



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**MARINA ABRAMYCHEVA,**

Complainant,

v.

**UNIQUE PEOPLE SERVICES, INC., LINCOLN  
TOWERS MANAGEMENT LLC, CONFESORA  
CASTOIRE, 1068 WINTHROP STREET LLC,**  
Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 10193845

Federal Charge No. 02-18-9949-8

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on April 13, 2021, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.


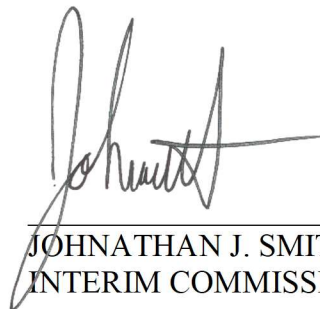
**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the

Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

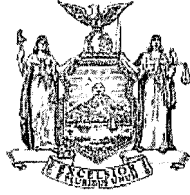
**ADOPTED, ISSUED, AND ORDERED.**

DATED: **June 15, 2021**  
Bronx, New York



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JOHNATHAN J. SMITH  
INTERIM COMMISSIONER



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**UNIQUE PEOPLE SERVICES, INC.,  
LINCOLN TOWERS MANAGEMENT LLC,  
CONFESORA CASTOIRE, 1068 WINTHROP  
STREET LLC,**

Respondents.

**RECOMMENDED FINDINGS OF  
FACT, OPINION AND DECISION,  
AND ORDER**

Case No. **10193845**

Federal Charge No. 02-18-9949-8

**SUMMARY**

Complainant sought a new apartment as an accommodation to her disability.

Complainant has failed to show her desire for a new apartment is related to her disability and, as a result, her claim is dismissed.

**PROCEEDINGS IN THE CASE**

On March 12, 2018, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondents with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on December 16, 2019, December 17, 2019, March 2, 2020, and March 3, 2020.

Complainant and Respondents appeared at the hearing. The Division was represented by Luwick Francois, Esq., Senior Attorney Respondents were represented by Mark F. Heinze, Esq. and Christopher W. Edwards, Esq.

#### **FINDINGS OF FACT**

1. Complainant resides at 1068 Winthrop Street, Apartment 7B, Brooklyn, New York. (Tr. 9)
2. Complainant lives on the second floor of a four-story building. She has lived at this location since April 7, 2014. (Tr. 9)
3. Complainant is Caucasian. She suffers from depression, anxiety disorder and heart disease. (ALJ Exhibit 2; Tr. 51)
4. Respondent Unique People Services (“UPS”) is a non-profit organization that provides supported housing for individuals with special needs, including those with mental illnesses. (Tr. 140)
5. Respondent Confesora Castoire is the program director of the supportive housing program at Respondent UPS. (Tr. 140)

6. Respondent Lincoln Towers Management LLC (“Towers Management”) manages the building at 1068 Winthrop Street, Brooklyn, New York. (Tr. 424)
7. Respondent 1068 Winthrop Street, LLC (“1068 Winthrop”) owns the building at 1068 Winthrop Street, Brooklyn, New York. (Tr. 424)
8. Respondent 1068 Winthrop acquired the building on February 26, 2015. Neither Respondent 1068 Winthrop nor Respondent Towers Management had any connection to the building prior to that date. (Respondent’s Exhibit 19; Tr. 426-29)
9. In February 2014, Respondent UPS workers assisted Complainant in finding the apartment in which she currently resides. (Tr. 10-11)
10. Respondent UPS leases Complainant’s apartment from 1068 Respondent Winthrop and sublets it to Complainant. (Respondent’s Exhibits 1, 4, & 5)
11. Prior to leasing the apartment, Respondent Castoire, on behalf of Respondent UPS, inspected the apartment and determined that it was in good condition and not in need of repairs. (Tr. 146-47, 154-55)
12. Complainant has no contractual or lease agreement with either Respondent 1068 Winthrop or Respondent Towers Management. (Tr. 430, 481-81, 505)
13. Complainant became unhappy with the apartment soon after moving in. Complainant alleges that her upstairs neighbor, in Apartment 7C, who is also a UPS client, makes too much noise to suit her. (Tr. 13)
14. In 2015, Complainant complained to Respondent Towers Management about the noise problems. (Complainant’s Exhibits 1 & 3)

15. Joe Falkowitz, property manager, investigated to determine if the building superintendent or any other tenants had encountered excessive noise. No other complaints had been received. (Tr. 455-57)

16. Falkowitz found no evidence of noise emanating from Apartment 7C and no structural issues that would create a noise problem for Complainant. (Tr. 534)

17. On February 24, 2015, Complainant filed a petition in Civil Court of the City of New York, Kings County, against Respondent 1068 Winthrop and Respondent UPS alleging that “constant and incessant noise” was affecting her health. (Complainant’s Exhibit 2)

18. On August 27, 2015, the case was dismissed in part because Complainant was “unprepared [and] unwilling to testify.” (Respondent’s Exhibit 3; Tr. 22)

19. Prior to the August 27, 2015 dismissal, Toya Antwi, case manager and Respondent UPS employee, conducted a noise test at the direction of the Court. (Tr. 209)

20. With Complainant, the building superintendent, and another witness in Complainant’s apartment, Antwi went to Apartment 7C. (Tr. 210)

21. In Apartment 7C, Antwi and the upstairs tenant played music, turned on the television and stomped across the floor in Apartment 7C. (Tr. 211-12)

22. Then, Antwi went downstairs to Complainant’s apartment to listen while the superintendent went upstairs and stomped on the floor in Apartment 7C. (Tr. 212-13)

