

**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, on behalf of)
XXXX,)
)
Charging Party,)
)
v.)
)
University of Nebraska at Kearney,)
Board of Regents of the University)
of Nebraska, Cheryl Bressington,)
Christy Horn, LeAnn Obrecht,)
Gail Zeller, and David L. Brandt)
)
Respondents.)
_____)

FHEO No.: 07-10-0930-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

Complainant XXXX, an aggrieved person, timely filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD) on or about September 29, 2010¹, as amended on or about August 2, 2011, and September 1, 2011, alleging Respondents University of Nebraska at Kearney, Board of Regents of the University of Nebraska, Cheryl Bressington, Christy Horn, Ph.D., LeAnn Obrecht, Ph.D., Gail Zeller, Ph.D., and David L. Brandt committed discriminatory housing practices on the basis of Complainant’s disability² in violation of Section 804(f) of the Fair Housing Act, as amended in 1988, 42 U.S.C. §§ 3601 et seq. (2011) (hereafter, the “FHA”).

The FHA authorizes the Secretary of HUD to issue a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated to the General Counsel, who has redelegated

¹ HUD referred the complaint to the Nebraska Equal Opportunity Commission (NEOC) for investigation on September 29, 2010. NEOC voluntarily waived the complaint back to HUD for investigation on October 1, 2010.

² This charge will use “disability” in place of “handicap,” the term which appears in the Fair Housing Act. The terms have the same legal meaning.

to the Regional Counsel, the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or his designee. 24 C.F.R. §§ 103.400(a)(2)(i) and 103.405 (2011); 76 Fed. Reg. 42463, 42465 (July 18, 2011).

By Determination of Reasonable Cause of September 30, 2011, the FHEO Region VII Director, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred based on disability and has authorized and directed the issuance of this Charge.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondents University of Nebraska at Kearney, Board of Regents of the University of Nebraska, Cheryl Bressington, Christy Horn, LeAnn Obrecht, Gail Zeller, and David Brandt, are charged with discriminating against the Complainant based on disability in violation of 42 U.S.C. § 3604(f) as follows:

A. Applicable Federal Law

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person. 42 U.S.C. § 3604(f)(2)(A); 24 C.F.R. § 100.202(b)(1).
2. It is unlawful to make an inquiry to determine whether an applicant for a dwelling, has a disability or to make inquiry as to the nature or severity of a disability of such a person, with limited exceptions, provided that the inquiry is made of all applicants, whether or not they have disabilities. 24 C.F.R. § 100.202(c).
3. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.
4. Pursuant to the FHA, "disability" means a physical or mental impairment which substantially limits one or more of a person's major life activities; a record of having such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.
5. Pursuant to the FHA, an "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20.
6. Pursuant to the FHA, "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

B. Factual Allegations

7. The subject property, University Heights Apartments, is a three building complex containing one bedroom and efficiency apartments, located at XXXX, in Kearney, Nebraska, approximately one mile north of the University of Nebraska at Kearney's campus.
8. Complainant XXXX resided in apartment XXXX at the subject property from approximately August 12, 2010 to October 1, 2010. Complainant's apartment is a "dwelling" within the meaning of 42 U.S.C. § 3602(b). The property is not exempt from the FHA.
9. Complainant XXXX was diagnosed with depression in 2008 and diagnosed with anxiety in June of 2009. Her anxiety substantially limits her major life activities of breathing and sleeping. Complainant has been prescribed various anti-anxiety medications and has a four pound miniature pinscher therapy animal named Butch that helps alleviate the symptoms of her disability. Complainant is disabled within the meaning of 42 U.S.C § 3602(h).
10. Respondent University of Nebraska at Kearney (UNK or University) is a four year university in the University of Nebraska system. Respondent Board of Regents operates and governs the University of Nebraska system. The subject property is owned by the Board of Regents and operated through UNK's Office of Residential and Greek Life as housing for nontraditional students over age 21 or students with families.
11. Respondent David L. Brandt is the Assistant Director of Academic Success at UNK and the Coordinator of Services for Students with Disabilities, and was the Complainant's main contact with the University. Respondent Gail Zeller, Ph.D., was the Interim Director of Academic Success at the time of the allegations, and was Respondent Brandt's immediate supervisor.
12. Respondent Cheryl Bressington, Ph.D., is the Director of Human Resources at UNK and the Coordinator of the University's ADA Committee.
13. Respondent Christy Horn, Ph.D., is the University of Nebraska's ADA/Section 504 Compliance Officer and the Director of the Accommodation Resource Center. Her office is located at the University of Nebraska at Lincoln.
14. Respondent LeAnn Obrecht, Ph.D., is UNK's Counseling and Health Care Director. She is the immediate supervisor of XXXX, a licensed counselor in UNK's Counseling and Health Care Center.
15. UNK's Residential and Greek Life Policies prohibit pets other than fish for students residing in UNK housing, but permit professional or graduate hall director staff members to have pets, including cats and dogs, in UNK housing.
16. Respondents have policies providing students and staff reasonable accommodations under

