

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

Complainant _____

Charging Party,

v.

Friedman Residence, LLC, Common Ground
Management Corporation, and The Actors'
Fund of America,

Respondents.

ALJ No.: _____

FHEO No. 02-13-0448-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about June 19, 2013, Complainant _____ filed a complaint with the United States Department of Housing and Urban Development (“HUD”) alleging that Respondent Friedman Residence, LLC and Richard Pimentel, an employee of Common Ground Management Corporation (“Common Ground”), violated the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601-19 (“the Act”), based on disability¹ by failing to grant him a reasonable accommodation. On July 24, 2015, Complainant amended the Complaint to add Respondents Common Ground and The Actors’ Fund of America (“Actors’ Fund”), and to remove Richard Pimentel as a respondent.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons 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 (24 C.F.R. §§ 103.400 and 103.405), who has re-delegated to the Regional Counsel the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011).

¹ The Fair Housing Act uses the terms “handicap,” whereas this document uses the term “disability.” Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1988).

The Regional Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

II. SUMMARY AND FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD’s investigation of Complainant’s allegations of disability discrimination contained in the aforementioned HUD Amended Complaint and the Determination of Reasonable Cause, Respondents Friedman Residence, LLC, Common Ground and Actors’ Fund are hereby charged with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate in the rental, or to otherwise make unavailable or deny, a dwelling to any renter because of a disability of that renter. 42 U.S.C. §§ 3604(f)(1)(A); 24 C.F.R. § 100.202(a).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of 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).
3. Discrimination under 42 U.S.C. § 3604(f)(1)-(f)(2) includes the refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.
4. The Act defines a “handicap” as a “physical or mental impairment which substantially limits one or more . . . major life activities.” 42 U.S.C. § 3602(h)(1); 24 C.F.R. § 100.201.

B. PARTIES AND SUBJECT PROPERTY

1. Complainant is a person with a psychiatric disability that substantially limits one or more of his major life activities. Complainant is and, at all times relevant to the Charge, has been an individual with a disability, as defined by the Act. 42 U.S.C. § 3602(h).
2. Complainant is an aggrieved person as defined by the Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of Respondents’ conduct.
3. At all times relevant to the allegations described in this Charge, Complainant resided in a two-bedroom apartment at The Dorothy Ross Friedman Residence, which is located at [REDACTED] Street, New York, New York (the “subject property”). The subject property is a supportive, shared housing residence for senior citizens, working

professionals and persons living with HIV/AIDS that is sponsored by Actors' Fund. Complainant's unit at the subject property is a dwelling as defined by the Act. 42 U.S.C. § 3602(b).

4. At all times relevant to the allegations described in this Charge, Respondent Friedman Residence, LLC owned the subject property. Friedman Residence, LLC is a New York limited liability company with an office at 729 Seventh Avenue, 10th Floor, New York, NY.
5. Respondent Actors' Fund, a New York not-for-profit corporation serving performing arts and entertainment professionals, has a principal place of business at 729 Seventh Avenue, 10th Floor, New York, NY. At all times material to this Charge, Actors' Fund sponsored the Dorothy Ross Friedman Residence, which includes developing and approving administrative policies for the subject property, and provided on-site social services for the residents.
6. Respondent Common Ground, a property management company, maintains a principal place of business at 255 West 43rd Street, New York, NY. At all times relevant to the allegations in this Charge, Common Ground was contracted by the Actors' Fund to serve as the property manager for the subject property, providing maintenance, security, marketing, intake and administrative services.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. On May 11, 2004, Complainant entered into a lease for a shared apartment at the subject property. Complainant's leasehold interest is shared with his roommate.
8. Respondents employ a no-pet policy at the subject property, which is incorporated in Rule 11 of the Rules and Regulations section of the lease agreement.
9. Complainant has been under the care of [REDACTED] Ph.D., a Licensed Clinical Psychologist, since November 2010.
10. In or about August 2011, Complainant brought his dog, a small female dachshund named [REDACTED] to his apartment at the subject property. [REDACTED] provides emotional support to Complainant.
11. Complainant's roommate has never objected to Shelly's presence in the apartment.
12. After Complainant acquired [REDACTED] Dr. [REDACTED] recognized improvement in Complainant's behavior and recommended to Complainant that he register [REDACTED] as an emotional support animal.
13. By letter dated August 29, 2012, Dr. [REDACTED] supported Complainant's registration of [REDACTED] as an emotional support animal. In the letter, Dr. [REDACTED] describes the major life activities that are impaired by Complainant's disability, concludes that [REDACTED] has helped

Complainant cope with the symptoms of his disability, and offers her professional opinion that ██████ "is a necessary form of support" to Complainant. Dr. ██████ supported ██████ being registered as an emotional support animal "so that [Complainant] can maintain the dog in his apartment as prescribed and travel with the dog when necessary."