23. Antwi said she only heard “light thumping.” (Tr. 213)

24. Complainant accused Antwi of “faking” the test and locked herself in her bedroom. Complainant played loud music and turned on a vacuum cleaner so Antwi could no longer hear any thumping. (Respondent’s Exhibit 9; Tr. 213-14)

25. When Antwi consulted with the superintendent and the witness, both indicated to her that there had been no excessive noise. (Tr. 216)

26. Ultimately, Antwi and Respondent UPS concluded that the noises in Complainant's apartment were "not abnormal" and emanated from the street. (Respondent's Exhibit 11)

27. After this encounter, Complainant no longer allowed Antwi into her apartment and communicated with Antwi via telephone only. (Tr. 222)

28. I do not credit Complainant's claim of excessive noise. Neither Antwi nor Falkowitz were able to detect a problem and both sought the advice of others, including the building superintendent and other tenants. Complainant's assertions that the noise was unbearable, in opposite to the available evidence, are simply not credible.

29. On April 28, 2015, Complainant wrote to Respondent Towers Management seeking a transfer to apartment 7D, which was vacant. (Complainant's Exhibit 3)

30. On May 14, 2015, apartment 7D was leased to another tenant. The tenant had been sent to Towers Management through a broker. (Tr. 466)

31. Complainant made no requests for a transfer to Respondent UPS in 2016. (Tr. 32)

32. In 2017, Complainant again requested that Respondent UPS transfer her out of her apartment. (Complainant's Exhibit 4; Tr. 34)

33. Complainant sought a "top floor apartment" in the "Russian community neighborhood" of South Brooklyn. In addition to her noise complaints, Complainant said she needed to move because she claimed the neighborhood in which she lived was a "very hostile and dangerous ... African neighborhood," that she described as an "extremely dangerous black ghetto." (Complainant's Exhibit 4)

34. As a condition of her sub-tenancy, Complainant and Respondent UPS are required to meet regularly to communicate any needs or concerns the tenant might have so that Respondent UPS can provide her with needed services. (Tr. 165)

35. Complainant has repeatedly refused to meet with representatives of Respondent UPS, including Respondent Castoire, despite repeated attempts by Respondent UPS to get Complainant to comply. (Respondent's Exhibits 13, 14 & 15; Tr. 165-66)

36. Complainant has indicated that she will not comply with Respondent until she is "assigned to a WHITE case worker" (emphasis in original). (Respondent's Exhibits 15 & 16)

37. Complainant has also failed to pay her rent to Respondent UPS since 2017. As of March 2020, Complainant was in arrears \$4,747.60 to Respondent UPS. (Tr. 323)

38. Despite these challenges caused by Complainant's lack of cooperation, Respondent Castoire has sought an apartment in a Russian neighborhood that would be suitable for Complainant. Respondent Castoire has been unable to find a suitable apartment for Complainant, although she continued to seek one from 2016 to 2020. (Tr. 324-27)

### **OPINION AND DECISION**

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.18(2) provides that it is an unlawful discriminatory practice for a housing provider to "refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling."

Under the Human Rights Law § 297.5, a complainant seeking redress under the Human Rights Law through an administrative proceeding must file a complaint "within one year after the alleged unlawful discriminatory practice." This provision is in the nature of a statute of



limitations and is mandatory. See *Queensborough Cmty. Coll. v. State Human Rights App. Bd.*, 41 N.Y.2d 926, 394 N.Y.S2d 625 (1977); *Matter of Ferrara v. New York State Div. of Human Rights*, 154 A.D.3d 715, 716, 61 N.Y.S.3d 356 (2017); *Matter of Murphy v. Kirkland*, 88 A.D.3d 267, 273, 928 N.Y.S.2d 333 (2011). The only request for accommodation made by Complainant within the statutory period is her request to move to a “Russian community neighborhood” in 2017.

To establish a claim for a violation of the Human Rights Law based upon the failure to provide an accommodation, Complainant must show: (1) she has a disability; (2) the accommodation may be necessary in order to use and enjoy her apartment; and, (3) the landlord or agent refuses to make the accommodation. *Lindsay Park Housing Corp. v. New York State Div. of Human Rights*, 56 AD 3d 477, 478 (2d Dept. 2008), citing *Matter of One Overlook Terrace v. New York State Div. of Human Rights*, 8 A.D.3d 286 (2d Dept. 2004)

It is undisputed that Complainant in this case has a disability. Indeed, she was eligible for assistance by Respondent UPS because of her disability. Complainant, however, has not shown that the accommodation she seeks is necessary for her to use and enjoy her apartment. Given that her claims of excessive noise cannot be credited, there is no reason to believe she needs another apartment as an accommodation to her disability. In fact, Complainant herself cites another reason for wanting to move in her letter to Respondent UPS, wherein she seeks to move to South Brooklyn in a “Russian community neighborhood,” away from a “very hostile and dangerous... African neighborhood.” That request is unrelated to her disability and does not bear on her ability to use and enjoy her apartment. Complainant sought a new apartment, for whatever reason, and fabricated complained of noise to create a pastiche of a disability discrimination charge. Moreover, Respondent Castoire has attempted to accommodate

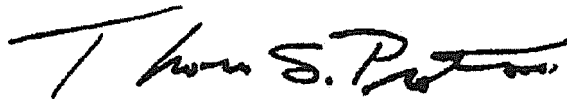
Complainant by searching for an apartment in a Russian neighborhood, even though this request is unrelated to Complainant's disability. Complainant's claim must be dismissed.

**ORDER**

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the case be dismissed.

DATED: April 13, 2021  
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas S. Protano". The signature is written in a cursive, slightly slanted style.

Thomas S. Protano  
Administrative Law Judge