



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ROBERTO BELEM,

Complainant,

v.

**DEXTER HOUSE HOTEL, JAY WARTSKI,
DEXTER 345 INC., DEXTER PROPERTIES L.L.C.,**
Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10145422

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 July 12, 2012, by Robert J. Tuosto, 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 GALEN D. KIRKLAND, 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: AUG 29 2012
 Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

First Deputy Commissioner



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

Case No. **10145422**

SUMMARY

Complainant alleged that he was unlawfully discriminated against on the basis of his disability when personnel at the single room occupancy residence in which he resided prevented the delivery of packages containing his medications. However, Complainant has failed to prove his case and the complaint is hereby dismissed.

PROCEEDINGS IN THE CASE

On November 16, 2010, 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 Robert J. Tuosto, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on April 20, 2012.

Complainant and Respondents appeared at the hearing. The Division was represented by Bellew S. McManus, Esq., Senior Attorney. Respondents were represented by Nathan M. Ferst, Esq., New York, New York.

The N.Y.S. Department of State, Division of Corporations entity information searches for both Respondents Dexter Properties, L.L.C. and Dexter 345, Inc. are hereby admitted as ALJ Exhs. 5, 6.

Permission to file post-hearing briefs was granted. Counsel for Respondents timely filed a post-hearing brief.

FINDINGS OF FACT

1. Complainant alleged that he was unlawfully discriminated against on the basis of his disability when personnel at the single room occupancy residence in which he resided prevented the delivery of packages containing his medications. (ALJ Exh. 1)
2. Respondents denied unlawful discrimination in their verified Answer. (ALJ Exh. 3)

The Parties

3. Complainant, who has resided in Respondent Dexter House Hotel’s single room occupancy (“SRO”) residence for approximately the past twenty-two years, currently uses various prescription medications on a regular basis which are delivered to him at the SRO.

Pursuant to stipulation, Complainant is a person who is “disabled” as that term is used in the Human Rights Law, and Respondent knew of Complainant’s disability. (ALJ Exh. 1; Tr. 12, 20, 66, 112, 117)

4. Respondent Dexter House Hotel is a sixteen story SRO residence with approximately 270 rooms and two apartments which together house 271 tenants. All of the aforementioned tenants are protected by state and local laws which, among other things, allow the vast majority to reside in the SRO at below market rents. Respondents Dexter Properties, L.L.C. and Dexter 345, Inc. are a domestic limited liability company and a New York domestic business corporation, respectively. Respondent Jay Wartski, one of the owners of the SRO, is a corporate officer of Respondent Dexter 345, Inc. (ALJ Exhs. 5, 6; Tr. 19, 110, 161, 224-25, 228)

Complainant’s Medical Package Deliveries

5. Prior to becoming sick, Complainant would pick up his various prescription medications at local pharmacies. When Complainant became ill and was unable to leave his room pharmacies would have courier services deliver medical packages directly to him. (Tr. 107, 134, 162)

Complainant Alleges That Respondent Prevented the Delivery of His Medical Packages

6. During the period of October, 2009 to November, 2010, Complainant cited three instances when Respondents allegedly prevented the delivery of his medical packages. In October, 2009 Complainant alleged that delivery of a medical package was refused by the SRO’s management. As to this delivery, Complainant could not remember if he was even in the SRO at the relevant time. (Complainant’s Exhs. 1, 4; Tr. 40-42, 47-48, 59-60, 70-72)

7. In May, 2010, Complainant alleged that the SRO’s management did not permit the courier service to deliver a medical package to his room. As to this delivery, Complainant was

not in telephone contact with the delivery person as he would sometimes fail to bring his cell phone with him when he went to the bathroom located down the hall from his room.