the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

17. In March of 2010, Complainant applied to attend UNK for the upcoming Fall 2010 semester.
18. On or about April 30, 2010, Complainant and her mother visited UNK for orientation and met with Respondent Brandt. They informed him that Complainant needed her dog to live with her in UNK housing due to her disabilities. Complainant completed UNK's Students with Disabilities Registration Agreement, registering herself as a student with the disabilities of depression and anxiety.
19. During the meeting, Respondent Brandt told Complainant she would need to provide documentation to have her dog live with her and provided Complainant with UNK's Psychological Documentation Guidelines (PDG). The PDG requires students requesting an accommodation to have their medical provider submit: (1) the professional qualifications of the evaluator; (2) documentation that the diagnosis is current; (3) a specific diagnosis based on Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) Criteria; (4) the treatment and prescribed medications of the student, including the date of last treatment and a schedule of the student's regular meetings with the provider; (5) a clinical summary of the student's limitations, including clear evidence that the student's symptoms are present in two or more settings; and (6) a specific recommendation and a rationale explaining each accommodation correlated to specific functional limitations.
20. The PDG requests detailed disability information that goes beyond what is needed to review a request for reasonable accommodation in housing under the FHA. The PDG improperly requests detailed information about the student's treatment, limitations and medications.
21. XXXX, Advanced Practice Registered Nurse (A.P.R.N.), Complainant's medical provider, who practices at XXXX Practice in Omaha, Nebraska, with XXXX, M.D. submitted a note dated August 10, 2010, to Respondent Brandt stating that Complainant was under her care for anxiety and that owning a "pet" was suggested as part of her therapy as it provided positive emotional benefits.
22. On or about August 12, 2010, Complainant moved into the subject property without her therapy dog, Butch.
23. On or about August 19, 2010, Respondent Brandt informed Complainant that XXXX' note was insufficient and she needed to submit additional information pursuant to UNK's PDG. He referred Complainant to UNK Counseling Care and suggested they could assist her in obtaining the documentation required by UNK.
24. On or about August, 20, 2010, Complainant contacted XXXX, informing her that her anxiety was out of control, causing her to miss class, that she needed a refill of her anti-anxiety medication and that she needed a different note supporting her need for Butch.

25. Immediately after receiving Complainant's call, XXXX contacted Respondent Brandt. He inquired whether Butch was trained and certified and informed her that only certified service animals were permitted in University housing. Respondent Brandt did not ask XXXX to confirm if Complainant was disabled or to provide a specific diagnosis.
26. On or about August 27, 2010, at Respondent Brandt's direction, Complainant met with UNK Counselor XXXX for a counseling session and signed a release for UNK Counseling and Health Care to obtain her medical records from XXXX' office. She also signed a release for Counseling and Health Care to disclose information about her to Respondent Brandt. On or about August 31, 2010, XXXX received Complainant's medical records from XXXX Practice.
27. On August 31, 2010, Complainant sent an email to Respondent Brandt inquiring as to what she needed to do next to have Butch reside with her. He responded, copying XXXX on the email, that if she submitted the necessary certification for her dog, it would not be a problem for her to have him.
28. On September 2, 2010, Complainant emailed her mother, pleading for her mother's help in obtaining approval for Butch to live with her and stating, "...I'm just @ the end of my wire. I am running on empty and along way to go. I can't focus and I'm about to snap. I'm a zombie and I have been feeling very depressd I csnt sleep...[sic]"
29. That morning, Complainant's mother contacted Respondent Brandt, who informed her that XXXX' note was not sufficient documentation of a service animal. The next day, Complainant submitted a written reasonable accommodation request, dated September 3, 2010, to Respondent Brandt stating Butch met the service animal requirements under the ADA.
30. On or about September 3, 2010, after consulting with his supervisor, Respondent Zeller, Respondent Brandt forwarded the August 10, 2010 note from XXXX regarding Complainant's request to Respondent Cheryl Bressington, who forwarded it to Respondent Christy Horn for review.
31. While living without her dog at the subject property, Complainant was unable to sleep for more than two hours a night, suffered from severe anxiety attacks, and spent hours on the phone with her mother almost every evening going through breathing techniques and thought control exercises in an attempt to manage her anxiety.
32. On or about September 7, 2010, Complainant brought Butch to her unit at the subject property because she felt she could not live there without him any longer. Her mother contacted Respondent Brandt to inquire as to the status of their request and inform him that her daughter had Butch with her.
33. In an email dated September 8, 2010, Respondent Horn advised Respondent Bressington to deny the Complainant's request. The email stated, "This is not a service animal, but rather a pet...unless this animal can be classified as a service animal, we are opening a big can of

worms. In essence, anyone can have their doctor say they are anxious and need to have their dog, cat, snake, monkey, etc.”

