



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

ROSEANN BIRCH,

Complainant,

v.

DELKAP MANAGEMENT, LINDENWOOD
VILLAGE SECTION C COOPERATIVE CORP.,
Respondents.

NOTICE AND
FINAL ORDER

Case No. 10144095

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 September 24, 2013, by Migdalia Pares, 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”). 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: **DEC 24 2013**
Bronx, New York



HELEN DIANE FOSTER
ACTING COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
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ROSEANN BIRCH,

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**DELKAP MANAGEMENT, LINDENWOOD
VILLAGE SECTION C COOPERATIVE
CORP.,**

Respondents.

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

Case No. **10144095**

SUMMARY

Respondents failed to engage in an interactive process to consider a disabled shareholder's request to keep a dog as a reasonable accommodation, retaliated against her by removing parking privileges, and while a recommended order was pending for review by the Division's Commissioner, directed Complainant to remove the dog on the incorrect assertion that the Division had issued a final order against her. Respondents shall pay to Complainant damages for pain and suffering as well as punitive damages. Respondents shall also pay a civil fine and penalty to the State of New York.

PROCEEDINGS IN THE CASE

On September 17, 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 Katherine Huang, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on July 6, 2011.

Complainant and Respondents appeared at the hearing. The Division was represented by Aaron Woskoff, Esq., Senior Attorney. Respondents were represented by Fred Daniels, Esq.

Permission to file post-hearing submissions was granted. None were filed.

On January 4, 2012, ALJ Huang issued a recommended order and forwarded the file to the Division’s Adjudication Counsel Unit for review.

On March 13, 2012, the Division’s Adjudication Counsel remanded the case to the Hearing Unit for further proceedings.

On July 25, 2012, ALJ Huang held a further public hearing session. The transcript of the July 23, 2012 hearing is hereby designated as “Tr. II.”

Complainant and Respondents appeared at the hearing. The Division was again represented by Mr. Woskoff. Respondents were represented by Seth Denenberg, Esq.

After ALJ Huang left state service this case was reassigned to Migdalia Parés, an Administrative Law Judge with the Division.

FINDINGS OF FACT

The Parties

1. Respondent, Lindenwood Village Section C Cooperative Corp., is a one hundred and fifty unit housing corporation (“the cooperative”). (Tr. II 81)

2. The cooperative is governed by a nine member Board of Directors (“the Board”) which sets policies applicable to all shareholders and makes decisions on behalf of the corporation. (ALJ Exhibit 2; Tr. 59-60, 129, 280,330, 334)

3. The Board contracted with Respondent Delkap Management (“Dekalp”) as its agent to among other things, enforce the policies and lease agreements as directed by the Board. (ALJ 2)

4. A shareholder in the cooperative occupies a unit subject to an occupancy lease agreement and pays a separate fee for parking privileges. (Complainant’s Exhibit 8; Tr. 59, 60, 129, 151-2; Tr. II 81)

5. In 1998, Complainant became one of Respondent’s shareholders and signed an occupancy lease agreement. (Respondent’s Exhibit. 1; Tr. 172-73)

Respondent’s Occupancy Lease Agreement “No Cat or No Dog” Policy

6. At all relevant times the cooperative occupancy lease agreement included a rule which states: “No tenant shareholder or member of his immediate family residing with him is permitted to harbor any dog or cat.” (Complainant’s Exhibit 8; Tr. 59, 60, 129, 151-2)

7. Starting in the year 2000, many shareholders, including Complainant and members of the Board, began to harbor cats in violation of Respondent’s occupancy lease agreement. (Tr. II 85)

8. Respondents exercised their discretion not to initiate eviction proceedings against any of its shareholders, Complainant or Board Members for harboring a cat in their respective apartments. (Tr. II 85)

9. Respondent Cooperative strictly forbids dogs and does not allow an exception for a reasonable accommodation. (Complainant's Exhibit 10)

10. The Board fines shareholders \$300.00 for harboring a dog. (Tr. II 85)

11. The Board initiates eviction proceedings against shareholders who harbor a dog. (Tr. II 85)

12. Between the years 2008 and 2010, Respondents received three requests from separate shareholders each requesting to harbor a dog in their respective apartments as a reasonable accommodation. None of these requests was granted. (Tr. 155)

