UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY

The Secretary, United States Department of Housing and Urban Development, on behalf of Complainant Carlo Gimenez Bianco,	)	
Charging Party,	)	HUDALJ 12-M-034-FH-9
v.	)	August 15, 2014
Castillo Condominium Association and Carlos Toro Vizcarrondo,	)	
Respondents.	)	

For the Complainant: Jeanine Worden, Associate General Counsel for Fair Housing; Kathleen Pennington, Assistant General Counsel for Fair Housing Enforcement; Allen Levy, Deputy Assistant General Counsel for Fair Housing Enforcement; Amanda Korber, Trial Attorney, U.S. Department of Housing and Urban Development

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

ORDER ON SECRETARIAL REVIEW

On August 1, 2014, the Charging Party submitted a *Petition for Review* ("Petition"), appealing the July 17, 2014, Initial Decision and Order ("Initial Decision") issued by Acting Chief Administrative Law Judge ("ALJ") J. Jeremiah Mahoney. On August 8, 2014, the Respondent[1] submitted a reply to the Charging Party's Petition ("Respondent's Statement in Opposition to Petition"), asking the Secretary to affirm the ALJ's Initial Decision. In the Initial Decision, the ALJ held that Respondent did not violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, when it denied Complainant's request to keep his emotional support animal at his residence in Castillo Condominium. The ALJ held that the Charging Party failed to prove by a preponderance of the evidence that Complainant suffered from a mental impairment

[1] The Charging Party asks that the Secretary find that only Respondent Castillo Condominium Association violated the Act. The Charging Party does not ask the Secretary to find that Respondent Vizcarrondo violated the Act. Therefore, "Respondent" is used herein in place of "Respondents."

warranting an emotional support animal as a reasonable accommodation. In its Petition, the Charging Party argues that Respondent (1) violated 42 U.S.C. § 3604(f)(1) by making housing unavailable because of a disability; and (2) violated 42 U.S.C. § 3604(f)(2) by refusing to make a reasonable accommodation to the Respondent's bylaws that prohibited pets. The Charging Party requests that the Secretary vacate the Initial Decision in its entirety and remand the case to the ALJ for a determination of damages.

Upon review of the entire record in this proceeding, including the briefs filed with the Secretary, the Charging Party's Petition is GRANTED for the reasons set forth below. Pursuant to 24 C.F.R. § 180.675(a), the ALJ's July 17, 2014, Initial Decision and Order is SET ASIDE. In accordance with 24 C.F.R. §§ 180.675(a) and 180.675(b)(3) and 42 U.S.C. § 3604(f)(1)-(2), this proceeding is REMANDED to the ALJ to issue an initial decision on the question of damages and an appropriate civil penalty based on the existing administrative record and this ORDER.

BACKGROUND

On March 29, 2012, the Charging Party filed a Charge of Discrimination ("Charge") on behalf of Carlo Gimenez Bianco ("Complainant") alleging that Castillo Condominium Association and Carlos Toro Vizcarrondo violated the Fair Housing Act ("Act"), as amended 42 U.S.C. §§ 3601 *et seq.*, by discriminating against Complainant on the basis of his disability[2] by denying him a reasonable accommodation and making housing unavailable in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(2). Specifically, the Charging Party alleged that Respondent unlawfully denied Complainant's request for a reasonable accommodation to Castillo Condominium's no-pet policy in order to keep his dog, Bebo, as an emotional support animal. On May 30, 2012, Respondent filed its Answer to the Charge. The hearing was held on August 6-9, 2013, and an Order was issued on November 29, 2013. Post-hearing briefs were submitted on January 14, 2014, and reply briefs were submitted on February 7, 2014.

On July 17, 2014, the ALJ issued an Initial Decision. The ALJ found that the Charging Party failed to prove by a preponderance of the evidence that Complainant suffered from a mental impairment when he sought the accommodation to keep Bebo as an emotional support animal. *See* Initial Decision at 11. In making this determination, the ALJ reasoned that Complainant's psychiatrist, Dr. Fernandez, was the best individual to determine whether Complainant's mental health problems rose to the level of a 'mental impairment' as required by the Act because Dr. Fernandez had been Complainant's psychiatrist for approximately 16 years and held therapy sessions with Complainant 10-15 times per year. *See id.* However, the ALJ found that the Court could not reasonably rely on Dr. Fernandez's testimony because (1) his friendship with Complainant tainted his objectivity; (2) his lack of documentation describing Complainant's psychiatric condition or treatment showed that his primary motivation was not to treat a patient, but to help a friend; and (3) his failure to charge Complainant or Complainant's insurance company removed the doctor-patient relationship. *See id.* at 12-17. As a result, the ALJ found that the Charging Party failed to prove by a preponderance of the evidence that

[2] The term "disability" is used herein in place of, and has the same meaning as, the term "handicap" in the Act and its implementing regulations. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of "handicap" contained in the Fair Housing Amendments Act of 1988"). The term "disability" is more generally accepted.