14. On or about February 13, 2013, Respondents initiated eviction procedures against Complainant with the issuance of a "Notice to Cure" alleging that Complainant had violated a substantial obligation of his lease by keeping ██████ in his apartment.
15. On or about February 20, 2013, Complainant met with Richard Pimentel, Director of Property Management, to discuss the Notice to Cure. During this meeting, Complainant informed Mr. Pimentel that ██████ was necessary to help him cope with his disability and requested a reasonable accommodation to allow him to keep ██████ in his apartment as an emotional support animal. He provided Mr. Pimentel with the following: (1) a certificate from the National Service Animal Registry that certifies that ██████ is an emotional support animal and states, among other things, that "[t]his emotional support [animal] has been formally prescribed and deemed necessary to assist ██████ the confirmed disabled handler;" and (2) the August 29, 2012 letter from Dr. ██████ recommending that Complainant keep Shelly as an emotional support animal.
16. Respondents did not contact Complainant further to discuss his disability-related need for his dog.
17. Instead, on March 5, 2013, Respondents sent Complainant a "Notice of Termination" stating that his tenancy was terminated effective March 18, 2013. The Notice informed Complainant that although he had asserted that the dog was a necessary service dog, he had failed to properly demonstrate his need for the dog.
18. On or about March 20, 2013, Complainant received a Notice of Petition Holdover notifying Complainant that a summary holdover petition regarding his eviction would be held in New York County Civil Court on March 28, 2013. The parties thereafter agreed to stay the holdover proceeding in New York County Civil Court without prejudice until the investigation of the complaint that had been filed with HUD was complete. The matter is currently adjourned.
19. During HUD's investigation, Dr. ██████ opined that ██████ continues to be medically necessary for Complainant because she is a major factor in Complainant's ability to manage his disability. According to Dr. ██████, "taking ██████ away would be detrimental to [Complainant] and his progress."
20. Since February 2013, Respondents have not granted Complainant's request for a reasonable accommodation. Instead, Respondents continue to deny that Complainant needs an emotional support animal and intend to enforce the no pet policy by pursuing the eviction of Complainant in the holdover proceeding before the New York County Civil Court because he has refused to remove ██████ from his home.

D. LEGAL ALLEGATIONS

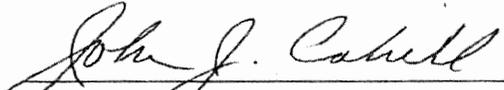
1. As described in the paragraphs above, Respondents violated the Act by discriminating against Complainant on the basis of disability when they acted to make housing unavailable to him by pursuing his eviction rather than granting his request for a reasonable accommodation. 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B); 24 C.F.R. §§ 100.202(a) and 100.204.
2. As described in the paragraphs above, Respondents discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when they refused to grant his request for a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204.
3. As a result of Respondents' discriminatory conduct, Complainant suffered actual damages, including out-of-pocket expenses, inconvenience, and emotional distress.

III. CONCLUSION

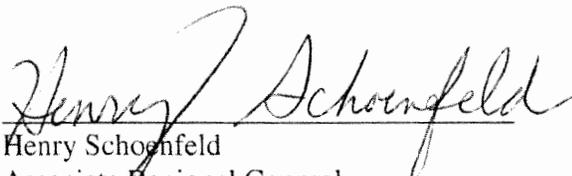
WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1), 3604(f)(2) and 3604(f)(3)(B) of the Act, and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. §§ 3601-19;
2. Enjoins Respondents, their agents, officers, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling;
3. Mandates that Respondents, their agents, officers, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
4. Awards such monetary damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondents' discriminatory conduct;
5. Awards a civil penalty of \$16,000 against each Respondent for its violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

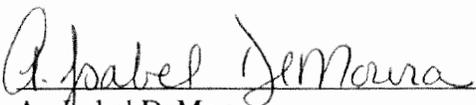
Respectfully submitted,



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Date: September 29, 2015