



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

JANICE ANGELO,

Complainant,

v.

THE KNOLLS OF FOX HILL HOMEOWNERS
BOARD,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10153359

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 August 9, 2013, by Margaret A. Jackson, 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 HELEN DIANE FOSTER, ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER") WITH THE FOLLOWING AMENDMENT:

- There is insufficient evidence in the record to support Complainant's claim that

she requires a pet as a reasonable accommodation to use and enjoy her home. *See One Overlook Ave. Corp. v. NYS Div. of Human Rights*, 8 A.D.3d 286, 287 (2d Dept. 2004). Accordingly, the instant complaint is dismissed.

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.

OCT 10 2013
DATED:
Bronx, New York



HELEN DIANE FOSTER
ACTING COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

JANICE ANGELO,

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**THE KNOLLS OF FOX HILL
HOMEOWNERS BOARD,**

Respondent.

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

Case No. **10153359**

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her on the basis of her disability when it refused, as a matter of policy, to allow her to keep her dog as a reasonable accommodation. Respondent has demonstrated that the enforcement of its “no pet policy” was not unlawful. Therefore, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On February 17, 2012, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent 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 Respondent 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 Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on November 20-21, 2012.

Complainant and Respondent appeared at the hearing. The Division was represented by Sandra S. Oneil, Esq. Respondent was represented by Weber Law Group LLP by Jaret Weber, Esq.

At the hearing, Division counsel made an oral application to amend the charge to include retaliation based on Respondent’s filing of an action against Complainant in Suffolk County Supreme Court on December 15, 2011. Respondent objected to the amendment and a ruling was made not to amend the complaint by the presiding ALJ.

FINDINGS OF FACT

1. Respondent (The Knolls) is an 84 unit condominium housing development. The Knolls is governed by a five member Board of Directors (the Board) which, among other things, enforces by-laws and sets policies applicable to all unit owners. (Tr. 246-48; ALJ Exhibit 1)
2. The Knolls has a “no pet policy” that went into effect on May 23, 2000. However, if a resident had a dog when the policy went into effect it was grandfathered in, and the dog was allowed to stay until it passed away. Pursuant to the by-laws, the unit owner would not be allowed to replace the dog. (Tr. 249-50, 261, Complainant’s Exhibit 2).

3. Complainant purchased a condominium unit in The Knolls on or about April 25, 2001.
(Tr. 15)

4. In 2001, Complainant, a licensed clinical social worker, made a request via her real estate broker, to the Board seeking to harbor a dog that she used as a therapeutic canine in her psychotherapy practice located in Mattituck, New York. The Board granted her request. (Tr. 252; Complainant's Exhibit 1)

5. Complainant also operates her practice in her home and uses the dog as a therapeutic canine to assist her even though she has not been granted permission to operate a business from her condominium unit. (Tr. 20, 284, 310)

6. The dog died in February of 2011. (Tr.24)

7. Complainant did not seek permission from the Respondent to replace the dog. However, she replaced the deceased dog with a similar looking dog in March of 2011. (Tr. 24)

8. Complainant thought that, despite the by-laws, once she was permitted to have a dog, she could harbor a dog in "perpetuity." However, when the Board asked her to provide written documentation in support of her claim that she could replace her dog; she was unable to provide any documentation. (Tr. 292-93)

9. At no time did Complainant disclose to the condominium board that she had a disability of any kind. In fact, she stated that she did not have a written diagnosis or evaluation stating that she had a disability because "that is not how psychology operates." For the same reason, she did not have progress notes referencing her alleged disability from any treating physician. (Tr. 26, 147, 153, 155)

10. In April of 2011, property manager, Alan Liebowitz, sent Complainant a letter notifying her that harboring a dog was in violation of the by-laws "no pet rule" unless she could submit

written proof that she had been given permission to keep the dog in “perpetuity” as a therapeutic canine. Complainant did not have any paperwork to support her allegation.(Tr. 27, 41, 257)

11. Complainant asked to meet with the Board prior to its annual May 21, 2011, meeting to discuss the dog issue. The Board determined that it was not necessary to meet with her because she was in direct violation of the by-laws. (Tr. 257-60)

12. On May 31, 2011, Complainant again wrote to the Board asking to keep the dog and advised it that the dog was a therapeutic canine that she used as part of her practice.

(Complainant’s Exhibit 4)

13. On July 27, 2011, Liebowitz notified Complainant, in writing, that the Board had denied her request to keep the dog and if she did not remove the dog she would be fined \$50 a day for harboring the dog and using her unit as an office without approval. (Tr. 260, 262, 284;

Complainant’s Exhibit 7)

14. On October 6, 2011, Complainant sent an e-mail to Liebowitz requesting a reasonable accommodation so that she could have a dog in her home because she has a post traumatic stress disorder disability. (Tr. 260)

15. On November 7, 2011, the Board advised Complainant, in writing, that Respondent still had not received written verification from Complainant that the dog was no longer on Respondent’s premises. Therefore, the fines were reinstated. (Complainant’s Exhibit 11)

16. By e-mail dated November 15, 2011, Complainant requested a reasonable accommodation so that she could have an “assisted canine” in her home. (Complainant’s Exhibit 12)

17. Complainant diagnosed herself as having post traumatic stress disorder resulting from a fall and surgery she had in 2000. She gave her self diagnosis to her OB/GYN, Dr. Zeinab Fath-

El-Bab, (transcribed as Zina Facel) who in turn prescribed medication for Complainant without assessing her psychological condition. Complainant reciprocated by referring patients from her practice to Dr. Fath-El-Bab. (Tr. 68-70, 72-73)