Complainant suffered from a mental impairment warranting an emotional support animal as a reasonable accommodation. *See id.* at 17-18. Additionally, the ALJ concluded that even if a mental impairment had been demonstrated, Complainant refused to participate in the interactive process with the Respondent. *Id.*

DISCUSSION

I. The ALJ's Holding that Complainant Did Not Have a Disability Is Erroneous.

The Charging Party appeals the ALJ's holding that Respondent did not have a disability that is cognizant under the Act. The Charging Party argues that the ALJ ignored Complainant's testimony about his depression and anxiety; discredited the testimony of Complainant's psychiatrist; and discredited the testimony of Complainant's primary care physician.

The Act was implemented to protect individuals from discrimination, including those with disabilities, who apply for or reside in private or public housing. Pursuant to the Act, disability means a physical or mental impairment which substantially limits one or more of a person's major life activities. 42 U.S.C. § 3602(h). A mental impairment includes emotional or mental illness. 24 C.F.R. § 100.201. Courts have long recognized that depression and anxiety are legitimate mental impairments for both the Act and the American with Disabilities Act ("ADA"). *See 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). The term "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 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); *see also LaBella v. New York City Admin. For Children' Serv.*, 2005 U.S. Dist. LEXIS 18271 (E.D.N.Y. 2005) (ability to care for one's self, to interact with others, to concentrate and to sleep are major life activities); *see also HUD v. Riverbay Corp.*, 2012 HUD ALJ LEXIS 15, at *33, 36 (noting that inability to interact with others is substantially limited if that person's mental impairment "limits the fundamental ability to communicate with others," and that Complainant had chronic insomnia that substantially limited his ability to sleep). After review of the Petition and the record, the Secretary finds that the Charging Party proved that Complainant had a disability and the ALJ erred in ignoring Complainant's testimony and discrediting the testimony of both Dr. Fernandez and Dr. Unda.

A. The ALJ Erroneously Ignored Complainant's Testimony that He Had a Disability.

The Charging Party argues that the ALJ erred in ignoring Complainant's testimony regarding his disability. Depending on the individual's circumstances, information verifying that a person meets the Act's definition of disability can usually be provided by the individual himself. *See 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://hud.gov/offices/fheo/library/huddojstatement.pdf. at 13; *see also*

Powers v. Kalamazoo Breakthrough Consumer Hous Coop., 2009 U.S. Dist. LEXIS 81728, at *17, n.2 (W.D. Mich. 2009) (while medical testimony may be helpful to establish whether one cannot perform a major life activity, a plaintiff's testimony alone may establish a genuine issue of material fact on the issue); *see also Clark v. Whirlpool Corp.*, 109 Fed. Appx. 750, 754 (6th Cir.2004) (under state statute analogous to ADA, "plaintiff's subjective complaints of disabling pain may be sufficient to prove that she was 'handicapped,' as that term is defined in the statute; there is no requirement that the plaintiff bolster that testimony with corroborating medical evidence"). In this case, Complainant has provided sufficient testimony of his 50-year history of suffering from depression and anxiety to support the conclusion that Complainant suffers from a mental impairment.

During the hearing, Complainant testified that he has experienced bouts of depression and anxiety throughout his life. [Tr.[3] at 24-20-21; Tr. at 26-29; Tr. at 37-38; Tr. at 45, 15-20, Tr. a 47, 18-21]. Complainant's first episodes of anxiety and depression occurred as a child when his uncle, and then his grandfather, passed away. [Tr. at 26-27]. As an adult, Complainant fell into a deep depression in 1994 when his long-time partner [of 30 years], Tony, passed away. [Tr. at 28, 10-22; Tr. at 29, 1-8]. During this period of time, Complainant testified that he "withdrew again immediately [and] couldn't sleep." [Tr. at 28, 20-22]. He sought therapy twice a week from a psychoanalyst who prescribed Klonopin[4] and perhaps Ativan. [Tr. at 34, 18-22; Tr. at 35, 1-2, 5-9, 13-14; Tr at 37, 13-15]. Also around this time period, Complainant had a dog named Rhettskie. Complainant testified that Rhettskie was very helpful to him because he had to take him out and take care of him and this forced him to speak to and socialize with people. [Tr. at 33, 1-9].