Complainant's Medical Diagnosis of Rheumatoid Arthritis and Cardiac Arrhythmia

13. In 2007, Complainant's physicians diagnosed her with rheumatoid arthritis ("RA"). RA is a medical condition with physically disabling symptoms including in relevant part extreme pain, swelling of the knees, and joint pain which affects walking and the ability to have restful sleep. (Tr. 26, 60)

14. The onset of RA changed Complainant's life from being a healthy, active and independent person to one with a medical condition with debilitating physical, emotional, psychological and social impacts. (Tr. 26, 60)

15. In 2008, Complainant's physician diagnosed her with cardiac arrhythmia, rapid heart beating and heart palpitations which cause her to feel "light headed." The effects of cardiac arrhythmia impacted Complainant's ability to have restful sleep at night thereby causing her to feel extremely tired during the day. (Tr. 14-5, 21, 118)

16. Complainant who uses a cane to walk, has a handicap parking placard and an assigned parking space in Respondent's tenant parking area that is in close proximity to the building entrance. Complainant pays a monthly fee for the parking space. Complainant also has a disabled motor vehicle license plate. (Tr. 26, 60)

17. The Division finds that Complainant is "disabled" as that term is used in the Human Rights Law. (Complainant's Exhibits 3, 4; Tr. 25-27, 175).

18. The Division finds that Complainant was qualified for her tenancy. (Tr. 8)

19. During the relevant time, Norman Karin, President, Vincent Trotta, Vice President and Herbert Kamens, Treasurer, were the only active Board members of Respondent cooperative. These three Board members exercised sole discretion and decision making authority over Respondent cooperative. (Tr. 149, 162-3, Tr. II 85)

Mid-August 2010: Complainant Begins to Harbor a Dog

20. Starting in mid August 2010, Complainant began to harbor a dog in her apartment. (ALJ Exhibit 2; Tr. 15, 22, 26, 106)

21. The dog is a Shitzu breed named "Lola" that weighs about 10 pounds. (ALJ Exhibit 2; Tr. 15, 22, 26, 106)

August 30, 2010: Complainant Requests a Reasonable Accommodation

22. On August 30, 2010, Complainant verbally advised Vice President Trotta, that she had a dog in her apartment, that the presence of the dog caused an improvement in her cardiac symptoms, and that she was experiencing restful sleep for the first time in a long time due to the presence of the dog in her bedroom while she slept. (Tr. 18-9, 23, 89-90)

23. The dog's presence, companionship and willingness to be held contributed to Complainant's use and enjoyment of her apartment. (Tr. 18-9, 23, 89-90)

24. Complainant verbally requested a reasonable accommodation from Vice President Trotta due to her disability in the form of a waiver of the no dog policy contained in the occupancy lease agreement. (Tr. 28-29)

Respondent's Reasonable Accommodation Request Process

25. Vice President Trotta instructed Complainant that a reasonable accommodation in the form of a waiver of the no dog policy required the submission of a doctor's note both to the Board and Dekalp. (Tr. 28-29)

26. That same day the Board and Dekalp received a letter from Complainant's treating physician, Norman Riegel, M. D., FACC in support of the reasonable accommodation request. (Complainant's Exhibit 4; Tr. 18-9, 23, 28-29, 89-90, 159, Tr. II 86)

27. Dr. Riegel's letter, dated August 30, 2010, indicated that "due to palpitations, cardiac arrhythmia, supraventricular tachycardia, rheumatoid arthritis and flares under stress, and a recent severe increase in strength responding to pets, we have recommended Roseanne Birch have a dog 24-7. Additionally she has a disabled certificate and cannot forgo her parking spot." (Complainant's Exhibit 4; Tr. 18-9, 23, 28-29, 89-90, 159, Tr. II 86)

28. President Karins stated that, if Complainant was granted permission to harbor a dog, it would open a "Pandora's box" of similar reasonable accommodation requests from other shareholders. (Tr. 159)

29. The Division finds that Respondents did not consider Complainant's request for a reasonable accommodation. (Tr. 159-160, 170)

