

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

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|--|---|-----------------------|
| The Secretary, United States Department of Housing and Urban Development, |) | |
| |) | |
| Charging Party, |) | |
| |) | |
| on behalf of , |) | |
| on behalf of , |) | |
| |) | |
| v. |) | FHEO NO. 02-09-0997-8 |
| |) | |
| Paulsen Development of Albany, LLC, |) | |
| |) | |
| Respondent. |) | |
| |) | |

CHARGE OF DISCRIMINATION

JURISDICTION

On August 26, 2009 (‘‘Complainant’’) filed a verified complaint with the United States Department of Housing and Urban Development (‘‘HUD’’) on behalf of herself and her minor child, . Complainant alleges that Respondent, her landlord, refused to grant her a reasonable accommodation in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (‘‘Act’’). In particular, Complainant alleges that Respondent unlawfully denied her request to permit to have a medically prescribed service animal as a reasonable accommodation and then, months later, after relenting, refused to permit the service animal to accompany to her apartment complex’s pool area. 42 U.S.C. § 3604 (f) (2) (A) and (B).

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (‘‘Charge’’) on behalf of aggrieved persons following an investigation and 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 CFR §§ 103.400 (a) (2) (i), 103.405, who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441-68442 (Nov. 18, 2008)), the authority to issue such a charge, following a determination of reasonable cause.

The 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 authorized this Charge because he has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. HUD's efforts to conciliate the complaint were unsuccessful. *See* 42 U.S.C. § 3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a handicap of that person or a person residing in that dwelling after it is sold. 42 U.S.C. § 3604 (f) (2) (A) and (B). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a handicap equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604 (f) (3) (B).

PARTIES

2. Complainant _____ is the mother of _____, a _____ year old girl who has physical and emotional impairments (the "Child").
3. The Child has been diagnosed with Spina Bifida and Hydrocephalus at birth, and is mobility impaired. When walking short distances she uses either foot-and-ankle braces or crutches; for long distances, she uses a wheelchair. The Child also has Anxiety Disorder and Attention Deficit Disorder, which has impaired her learning ability. The Child is a person with a handicap within the meaning of the Fair Housing Act. 42 U.S.C. § 3602 (h).
4. Respondent Paulsen Development of Albany, LLC is a privately owned corporation that builds, develops and manages rental properties in and around Albany, New York. It owns and manages the subject property, _____ Apartments, a 90-unit garden style rental apartment complex located in _____, New York.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

5. Complainant resides with the Child and a roommate at _____, New York, at the subject property.
6. Complainant's apartment is a "dwelling" within the meaning of the Act.
7. Respondent maintains a policy prohibiting dogs or other animals or pets at the subject property. This policy is found in Complainant's lease agreement with Respondent.

8. Because of her multiple impairments, the Child's doctor, Dr. _____, has prescribed a service dog for the Child to assist with such daily tasks as retrieving items, opening doors, turning light switches, and carrying school books. Dr. _____ maintains such a service animal will promote the Child's independence by decreasing her reliance on others.
9. On a number of occasions, beginning in June 2009, Complainant or her roommate requested that Respondent grant a reasonable accommodation by waiving its no-pet policy to permit the Child to have a service animal, as recommended by Dr. _____.
10. Complainant's requests for a reasonable accommodation were at first denied or ignored.
11. However, on or about December 2009, Respondent agreed to allow Complainant to maintain a service animal in her apartment, but did not permit the service animal to enter the subject property's swimming pool area, despite the Child's need for the service animal's assistance in this area.
12. On or about March 1, 2010, Complainant obtained a certified service dog, _____, who was trained and provided by East Coast Assistance Dogs, Inc.
13. _____ spends 24 hours a day with the Child, accompanying her to school, traveling with her on airplanes, aiding her mobility, providing her with physical assistance and constant companionship, all of which serves to diminish the Child's anxiety and increase her independence.
14. On May 20, 2010, Complainant received a lease renewal from Respondent, dated March 1, 2010. Although the lease renewal allows Complainant to keep a service animal in her apartment, it specifically prohibits the service animal from entering the subject property's pool area at any time. Respondent maintained this prohibition despite assurance from Complainant that the service animal would not enter the pool.
15. Respondent maintains a policy allowing children 13 and older to use the pool without being accompanied by an adult, but because Respondent refuses to allow the Child's service animal in the pool area, she will not be able to take advantage of this policy.
16. Complainant signed the lease renewal, but wrote "This is signed under protest as we are not in agreement with the restrictions placed on where the service dog may accompany [the Child]." Complainant mailed the renewal lease back to Respondent on May 25, 2010. Complainant's current lease expired on June 14, 2010.
17. After receiving the signed lease renewal from Complainant and noting her protest, Respondent has refused to execute the renewal and has given Complainant 60 days to find "other living accommodations."

18. Complainant and the Child have suffered severe emotional distress because of Respondent's refusal to permit the service animal in the subject property's swimming pool area.
19. Complainant and the Child have suffered severe emotional distress because of Respondent's failure to renew Complainant's lease and its threat to evict the family in 60 days.

FAIR HOUSING ACT VIOLATIONS:

20. Respondent has violated the Act because it has placed an unreasonable restriction on a service dog aiding Complainant's minor child constituting a discriminatory refusal to make a reasonable accommodation in its rules, policies, practices, or services, when such an accommodation is necessary to afford Complainant and her minor child an equal opportunity to use and enjoy their dwelling. 42 U.S.C. § 3604 (f) (2) (A) and (B); 42 U.S.C. § 3604 (f) (3) (B); 24 C.F.R. § 100.204.
21. Respondent has violated the Act because it has refused to renew Complainant's lease and threatened to evict Complainant after Complainant protested the unreasonable restriction placed on its service animal. 42 U.S.C. § 3604 (f) (2) (A) and (B); 42 U.S.C. § 3604 (f) (3) (B); 24 C.F.R. § 100.204.

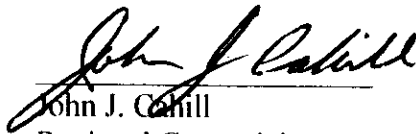
CONCLUSION

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

1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from discriminating because of handicap against any person in any aspect of the rental, sale, use or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612 (g) (3);
3. Allows Complainant's minor child to keep a service animal for her use and enjoyment of the subject dwelling and allows the service animal access to all public areas of the subject property, including the pool area;
4. Mandates that Respondent grant Complainant a renewal lease without provisions that restrict the Child's service animal from entering the pool area;

5. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with it, from coercing, intimidating, threatening or interfering with Complainant's exercise or enjoyment of rights granted or protected by the Act;
6. Awards such damages pursuant to 42 U.S.C. § 3612(g) (3) as will fully compensate Complainant and the Child for emotional distress, including embarrassment and humiliation, inconvenience, and economic loss caused by Respondent's discriminatory conduct;
7. Assesses a civil penalty against Respondent for violation of the Act, pursuant to 42 U.S.C. § 3612(g) (3) and 24 CFR § 180.671; and
8. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612 (g) (3).

Respectfully submitted,



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