Another bout of depression occurred in 1997. [Tr. at 28, 4-8, 18-22]. During this time, Complainant testified that he was severely depressed to the point where he did not want to eat or go out and sought medical attention from a psychiatrist, Dr. Pedro Fernandez. *Id.* Dr. Fernandez prescribed him Klonopin and subsequently Prozac. [Tr. at 41, 11-13, 17-19; Tr. at 243, 19-22; Tr. at 286, 5-11]. Prior to starting the Prozac regimen, Complainant testified that he was crying all the time and that the Prozac helped him stop crying. [Tr. at 25, 12; Tr. at 41, 8-10]. Since then, Dr. Fernandez continued treating Complainant with medication and psychotherapy. [Tr. at 39, 16-21; Tr. at 225, 19-22; Tr. at 226, 1; Tr. at 40, 3-4; Tr. at 41, 11-13, 17-19; Tr. at 243, 2-5; Tr. at 251, 4-5].

Complainant testified that sometime in 2009, he started having problems with the president of the board at his condominium. [Tr. at 45, 22; 45, 1-21]. He stated that these problems made him feel depressed again. [Tr. at 48, 20-21]. Complainant testified that his condition would cause him to withdraw and experience loss of appetite and sleeplessness. Complainant also stated that he was afraid to go out and to open his door. [Tr. at 49, 21-22; 50, 1-10]. After speaking with Dr. Fernandez about this situation, [Dr. Fernandez] insisted that Complainant get a dog. [Tr. at 48, 6-7]. Complainant testified that Dr. Fernandez also

[3] "Tr." refers to Trial Transcript.

[4] Klonopin is used to treat panic attack disorders and Avitan is used for short-term relief of the symptoms of anxiety or anxiety associated depressive symptoms *See* PDR.net, available at: http://pdr.net/drug-summary/klonopin?druglabelid=3064 and http://pdr.net/drug-summary/ativan-tablets?druglabel=2135&id=1548.

prescribed him Prozac. [Tr. at 48, 8-18].

The ALJ completely ignored Complainant's testimony even though case law supports the idea that an individual can provide sufficient evidence himself that he meets the definition of disabled under the Act. Complainant has done that here. He has described in detail his bouts with depression over a 50 year timeframe, including during 2009, and the substantial limitations it has had on his ability to sleep, eat and interact with others. Therefore, the Secretary finds that the ALJ erred in ignoring Complainant's testimony regarding his mental impairment.

B. The ALJ Erred in Discrediting Dr. Fernandez's Testimony that Complainant had a Disability.

The Charging Party asserts that the ALJ erroneously discredited the testimony of Dr. Fernandez. The ALJ concluded that Dr. Fernandez's testimony was biased and unreliable because he was close friends with Complainant; he failed to maintain a written record of treatment; and he failed to charge Complainant or Complainant's insurance for his services. Respondent also believes that Dr. Fernandez should be disqualified as a reliable witness for the same reasons. *See* Respondent's Statement in Opposition to Petition at 9. The HUD-DOJ Joint Statement states that a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. *See Joint Statement* at 13-14. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry. *Id.* at 14.

In this case, Dr. Fernandez presented sufficient testimony regarding Complainant's medical impairment. Dr. Fernandez is an experienced psychiatrist who has treated thousands patients for almost 20 years. For 16 years, Dr. Fernandez saw Complainant 10-15 times a year, noting that at times Complainant experienced severe episodes of depression. *See supra*; *see also* [Tr. at 279, 4-10; Tr. at 280, 5-6, 14-15]. Dr. Fernandez has been treating Complainant for anxiety and depression and has diagnosed Complainant with Major Depressive Disorder Recurrent ("MDD") and Generalized Anxiety Disorder, which Complainant has had for many years. [Tr. Ex.[5] 19 at 4 (psychiatric report); Tr. at 121, 22; Tr. at 269, 20-22; Tr. at 270, 1-4, 7-8, 11-12, 17-22; Tr. at 271, 1-13]. Furthermore, although Respondent attempts to discredit Dr. Fernandez's testimony and records through its expert witness, Dr. Franceschini, Dr. Franceschini testified that based upon Dr. Fernandez's July 29, 2009 note, Complainant "could have been having major depression at that time...According to that note." [6] [Tr. at 1241, 12-14].

