

> The patient moved to NYC in 1952 and met a friend Freddie Figueroa Bayonet. He was a transvestite that travelled the world as Baby Martell. This friend of childhood now prostitute himself. His lover is extremely jealous, accuses him of calling men. He is using the Klonopin at ½.

This note provides no description of Complainant's symptoms and no diagnoses. Other than the mere fact that the Klonopin prescription from Dr. Renthrop existed, there is nothing to suggest Complainant suffered from any mental impairment in 1997.

The notes of July 29, 2009,[19] however, stand in stark contrast to the two notes from 1997. Not only does the 2009 note contain the first references to depression and to Condominio Castillo, it is also the first written description of Complainant's depression symptoms and the first mention of a prescription for Prozac.[20] The nature of the document departs notably from the pattern established in the two previous notes. Where the 1997 notes were fragmented and only moderately substantive, the 2009 note is detailed, clinical, and speaks directly to Complainant's emotional state. It uses proper medical terminology and specifically addresses the depression symptoms outlined in the DSM-IV. The note is clearly intended to document symptoms of depression.

This begs the question: what changed? If Dr. Fernandez deliberately refused to take detailed notes between 1997 and 2009, as he claims, it is unknown what prompted him to alter that pattern in 2009 The most obvious answer is that Dr. Fernandez felt heightened concern for the welfare of his patient in 2009. The symptoms described in the note suggest Complainant may have experienced a Major Depressive Episode at that time. It would therefore stand to reason that Dr. Fernandez would want to maintain as comprehensive an account as possible of that episode. This theory is undermined, however, because Complainant apparently had a similar episode five years earlier, which did not generate a similarly detailed record. In fact, there is no written mention of a depressive episode in 2004, although Dr. Fernandez made reference to it at the hearing. Thus, even if it is Dr. Fernandez' normal policy to forgo note-taking with regard to Complainant, and even if it is his practice to deviate from that policy when Complainant is in the midst of a depressive episode, it still does not explain his inconsistent responses to Complainant's episodes in 2004 and 2009, as reported by Dr. Fernandez.

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[19] The contents of the July 2009 notes are in the findings of fact at note 6, *supra*, and accompanying text.

[20] Although the July 2009 note is the first written mention of Prozac, it is not the first time Dr. Fernandez prescribed the drug for Complainant. The note states "we are going to keep him Prozac 20mg …" (sic) (emphasis added). Nowhere in his three notes does Dr. Fernandez describe when he first prescribed Prozac, nor do the notes describe any variation in the dosages he prescribed Complainant. Some variation must have occurred, however, because Complainant testified that "[t]he medication of Prozac depended on how deep a depression I was experiencing … if I was reacting, it would go up and down." Dr. Fernandez himself states in his expert witness report that Complainant's conflicts at Condominio Castillo caused him to "take more medication than what he usually takes." The lack of documentation of these variations is particularly worrisome because, as Dr. Fernandez testified, "there are some issues about using the medication because of all the medical problems that he has," including heart and prostate conditions. None of Dr. Fernandez' notes list Complainant's other maladies, or the medications he takes for those conditions. In the event Complainant — a 76-year-old man — were incapacitated and Dr. Fernandez were unavailable, no other medical professional would be able to safely administer treatment, as they would not know the names and dosages of drugs Complainant was taking.

Additionally, Dr. Fernandez' actions immediately after the 2009 therapy session are at odds with his purported diagnosis of a Major Depressive Episode. He did not refer Complainant to a hospital for observation. He did not prescribe Klonopin, despite noting that Complainant was "extremely anxious." He did not adjust Complainant's medication in any way. He also did not follow-up with Complainant or create any additional notes regarding Complainant's condition. In short, Dr. Fernandez did nothing in response to Complainant's deteriorating health other than document the symptoms. In the opinion of Dr. Franceschini, Respondent's expert in psychiatry, the condition reported in those notes, if accurate, would have required immediate hospitalization, or close observation with follow up treatment. However, the notes themselves only indicate that the Complainant's current Prozac dosage need not be changed. There were no follow-up notes. Indeed, there is not even any indication when the next oral communication between the doctor and his patient occurred.

If Dr. Fernandez felt Complainant's condition was serious enough to warrant taking detailed notes for the first time in their professional relationship, it is a mystery why he immediately reverted back to his normal course of conduct after that lone session. Overall, the abrupt departure from — and return to — his note-taking pattern is troubling, and suggests the possibility that there was some non-medical reason for the 2009 note. The remaining evidence leads the Court to conclude that the note ultimately served not to treat a patient, but to help a friend.