18. By letter dated November 18, 2011, Dr. Fath-El-Bab gave Complainant a letter to submit to the Board stating that Complainant had a disability diagnosed as post traumatic stress disorder and she needed the dog to fully use and enjoy her dwelling. (Tr. 279; Complainant's Exhibit 15)

19. On November 22, 2011, Complainant sent an e-mail to the Board asking where to send her medical reports. (Complainant's Exhibit 14)

20. On November 28, 2011, the Board, not receiving any of the requested information, advised Complainant that it had denied her request for a reasonable accommodation and it was going to commence legal action against her for violating its "no pet policy." (Complainant's Exhibits 13 and 16)

21. On or about December 15, 2011, Respondent served Complainant with a summons to appear in Suffolk County Supreme Court to pay fines that accrued because of her violation of its "no pet policy." (Tr. 107; Complainant's 21)

22. Complainant then wrote to the Board alleging that she had removed the dog from the premises, and the imposition of fines was suspended by the Board. But, when asked to provide written verification that the dog was no longer on the premises, Complainant did not submit anything in writing to the Board. (Complainant's Exhibits 9 and 10)

23. Complainant then visited a primary care physician who informed her that he could not write a diagnosis for her because psychotherapy was outside of his field of specialty. (Tr. 98-99)

24. Complainant alleged that after a fall in 2000, she injured her head. As a result, she was unable to walk on tile surfaces without becoming (self diagnosed as) hyper vigilant and experiencing symptoms associated with post traumatic stress syndrome that include flashbacks and panic attacks which she associated with her head injury. Complainant's kitchen, hallways and bathroom are tiled. (Tr. 109-10, 185)

25. On October 23, 2012, Complainant met with Dr. Luigi Buono, who provides preventive and illness related care. At Complainant's request, he provided a written note stating that Complainant sustained a traumatic fall in 2000 that resulted in brain surgery and anxiety/panic when walking on tile and slate floors. He further stated that holding onto her dog would provide an assurance of safety throughout her residence. (Complainant's Exhibit 19)

26. On October 25, 2012, licensed social worker, Janet Jakowski wrote a letter on Complainant's behalf stating that she needs a therapeutic canine to enjoy and live and walk unassisted throughout her condominium and its community amenities. Complainant insisted that the letter was inaccurate because she is able to walk throughout some areas of her condominium and the community without the dog.(Tr. 124, 126; Complainant's Exhibit 18)

27. The last letter that Complainant submitted was dated November 15, 2012. In that letter Karen Malcomson, a nurse practitioner with a PhD in Education, stated that Complainant met the diagnostic criteria for post traumatic stress disorder since 2000, and getting rid of her service dog would be detrimental to her well being. Complainant denied that her dog was ever a service dog. (Tr. 125-26; Complainant's Exhibit 20)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for "...the owner,

lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations 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...” Human Rights Law § 296.18(2).

A disability is defined under the Human Rights Law as “a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.” Human Rights Law § 292.21.

New York courts have long recognized and upheld the validity of no pet clauses in leases as a matter of public policy such that harboring a pet in defiance of a no pet clause can be considered a substantial breach of the lease agreement. *Crossroads Apartment Ass’n. v. LeBoo*, 578 N.Y.S.2d 1004 (1991).

If the Complainant demonstrates that she is disabled, is qualified for the tenancy, and because of the disability it is necessary to keep her dog in order to use and enjoy the condominium, and that reasonable accommodations can be made to allow her to do so, Respondent must waive its “no pet policy” and allow the dog to stay in Complainant’s home. *One Overlook Ave. Corp. v. New York State Div. of Human Rights*, 777 N.Y.S.2d 696 (2d Dept. 2004), *lv. denied* 5 N.Y.3d 714, 806 N.Y.S.2d 165 (2005).

Complainant argues that her disability makes it necessary for her to keep a dog in order to use and enjoy her condominium and, therefore, the no pet clause, as it relates to her, violates the Human Rights Law.

However, Complainant must show more than “an ambiguous statement of his physician that depressed people may benefit from having pets and notes from medical records that (s)he was anxious about possibly losing his or her dog.” *Landmark Properties v. Olivo*, 783 N.Y.S. 745 (App. Term, 2d Dept. 2004) ; *but cf. Janush v. Charities Housing Development Corp.*, 169 F. Supp.2d 1133 (N.D. Ca. 2000) (court denied defendant’s motion for summary judgment after plaintiff’s treating physician testified that her living with emotional support animals “lessen[s] the effect of this disability by providing her with companionship and are necessary to her mental health).

The record shows that Complainant failed to make out a prima facie case of unlawful disability discrimination because she failed to provide medical documentation from a physician who is competent to examine, evaluate and diagnose her as having a disability in support of her request for a reasonable accommodation. Complainant admittedly self diagnosed a condition of post traumatic stress disorder. She then shared this self diagnosis with physicians and professionals who were willing to provide letters reflecting that self diagnosis without examining or evaluating the Complainant.

Complainant credibly testified that the letters she submitted to support her reasonable accommodation request were written based on her self assessments and were not the result of “clinical or laboratory diagnostic evaluation” as required by the Human Rights Law § 292.21. Therefore, the complaint 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 complaint be and the same hereby is dismissed.

DATED: August 7, 2013
Hempstead, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive style with a large, sweeping flourish at the end of the word "Jackson".

Margaret A. Jackson
Administrative Law Judge