According to Dr. Fernandez, in 2009 Complainant's depression worsened. Dr. Fernandez testified that Complainant was having problems at Respondent's condominium. [Tr. at 247, 18]. Dr. Fernandez testified that during a July 29, 2009, therapy session Complainant was feeling overwhelmed and was developing symptoms of anxiety and depression that met the criteria of

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[5] "Tr. Ex." refers to Trial Exhibits.

[6] Respondent contends, albeit erroneously, that because Complainant completed high school and graduate studies; maintained a relationship with his male partner; purchased a home; and traveled frequently, that Complainant does "not suffer from major depression" and that "he is not handicapped." However, case law contradicts this type of conclusory statement about a mentally disabled person. *See Smith v. Powdrill*, 2013 U.S. Dist. LEXIS 154485 (C.D. Cal. (2013) (holding that to claim a mental disability plaintiff is not required to assert that her mental disability renders her incapable of carrying out some productive activity.) Complainant need not require hospitalization to be considered a disabled person under the Act, contrary to Respondent's claims.

full depressive episode and anxiety. [Tr. at 247, 19-22]. Complainant was extremely anxious and afraid to go out. [Tr. at 248, 10, 13-14]. Dr. Fernandez described Complainant as "anhedonic[7]." [Tr. at 248, 15-22]. Dr. Fernandez specifically noted that Complainant was feeling unprotected, lonely. [Tr. at 250, 5-6]. Dr. Fernandez noted that Complainant was "lying on the couch doing nothing," and "in his apartment all the time, not going out, not talking to anyone, no [sic] socializing with friends." [Tr. at 259, 2-4; Tr. at 316, 17-21]. Complainant had psychomotor retardation; problems sleeping; feelings of worthlessness and helplessness; and decreased energy level and appetite. [Tr. at 250, 7-10].

Although the evidence shows that the Complainant and Dr. Fernandez are personal friends, the Secretary believes the ALJ erred in dismissing Dr. Fernandez's testimony because of this friendship. The law is clear that verification of a person's disability can come from a reliable third party who is in a position to know about the individual's disability. Therefore, Dr. Fernandez's testimony cannot be discredited just because of his friendship with Complainant. Regardless of whether he is considered a friend or a psychiatrist, Dr. Fernandez is in a position to know about Complainant's disability. He has known and treated Complainant for over 16 years. Additionally, there is overwhelming evidence that Dr. Fernandez was not trying to help Complainant evade the condominium's no-pet policy because Dr. Fernandez first spoke with Complainant about getting a dog in the fall of 2009, which was well before Complainant knew about the no-pet policy. Additionally, there is no case law to suggest that written documentation of a diagnosis is required to obtain protection under the Act. Therefore, Dr. Fernandez's complete written record of treatment sessions is not required to seek protection under the Act.

The ALJ further discredits Dr. Fernandez's testimony because he failed to charge Complainant for his services. The ALJ held that this failure implies that "this is not a doctor-patient relationship in any conventional sense," and that "the only plausible inference is that Dr. Fernandez simply does not want to take money from his friend." *See* Initial Decision at 15-16. The Secretary does not agree. To rely on this argument would mean that persons who are treated by a physician who does not charge for charitable or benevolent reasons or persons treated at free clinics could never establish that they have a disability. *See Jones v. Orleans Parish School Bd.*, 370 So. 2d 677, 679 (La. App. 1979) (finding for plaintiff in a personal injury case based on the testimony of doctors who treated him at a free clinic).

Based on the foregoing, the Secretary finds that Dr. Fernandez's testimony cannot be discredited for the reasons stated by ALJ. Dr. Fernandez has provided ample evidence to establish that Complainant has a mental disability.