Moreover, the Court further questions Dr. Fernandez' testimony because his relationship with Complainant appears far removed from the traditional doctor-patient dynamic. This is most clearly illustrated by the fact that Dr. Fernandez provides his medical services to Complainant free of charge. Dr. Fernandez has a private practice in Mayaguez, and is the consultant for two area hospitals. He testified that he sees 10-15 patients per day, and may have as many as 800 patients overall. When HUD's attorney asked him on direct examination whether he makes his living treating patients, Dr. Fernandez replied "Exactly. That's what I do."

However, Dr. Fernandez makes no money treating Complainant. As both he and Complainant admit, payment is not requested and generally not provided. In fact, Dr. Fernandez stated that he had "never seen money from [Complainant]." He also said he does not bill Complainant for sessions in San Juan, and "in my office, often he never pays." Complainant confirms that there was no expectation of payment on his part. He stated during the hearing that he "never discussed money matters with Dr. Fernandez." On occasion, he would try to give Dr. Fernandez' receptionist a $100 bill as payment, "but it wasn't often because they seemed to want to refuse my payment." Additionally, Dr. Fernandez acknowledged that his wife normally submits claims to patients' insurance companies, but she did not do so for Complainant. As a result, neither the insurance company nor Complainant have ever been billed for psychiatric treatment by Dr. Fernandez.

Dr. Fernandez has offered no explanation why Complainant receives free, off-the-record psychiatric services. Complainant is clearly not indigent — he owns property in New York City and Tunisia, in addition to the other apartments he owns in Puerto Rico. The only plausible

inference is that Dr. Fernandez simply does not want to take money from his friend.[21] This is not, therefore, a doctor-patient relationship in any conventional sense.

Friendship would also explain why Complainant feels comfortable calling Dr. Fernandez at any time, day or night. A friend may be willing to take such a call, where a treating psychiatrist may prefer to maintain stricter professional boundaries. Dr. Fernandez and Complainant apparently have few such boundaries. When Complainant would travel overseas, he would sometimes name Dr. Fernandez as his emergency contact. When traveling, Complainant often left his keys with Mrs. Fernandez, who is also a close friend. Once or twice a year, the Fernandez family would stay in Complainant's Condominio Castillo condo unit when they visited San Juan. Dr. Fernandez stated that he would often leave a conference in San Juan and return to the condo unit to find his wife and Complainant chatting about Complainant's troubles. Dr. Fernandez would then "sit and talk to him." The Court is highly skeptical that a friendly chat suddenly morphs into a therapy session simply because a psychiatrist joins the conversation, especially when the conversation occurs in the patient's living room.

Given the close personal friendship between Complainant and Dr. Fernandez, the Court finds that Dr. Fernandez attested, after-the-fact, to Complainant's need for an emotional support animal even knowing the animal was not medically necessary.[22] Despite his claims to the contrary in the letter to the Board, there is no evidence that Dr. Fernandez ever prescribed an emotional support animal — he merely reminded Complainant that a pet had been beneficial in the past. Even that pet, Rhettskie, was not a medically prescribed emotional support animal. Rhettskie was purchased by Tony to keep Complainant company. Complainant, for his part, made no attempt to actually purchase an animal after Dr. Fernandez' suggestion; Bebo was simply a gift from a friend. In sum, nothing in the record suggests that the arrival of the dog was in any way connected to Dr. Fernandez' treatment of Complainant, much less "essential" to that treatment, as Dr. Fernandez later claimed. To the contrary, Dr. Fernandez' first written acknowledgement of Bebo's existence came only after the Board demanded the dog's removal from the building. The evidence therefore supports a chain of events centered around Complainant's desire keep his dog.

This Court's decision in a similar case involving an emotional support dog illustrates the weakness of the Charging Party's evidence here. In Riverbay, the Court easily concluded that the complainant suffered from Major Depressive Disorder, based primarily on the diagnosis of his treating psychiatrist. Riverbay, 2012 WL 1655364. There, however, the record was "replete with evidence and testimony that supports complainant's MDD diagnosis." Id. at p. 12.

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[21] Dr. Franceschini, in both his report and at the hearing, repeatedly and emphatically called attention to several alleged ethical lapses in Dr. Fernandez' pattern of practice, including the refusal of payment. The Court offers no opinion about the standard of care Dr. Fernandez shows his patients. Its only concern is whether Dr. Fernandez' friendship with Complainant fatally compromised his professional credibility in this case.

[22] It is clear that Complainant did not require Bebo's presence during trips away from Puerto Rico, when he voluntarily left Bebo in the care of friends, thus suggesting that Bebo's companionship was only necessary when convenient for Complainant.