34. Respondent Bressington forwarded the email, along with a link to the U.S. Department of Justice’s website containing guidance on service animals under the ADA, to Respondent Brandt. Respondent Brandt forwarded it to Respondent Obrecht, informing her that based on the current documentation, Complainant’s request was being denied.
35. XXXX submitted a second letter, dated September 13, 2010, supporting Complainant’s reasonable accommodation request, stating that a dog “would be an excellent adjuvant therapy to her medications for anxiety treatment.” She provided herself as a point of contact if she could be of further assistance.
36. Respondent Brandt met with Respondent Obrecht later that day, who noted on XXXX’ second letter that it was not adequate. Respondent Obrecht asserts the letter was not adequate as it did not provide a specific DSM-IV diagnosis or reference a specific need for a service animal.
37. On or about September 15, 2010, Respondent Brandt informed Complainant in person and via email that she could not have Butch reside in her unit. He informed her she could stay in UNK housing without Butch, choosing to “go beyond what Butch is able to provide,” while utilizing UNK counseling services, or she could continue living with Butch off campus. He requested her decision by early the next week.
38. After this meeting, Complainant’s mother submitted her daughter’s final request for reasonable accommodation under the FHA, dated September 15, 2010, via facsimile to Respondent Brandt, asking that Complainant be allowed the accommodation of an assistance animal. She attached a copy of the Joint Statement of HUD and DOJ on Reasonable Accommodations under the FHA to the request.
39. In an email to Complainant dated September 17, 2010, Respondent Brandt again requested the information pursuant to UNK’s PDG, including verification of her specific diagnosis and treatment and medication information, asserting that he was sure XXXX would be glad to help Complainant obtain the information, but that she would need to sign a medical release for her to do so.
40. In an email to Complainant dated September 23, 2010, Respondent Bressington denied Complainant’s request, informing her that she could not continue to have Butch reside with her in UNK housing. She provided that UNK was not governed by HUD guidelines, but rather DOJ guidelines, included a portion of the DOJ ADA guidelines pertaining to service animals, and stated that if Complainant could submit documentation that the dog had been trained to provide assistance and documentation of what the assistance was from a doctor, they would reconsider.³

³ The investigation revealed, on or about October 11, 2010, Respondents similarly denied another student and resident at University Heights’ reasonable accommodation request for a therapy dog, despite receiving the information requested in UNK’s PDG.

41. As a result of the Respondents' denial of her reasonable accommodation request, on or about October 2, 2010, Complainant removed the majority of her things from the unit and left school, returning to her mother's home in Bellevue, Nebraska, approximately three hours from Kearney.
42. UNK records indicate that Complainant withdrew from all classes on October 14, 2010, and formally completed her move out from the subject property on October 29, 2010. Complainant made several trips back and forth to Kearney to complete this process.
43. When she left UNK, Complainant gave up her position on UNK's cheer squad and lost the opportunity to experience university housing and complete her academic goals. The negative experience drastically altered the direction of Complainant's life, and has caused her to doubt if she could ever again attend a traditional four year university.
44. Due to Respondents' denial of her reasonable accommodation request and repeated illegal inquiries related to her disability, Complainant suffered damages, including but not limited to physical and emotional distress, inconvenience, frustration, anxiety attacks, out of pocket expenses and economic loss. Complainant is an aggrieved person under 42 U.S.C. § 3602(i).

C. Fair Housing Act Violations

45. Respondents violated the FHA by discriminating against the Complainant on the basis of disability in the terms, conditions, or privileges of the rental of a dwelling, by refusing to make a reasonable accommodation to modify their no pet policy, when such accommodation was necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling. 42 U.S.C. §§ 3604(f)(2)(A) and (f)(3)(B); 24 C.F.R. §§ 100.202(b)(1) and 100.204.
46. Respondents violated the FHA by discriminating against the Complainant in the terms, conditions, or privileges of the rental of a dwelling, by illegally inquiring into the nature and severity of her disability, on April 30, 2010, August 19, 2010 and September 17, 2010, when the information sought exceeded what was necessary to evaluate Complainant's request for reasonable accommodation in a housing setting. 42 U.S.C. § 3604(f)(2)(A) and 24 C.F.R. § 100.202(c).

III. Conclusion

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

1. Declares that the discriminatory housing practices of the Respondents, as set forth above, violate the FHA, 42 U.S.C. §§ 3601 *et seq.*;

2. Enjoins Respondents, their agents, employees and successors, and all other persons in active concert or participation with them, from discriminating against any person based on disability in any aspect of occupancy, use or enjoyment of a dwelling;
3. Awards such damages as will fully compensate Complainant for her damages caused by Respondents' discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
4. Awards a \$16,000 civil penalty against Respondents for each violation of the Act that they are found to have committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671.

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

_____/s/_____
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_____/s/_____
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