C. The ALJ Erroneously Discredited Dr. Unda's Testimony that Complainant had a Disability.

The Charging Party also argues that the ALJ erroneously dismissed Dr. Unda's testimony because he was a primary care physician, not a psychiatrist, and therefore was not in a position to diagnose Complainant's mental condition. It is important to note that case law does not support the ALJ's argument. Courts have found that a primary care physician has the expertise to

[7] Anhedonic is a psychiatric term for an emotional state in which the person no longer has the capacity to enjoy pleasure in activities. [Tr. at 249, 4-7].

diagnose mental impairments. *See Mass. Comm. Disc. & Richard Blake v. Bright Garden Apartments*, 33 MDLR 48 at *50-51 (Mass. Comm. Disc. Mar. 28, 2011) (finding that complainant's primary care physician established that complainant had depression, which caused him to withdraw socially); *see also California Fair Emp't and Hous. Comm'n v. Kumar*, 2012 CAFEHC LEXIS 10, at *4, 6, 15 (CCa. Fair Emp't and Hous. Comm'n Nov. 13, 2013) (complainant's primary care physician stated that [his] severe pain and medical problems have caused [him] mental distress and much depression).

Here, Dr. Unda, Complainant's primary care physician since 2009, is a licensed, practicing medical doctor. He has treated patients that have had physical and mental impairments for over 10 years. Accordingly, there is nothing in the evidence to question his professional diagnoses of Complainant's mental condition. At relevant times in this case, Dr. Unda provided ample evidence that Complainant suffered a mental impairment, testifying that Complainant suffered from chronic depression and anxiety disorder and had been receiving long-term care with antidepressants. [Tr. at 461, 10-16; Tr. at 465, 1-3]. Requiring individuals to obtain treatment from a psychiatrist for mental health issues would prevent those who cannot afford such treatment from receiving protection under the Act. Additionally, Dr. Unda's testimony is consistent with Dr. Fernandez's testimony, as well as Complainant's testimony. Therefore, Dr. Unda's testimony should not be discredited because he provides sufficient evidence to prove that Complainant has a disability.

The Secretary finds that the Complainant, Dr. Fernandez, and Dr. Unda have provided sufficient evidence of a mental disability. Therefore, the Secretary finds that the Charging Party has proved by a preponderance of evidence that Complainant is disabled as defined by the Act.

II. The ALJ's Holding that Respondent Did Not Violate 42 U.S.C. § 3604(f)(1)-(2) of the Fair Housing Act is Erroneous.

The Charging Party appeals the ALJ's holding that Respondent did not violate §§ 3604(f)(1) and (2) of the Fair Housing Act when it refused to make a reasonable accommodation. *See* Petition at 3, 36-39. Section 3604(f)(1) makes it unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter. 42 U.S.C. § 3604(f)(1). Section 3604(f)(2) makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision or facilities in connection with such a dwelling because of a disability of that person. 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). 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. *See HUD v. Riverbay Corp.*, 2012 HUD ALJ Lexis 15, at *5 (HUD ALJ May 7, 2012); *see also Lapid-Laurel, LLC. v. Zoning Board of Adjustment to Tp. Scotch Plains*, 284 F.3d 442, 459 (3d Cir. 2002).

In order to prove a prima facie case for a failure to provide a reasonable accommodation, the Charging Party must show that (1) Complainant is a person with a disability as defined by the

Act; (2) Respondent knew or reasonably should have known that Complainant is a person with a disability, (3) Complainant's emotional support animal may be necessary to afford Complainant an equal opportunity to use and enjoy his dwelling; and (4) Respondent refused Complainant's reasonable accommodation request. *See e.g. McGary v. City of Portland*, 386 F.3d 1259, 1262 (9th Cir. 2004); *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003); *Bentley v. Peace and Quiet Realty 2, LLC*, 367 F. Supp. 341, 345 (E.D.N.Y. 2005). Based on the discussion above, the Secretary has found that the Charging Party has already proved that Complainant is disabled because he suffers from depression and anxiety.[8] Based on a review of the Petition and the record, the Secretary finds that the Charging Party proved the remaining elements.