30. The Division finds that Respondents failed to engage in an interactive process regarding Complainant's request for a reasonable accommodation. (Tr. 159-60, 170)

31. On September 1, 2010, Respondents imposed a fine of \$300.00 on Complainant for harboring a dog. (Complainant's Exhibit 3; Respondent's Exhibit 1)

32. On September 17, 2010 Complainant filed her Division complaint. (ALJ Exh. 1)

33. On September 24, 2010, Respondents exercised their discretion of terminating Complainant's tenancy and commencing eviction proceedings for breach of the occupancy lease agreement by harboring a dog. (Tr. 68, Comp. Exh. 7)

34. Respondents further revoked Complainant's parking privileges effective September 30, 2010. (Complainant's Exhibit 6 and 8; Respondent's Exhibit 1; Tr. 28, 42, 58- 62, 64, 112)

35. Complainant did not have parking privileges from September 30, 2010 to October 8, 2010, a period of nine days. (Respondent's Exhibit 1; Complainant's Exhibit 8; Tr. 42, 58, 61-2, 64, 112)

36. During this nine day period Complainant limited her evening doctor's appointments and night time activities by not leaving her home. Complainant felt "trapped" in her home due to the loss of her parking privileges. (Respondent's Exhibit 1; Complainant's Exhibit 8; Tr. 42, 58, 61-2, 64, 112)

37. By letter dated October 10, 2010, Dr. Riegel, advised the Board that he issued a medical recommendation for a comfort dog for Complainant. In support of his medical recommendation Dr. Riegel advised that "due to palpitations, cardiac arrhythmia, supraventricular tachycardia, rheumatoid arthritis that flares under stress, and a recent increase in strength responding to pets, we have recommended Complainant have a dog 24-7.(sic). It is medically necessary for her to have a dog, being that it serves as a medical companion, relieving her stress, stopping the heart palpitations and lowering her blood pressure. Additionally, she has a disabled certificate and cannot forgo her parking spot". (Complainant's Exhibit 1; Tr. 9, 12)

38. On December 21, 2010, Dr. Riegel sent a letter to the Division advising that Complainant's symptoms have improved since the arrival of the dog in August, 2010 and that "[i]t is medically imperative that the dog be allowed to remain with my patient." (Complainant's Exhibit 2)

39. On March 8, 2012, Respondents ordered Complainant to remove the dog from her apartment by March 23, 2012 on the grounds that Complainant "lost" her case at the Division. (Complainant's Exhibit 12)

40. On March 9, 2012, Complainant replied to Respondents that she would move from the apartment. (Complainant's Exhibit 13; Tr. 96)

41. Respondents' assertion to Complainant was incorrect since the Division had not issued a Final Order after Hearing on the case. (Complainant's Exhibit 12)

42. Complainant's decision to move was based on her experience with Respondents in response to her request for a reasonable accommodation. (Tr. 96)

43. Complainant wanted to spend the rest of her life in the building. However, the chain of events following her request for a reasonable accommodation caused her to feel unhappy and unwelcome. (Tr. 96)

44. Complainant experienced increased stress and fear of becoming homeless when Respondents exercised their discretion to initiate eviction proceedings. (Tr. 96)

45. Complainant credibly explained the feelings of desolation and humiliation she suffered as neighbors took sides. (Tr. 96)

46. Complainant began to experience feelings of nervousness and stress when in the building hallways. (Tr. 85-6)

47. Complainant began to limit her use of the building's public amenities such as the bench outside her building, the laundry room and the garbage room. (Tr. 85-6)

48. Once Complainant moved out of the building her request for a reasonable accommodation became a moot issue. (Tr. 96)

OPINION AND DECISION

Complainant's disabilities are such that it is necessary for her to keep a dog in order to use and enjoy her apartment. Respondents violated the Human Rights Law when they failed to consider Complainant's reasonable accommodation request to waive its no dog rule, as it relates to her, and its failure to engage in an interactive process regarding her request.