In that case, the treating psychiatrist had taken copious notes throughout the course of the doctor-patient relationship, and there was a documented history of depression in the complainant's personal life, as well as a history of depression throughout the complainant's family. Moreover, the Court specifically noted that the psychiatrist's credibility was "not at issue and has not been put at issue by [R]espondents." Id. at p. 6. Despite not being at issue, the Court examined the psychiatrist's credentials, medical notes, and general demeanor during the hearing, and concluded that his testimony was "credible and informative."[23]

Dr. Fernandez' credibility is the subject of direct challenge here, making corroboration of his diagnoses all the more important. The documentary evidence of mental impairment available here is scant, incomplete, and inconsistent. At best, Complainant's medical record partially supports a claim that he experienced a Major Depressive Episode in July 2009. If he did, we do not know when it began or when it ended. The notes certainly do not support any finding of Major Depressive Disorder–Recurrent, as that diagnosis requires "two or more Major Depressive Episodes (each separated by at least 2 months in which criteria are not met for a Major Depressive Episode).[24] Additionally, although the July 2009 note identifies some symptoms consistent with Generalized Anxiety Disorder (GAD), it contains no reference to the essential time element. Consequently, the note is insufficient to corroborate a diagnosis of GAD at any time relevant to the charge.[25]

Conclusion

The Charging Party's assertion that Complainant suffered from Major Depressive Disorder and GAD when he sought an accommodation for Bebo is predicated entirely on the diagnoses of Dr. Fernandez. However, Dr. Fernandez' testimony is biased and unreliable. Moreover, by choosing not to keep written records, he has ensured that no other psychiatrist can corroborate (or refute) his diagnoses.[26] Accordingly, the Court concludes that the Charging

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[23] By comparison, the respondent's expert witness in Riverbay was deemed not credible because he never spoke to the complainant, the treating psychiatrist, or the complainant's wife, and so was unable to accurately assess the complainant's condition. The rebuttal expert here, Dr. Franceschini, did conduct a face-to-face interview with Complainant. However, Dr. Franceschini's testimony is insightful more for its prescient critiques of Dr. Fernandez than for his opinion on Complainant's current mental state. By all accounts Complainant no longer suffers from depression or anxiety. The Court finds Dr. Franceschini's critiques to be well-founded, credible, and persuasive.

[24] See note 14, *supra.*

[25] See note 15, *supra.*

[26] HUD argues that Dr. Unda's records provide the necessary corroboration. However, Dr. Unda is Complainant's primary care physician, not a psychiatrist. He therefore is not in a position to diagnose Complainant's mental condition. His medical opinion of Complainant's mental state during the operative period in 2010 is derived either from Dr. Fernandez' diagnosis or Complainant himself. In fact, the only evidence of Dr. Unda examining Complainant's mental health is a "Mini-Mental Evaluation" and follow-up report, both of which occurred in November 2012, after Complainant had already left Condominio Castillo. Although this document is somewhat useful in chronicling Complainant's mental state in 2012, it cannot speak to whether he had a mental impairment in 2010. This is the same temporal flaw, coupled with the lack of contemporaneous medical records, that renders Dr. Franceschini's 2013 assessment largely unhelpful. HUD also suggests the diagnosis from Complainant's psychiatrist in New York corroborates Dr. Fernandez' diagnosis. The Court disagrees. There is no direct evidence in the record of Dr. Renthrop's diagnosis. Moreover, Dr. Renthrop treated Complainant well over a decade before he acquired Bebo and requested an accommodation. She therefore provides no insight into Complainant's mental condition during the relevant time period.

Party has failed to prove by a preponderance of the evidence that Complainant suffered from a mental impairment warranting a companion animal as a reasonable accommodation.

As the Charging Party is unable to show that Complainant was disabled at the time he requested a reasonable accommodation, the Court need not address major life activities, the interactive process, or any other ensuing questions.[27] The Charging Party has not established that Complainant was disabled, and Respondents had no obligation to provide him a reasonable accommodation.

Accordingly, the Court decides that Respondents did not violate the Fair Housing Act when they denied Complainant's request to keep Bebo at his residence in Condominio Castillo.

So **ORDERED.**

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J. Jeremiah Mahoney
Chief Administrative Law Judge (Acting)

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.

[27] Even if a mental impairment had been demonstrated, Complainant admittedly refused a reasonable request to participate in the interactive process by meeting with the Conciliation Committee. The committee, chaired by a nurse and friend of Complainant, might well have discovered that the federal law prevails over condominium by-laws, and the Association was required to comply with the Fair Housing Act. Thus the committee might have recommended that the Association accommodate Complainant's request, whether or not warranted by his medical condition. Instead, Complainant rebuffed the interactive process and chose to move out of the building.