A. The Charging Party Proved that Respondent Knew or Should Have Known of Complainant's Disability.

After the Charging Party has established that Complainant is disabled under the Act, the Charging Party must thereafter demonstrate that Respondent knew of the disability or was reasonably expected to know of it. *See Riverbay Corp.*, 2012 HUD ALJ Lexis 15, at *40, *see also Peace & Quiet Realty*, 367 F. Supp. 2d at 345, *Taylor v. Harbour Pointe Homeowners Ass'n*, 2011 WL 673903 (W.D.N.Y. 2011). Here, the record is clear that Respondent knew or should have known of Complainant's disability. On April 12, 2010, Respondent notified Complainant that he was in violation of the condominium's no-pet policy. [Jt. Ex. 1]. On April 21, 2010, Dr. Unda sent a letter to Respondent that stated that Bebo represented "a very important sentimental bond that is very important for [Complainant's] emotional health." [Tr. Ex. 7]. Then on April 24, 2010, Complainant followed up with a personal letter to Respondent asserting that he was "legally entitled to a companion animal" as per Federal Statutes. [Jt. Ex. 2a]. Complainant also attached a letter from Dr. Fernandez that explained that Complainant had "certain limitations such as coping with stress and anxiety", and met the definition of a disability under the 'Americans with Disabilities Act,' 'Fair Housing Act,' and the 'Rehabilitation Act of 1973'. *See* Jt. Ex. 2b. Based on this evidence, the Secretary finds that Respondent knew or should have known of Complainant's disability.

B. The Charging Party Proved that Complainant Requested a Necessary Reasonable Accommodation that Respondent Denied.

The Charging Party also proved that Complainant made a reasonable accommodation request. *See* Petition at 37. Under the Act, a resident makes a reasonable accommodation request whenever [he] makes it clear to the housing provider that [he] is requesting an exception, change or adjustment to a rule, policy, practice, or service because of [his] disability. *See Joint Statement* at 10. [The resident] should explain what type of accommodation [he] is requesting and, if the need for the accommodation is not readily apparent or known to the provider, then explain the relationship between the requested accommodation and [his] disability. *Id.* The Act does not require that a request be made in a particular manner or at a particular time, and does not require that the person with a disability personally make the reasonable accommodation request. *Id.* The request can be made by a family member or someone else who is acting on [his] behalf. *Id.* Furthermore, an individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." *Id.*; *see also HUD v.*

[8] *See supra* Section I.

Astralis Condo. Ass'n, 2009 WL 6869727 at *16 ("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."). However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. *Id.*

In this case, the record reflects that Complainant and his doctors sent letters to Respondent in support of a reasonable accommodation request. First, Dr. Unda's letter explained that Bebo was needed for Complainant's emotional health and urged Respondent to have a "reasonable dialog" with Complainant to come to an agreement about the no-pet policy. [Tr. Ex. 7]. Second, Complainant's letter specifically mentioned that he was entitled to keep his "companion animal" as per "Federal statutes". [Jt. Ex. 2a]. Lastly, Dr. Fernandez's letter explained Complainant's disability and his need for the accommodation in more detail. [Jt. Ex. 2b]. He specifically stated that in order "to enhance [Complainant's] ability to live independently and fully use and enjoy the dwelling unit he owns, I am recommending and prescribing an emotional support animal that will assist him in coping with his disability." [Jt. Ex. 2b]. These three letters combined are more than sufficient evidence that Complainant requested a reasonable accommodation to the condominium's no-pet policy. Therefore, the Secretary finds that Charging Party established that Complainant made a request for a reasonable accommodation.

i. The Charging Party Proved Complainant's Request for a Reasonable Accommodation was Necessary.

After establishing that Complainant is disabled and Respondent knew or reasonably should have known of Complainant's disability, the Charging Party must demonstrate that Complainant's reasonable accommodation request was necessary. *See Riverbay*, 2012 HUD ALJ Lexis 15, at *51, *see also Peace and Quiet Realty*, 367 F. Supp. 2d at 345. The Act 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." *See Riverbay*, 2012 HUD ALJ Lexis 15, at *51-52. 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. *See id.* at *52; *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." *See 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)). The ALJ concluded that Complainant's need for an emotional support animal was not "medically necessary" because there was no evidence that an emotional support animal was ever prescribed and that Bebo's presence served as necessary when convenient for Complainant. *See* Initial Decision at 16.

Courts have found that emotional support animals are necessary reasonable accommodations for residents with a number of different mental impairments, including depression and anxiety. *See 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.); *Bhogaita v. Aktamonte Heights Condo Ass'n*, 2012 U.S. Dist. Lexis 296, at *11 (M.D. Fla. Jan. 3, 2012) (finding that a housing provider impermissibly denied plaintiff's request for a support animal to help him cope with his mental disabilities); *Riverbay Corp.*, 2012 HUD ALJ Lexis 15, at *54, 58 (finding that respondents violated the Act by denying complainant's request to keep a dog that helps him alleviate his depression); *HUD v. Dutra*, 1996 HUD ALJ Lexis 55, at *22 (HUD ALJ Nov. 12, 1996) (landlord violated the Act by refusing to allow a resident with fibromyalgia and anxiety to keep a cat from which "[c]omplainant derived a therapeutic benefit.") The Secretary finds that the ALJ's conclusion that the reasonable accommodation was not necessary is inconsistent with legal precedent because the Charging Party was only required to establish that Complainant's emotional support animal enhanced his quality of life, and not that Bebo had to be with Complainant at all times.