(Complainant's Exh. 2; Tr. 29, 44-48, 128-132)

8. In November, 2010, Complainant alleged he never received a medical package left at the SRO's front desk. I do not credit Complainant's testimony that he did not receive this package, and that the front desk personnel were unable to locate it. The credible testimony of the SRO's manager Robert Goicochea, who was on duty that day, was that Complainant signed for this package. (Complainant's Exh. 3; Tr. 49-52, 155)

9. I credit Goicochea's testimony that none of the courier services complained that medical packages left for Complainant were refused at the front desk, that Complainant never complained to him that he did not receive delivery of his medications, and that there were no complaints from any of the thirty to forty percent of the SRO's residents who also received medical packages. (Tr. 164-65, 178, 183-84)

10. I credit the testimony of front desk clerk Luis Ortiz that Complainant never complained to him about not receiving medical packages. (Tr. 206-07)

11. Complainant conceded that the SRO's front desk personnel were very busy taking care of tourists and had no control over who enters and leaves its lobby. (Tr. 100-103)

12. Complainant further conceded that Respondents were motivated to allegedly prevent the delivery of his medical packages to induce him to move from the SRO so that they could receive an increased rent from a subsequent resident. (Tr. 136, 142-43)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice to "refuse to make

reasonable accommodations in rules, policies, practices or services, when such accommodations maybe necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling...” Human Rights Law § 296.18 (2).

In order to make out a prima facie case of unlawful discrimination concerning disability in a housing context, Complainant must show that: 1) he suffers from a disability; 2) Respondents knew of his disability or should reasonably be expected to know of it; 3) accommodation of the disability may be necessary to afford complainant an equal opportunity to use and enjoy the dwelling; and 4) Respondents refused to make such accommodation. *U.S. v. California Mobile Home Park Management Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997)¹; *Dunleavy*, 14 A.D.3d at 480.

Here, Complainant cannot make out a prima facie case.

Pursuant to stipulation, Complainant makes out the first two prongs of the test, i.e., that he had a disability of which Respondents were aware. In addition, it was established that accommodation of his disability, by allowing personal delivery of his medical packages, was necessary to afford Complainant an equal opportunity to use and enjoy his dwelling.

However, Complainant failed to also prove that Respondents refused to make such accommodation. Instead, the record showed that pharmacies would have courier services deliver medical packages directly to Complainant when he was ill and unable to leave his room. As to the three incidents in question in which Respondents’ allegedly prevented Complainant from receiving his medications, they either never happened (as per the credible testimony of several of Respondent’s witnesses) or were reasonably explained. More to the point, Complainant did not prove that any failure to receive the medical packages was attributable to Respondents’

¹ This prima facie test under the federal Fair Housing Act is identical in analysis to the Human Rights Law. *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003), see also *Hughes v. Lillian Goldman Family, L.L.C.*, 153 F.Supp.2d 435 n.11 (S.D.N.Y. 2001); *Broome v. Biondi*, 17 F. Supp. 2d 211 (S.D.N.Y. 1997).

discriminatory animus based on his disability. On the contrary, Complainant himself conceded that he believed that Respondents' were motivated by the supposed pecuniary gain associated with his eviction, and not due to unlawful discrimination because of his disability. Finally, Complainant's concession that the SRO's front desk personnel were very busy taking care of tourists and had no control over who enters and leaves its lobby further undermines his contention these were the same people preventing the delivery of his medical packages.

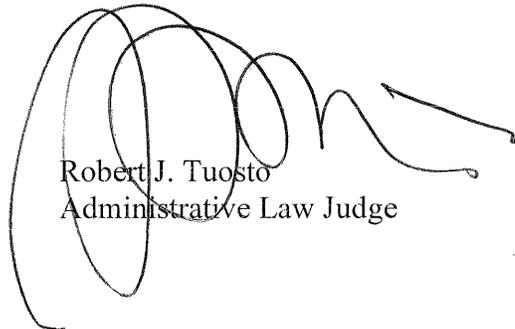
Therefore, the complaint must be dismissed.

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: July 12, 2012
Bronx, New York



Robert J. Tuosto
Administrative Law Judge