In this case, Complainant was diagnosed with Major Depressive Disorder Recurrent and Generalized Anxiety Disorder, which substantially limits his ability to interact with others, sleep, care for himself, and enjoy pleasure in activities. [Tr. Ex. 19 at 4; Tr. at 259, 24; Tr. at 39, 4, 6; Tr. at 49, 21-22; Tr. at 50, 2; Tr. at 248, 18-20; Tr. at 249, 4-10; Tr. at 271, 7-9]. In 2009, Dr. Fernandez noted that Complainant was "lying on the couch doing nothing," and "in his apartment all the time, not going out, not talking to anyone, no socializing with friends." [Tr. at 259, 2-4; Tr. at 316, 17-21]. Dr. Fernandez testified that Complainant's symptoms were severe, but was limited in the medication he could prescribe Complainant due to side effects with medications he took for physical ailments. [Tr. at 251, 4-10; Tr. at 286, 5-11; Tr. at 317, 6-8, 10-16]. Thus, according to Dr. Fernandez's testimony, he and Complainant discussed the benefit of an emotional support animal.[9] [Tr. 43, 21-22; Tr. at 253, 14-18; Tr. at 254, 16-18; Tr. at 258, 1-6]. As a result, in September or October of 2009, he recommended that Complainant get a dog "to force him to get out of bed to take care of his pet." [Tr. at 44, 1-12; Tr. at 48, 6-7; Tr. at 254, 17-18; Tr. at 288, 11-13; Tr. at 316, 22; Tr. at 317, 1-5]. Subsequently, in or about December of 2009, Complainant received Bebo, a 14-pound Pug, from a friend. [Tr. at 50, 12; Tr. at 52, 16-17, 19-21; Tr. 61, 19-20; Tr. Ex. 3].

The record shows that Bebo improved many of the effects of Complainant's disability. Dr. Fernandez observed that Bebo had a positive effect on Complainant because Complainant's focus was on Bebo rather than his disability. [Tr. 53, 9-11]. For instance, Complainant had to leave his home to go to the dog park where Complainant interacted with people. [Tr. 53, 12-19; Tr. 259, 7-9]. Dr. Fernandez also testified that the positive results followed by Complainant's use of his emotional support animal were consistent with what was described in the medical literature. [Tr. Ex. 4; Tr. 259, 16-22; Tr. 260, 1-6]. Dr. Fernandez observed that once Complainant received Respondent's letter that denied his request for an accommodation, Complainant "got more depressed, more anxious because [Respondent] was asking him to get rid of his animal." [Tr. at 272, 10-12].

Similarly, Dr. Unda observed that Bebo had a positive impact on Complainant. Dr Unda testified that Bebo "represented a therapeutical instrument" because "a lonely man would be able

[9] During these conversations, Dr. Fernandez and Complainant discussed how Complainant's old dog, Rhettskie, had positive impacts on his emotional health when his long-time partner died. [Tr. at 253, 14-18]. They also discussed Complainant having pet birds when he lived in Tunisia because he was "very very depressed and those birds were his companions" and would wake him up in the morning and he had to feed them. [Tr. at 253, 1-5].

to have company and serve as a bond for him and a way to relieve his anxiety." [Tr. at 469, 15-18]. Dr. Unda also testified that "there is no doubt" that Bebo was important for Complainant's mental health; and that it was his "medical impression that removal of Bebo from Complainant's home would have had a detrimental effect both on his physical and mental state." [Tr. at 469, 19-22; Tr. at 479, 1-8].

Finally, Complainant testified that Bebo helped his depression because he had to "mind him, walk him, feed him, bathe him, especially getting out of the house at the times when [he] was afraid to even open [his] door." [Tr. at 53, 9-14]. Complainant added that if forced to remove Bebo from his home, then he "would have ended up in the hospital with a real nervous breakdown or depression untreatable outside the hospital." [Tr. at 54, 12-15]. Therefore, it is clear that Bebo improved Complainant's quality of life and was needed for Complainant's emotional stability. Accordingly, the Secretary finds that Bebo was a necessary reasonable accommodation.

ii. The Charging Party Proved that Respondent Denied the Reasonable Accommodation Request and Failed to Engage in the Interactive Process.

Upon receiving a reasonable accommodation request, a housing provider is obligated to engage in an "interactive process" to resolve any questions raised by the request. *See Joint Statement* at 7, *Riverbay Corp.*, 2012 HUD ALJ Lexis 15, at *40-41; *see also 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 Indus.*, 204 F.3d 326, 338 (2d Cir. 2000). During an interactive process, the housing provider and requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations to ensure that the accommodation does not pose an undue financial and administrative burden for the provider. *See* Joint Statement at 7. "If a housing provider is skeptical of a tenant's alleged disability . . . it is incumbent upon the housing provider to request documentation or open a dialogue." *See Jankowski Lee & Assocs. v. Cisnero*, 91 F.3d 891,895 (7th Cir. 1996); *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187, 192 (S.D.N.Y. 1998) (finding that defendants failed to open a dialogue with plaintiff to seek additional information regarding her need for the requested accommodation); *Auburn Woods I Homeowner's Ass'n v. Fair Employment and Hous. Comm'n*, 121 Cal. App.4th 1578, 1598 (2004) (condominium association could not base denial of reasonable accommodation on lack of information regarding plaintiff's medical condition when it had not requested additional information.). 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. *See Riverbay*, 2010 HUD ALJ Lexis 15, at *45. The Charging Party argues that the ALJ erred when concluding that Complainant failed to participate in the interactive process with Respondent. *See* Petition at 33. The Secretary agrees with the Charging Party.

In this case, Complainant's treating physicians sent letters to Respondent explaining Complainant's disability and his need for a reasonable accommodation. [Tr. Ex. 7, Jt. Ex. 2b]. Furthermore, each letter contained the doctor's contact information. At this point, Respondents were required to engage in an interactive process to resolve Complainant's request if they had questions about his disability or the need for the requested accommodation. However, the record

establishes that Respondent ignored this requirement, and failed to make a good faith effort to gather additional information regarding Complainant's request. *See* Initial Decision at 7. Instead, Respondent disregarded the doctors' recommendations, ignored the Complainant, and voted to deny Complainant's accommodation request without gathering additional information regarding Complainant's disability. [Jt. Ex. 3].

Furthermore, the record establishes that Respondent did not meet with Complainant prior to its decision to deny Complainant's request. On May 18, 2010, Ms. Rosado, a board member and friend of Complainant, was assigned to arrange a meeting with Complainant. [Tr. 959-960]. Ms. Rosado testified that she contacted Complainant simply to give him a chance to vent, as well as to inform him that Respondent was enforcing condominium's bylaws, that everyone has to abide by them, and that Respondent's decision to deny the request was not personal. [Tr. at 937, 7-22; Tr. 938, 1-2]. In no way do these facts suggest that Respondent was making an attempt to open a dialogue or that there was a good faith effort to resolve Complainant's request. Instead, it is clear that Respondent had already made a final decision and that Complainant's request was denied. Thus, the ALJ's conclusion that Complainant refused to participate in the interactive process is mistaken because it was the Respondent that failed to meet its obligation to engage in an interactive process to resolve Complainant's request. Therefore, the Secretary finds Respondent failed to engage in the interactive process in good faith.

Because of the failure to grant the request for reasonable accommodation, the Complainant was forced to move out of his property in Castillo Condominium in order to keep Bebo, thus making housing unavailable. Therefore, the Secretary concludes that the Charging Party offered evidence sufficient to prove that Respondent violated § 3604(f)(1) by making housing unavailable because of a disability, and § 3604(f)(2) by refusing to provide a reasonable accommodation to its bylaws that prohibited pets as required by section 3604(f)(3)(B).

CONCLUSION

Upon review of the entire record in this proceeding, including the briefs filed with the Secretary, the Charging Party's Petition is GRANTED for the reasons set forth above. Pursuant to 24 C.F.R. § 180.675(a), the ALJ's July 17, 2014, Initial Decision and Order is SET ASIDE. In accordance with 24 C.F.R. §§ 180.675(a) & 180.675(b)(3) and 42 U.S.C. § 3604(f)(1)-(2), this proceeding is REMANDED to the ALJ to issue an initial decision on the question of damages and an appropriate civil penalty based on the existing administrative record and this ORDER.

IT IS SO ORDERED.

Dated this 14 day of August, 2014

Nealin Parker
Secretarial Designee