The Human Rights Law requires that an owner of property "make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person with a disability equal opportunity to use and enjoy a dwelling..." § 296.1-g (2). When a complainant demonstrates that she is disabled, is qualified for tenancy, that because of a disability it is necessary for her to keep a dog in order to use and enjoy the apartment and that reasonable accommodations can be made to allow her to keep the dog, the landlord must alter its rules to allow the dog. *One Overlook Ave. Corp. v. New York State Division of Human Rights*, 8 A.D.3d 286, 287, 777 N.Y.S.2d 696 (2nd Dept., 2004), *lv. denied* 5 N.Y. 3d 714, 806 N.Y.S. 2d 165 (2005) (citations omitted).

Complainant Demonstrated That She is Qualified for Her Tenancy

Complainant established that, during the relevant time period, she was qualified for the tenancy. Complainant was a shareholder with a right to tenancy in the apartment, had lived in the same apartment a long time and made the required maintenance payments.

Complainant Demonstrated That She is Disabled

Complainant demonstrated that she has a disability as defined by the Human Rights Law.

The Human Rights Law §292.21 (a) defines the term disability as:

“A physical or mental impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily functions or is demonstrable by medically accepted clinical or laboratory diagnostic techniques ...”

An individual is disabled within the meaning of the Human Rights Law if this impairment is demonstrable by medically accepted techniques. There is no requirement that the impairment substantially limit an individual’s normal activities.

Complainant was diagnosed with RA which causes pain and swelling in the knees.

Complainant was also diagnosed with cardiac arrhythmia, which causes rapid heart beating, heart palpitations, light headiness, affects the ability to have restful sleep, and causes feelings of tiredness. These conditions are exacerbated by stress. Respondents had knowledge that Complainant is disabled, that she had a handicap placard and was in need of parking that was close to the entrance to the cooperative.

Complainant Demonstrated That it is Necessary for Her to Keep a Dog

Complainant established that, because of her disability, it is necessary for her to keep a dog in order to have the equal use and enjoyment of her apartment. Complainant began to experience restful sleep and her medical conditions greatly improved after she began to have a dog present in her apartment. Complainant’s treating physician, Dr. Riegel, made compelling medical arguments to Respondents that Complainant’s medical conditions improved since she acquired the dog, that it was medically necessary for her to have a dog and that the dog served as a medical companion who relieved her stress, stopped her heart palpitations, and lowered her blood pressure. Once the heart palpitations were stopped and or alleviated Complainant was able

to have restful sleep in her own bedroom. Thus Complainant established that, because of her disability, it is necessary for her to keep a dog in order to have the equal use and enjoyment of her apartment

Complainant Demonstrated that Respondent Has the Ability to Grant the Accommodation Request

The Board has the ability to consider the reasonable accommodation request and engage in an interactive dialogue with Complainant. The record shows that Respondent ignored Complainant's reasonable accommodation request. The Board's inaction was a "de facto" denial without engaging in the required interactive process.

Respondents Failed to Demonstrate that Waiving Policy Would Cause An Undue Hardship.

Respondents explained that they had already granted Complainant a reasonable accommodation to keep a cat. Respondents' self serving assertion that, in their opinion, a cat met Complainant's needs is not supported by the record. Complainant's medical documentation fully supported the necessity of a dog as a comfort animal in order for her to have the equal use and enjoyment of the apartment. As to the cat, the record showed that, in 2000, Complainant, Board members and shareholders began to harbor cats without requesting reasonable accommodations and Respondents elected not to exercise its discretion to enforce its no cat policy.

Respondent referred to Complainant's request for a reasonable accommodation to her disability as a "Pandora's Box" that would allow all shareholders to harbor dogs. However, Respondents admitted that, in twenty years they had received only three requests to harbor a dog as a reasonable accommodation due to disability. Respondents' fears are based on speculation and do not justify its refusal to engage in the interactive process with Complainant.

The record shows that Respondents did not have written policies or procedures disseminated to its shareholders as to how to request a reasonable accommodation in a manner that made the process for evaluation of the request known to all. Respondent explained that it did not consider Complainant's notes from her doctors as "reasonable accommodation requests." This explanation is incredible. The record established that Respondent received Complainant's verbal request for a reasonable accommodation and that she followed the directive of Vice President Trotta and submitted the medical notes to Respondents.

The record is devoid of evidence that Respondents would suffer any undue hardship by allowing Complainant a dog as a reasonable accommodation. There being no undue hardship which excuses Respondents, Complainant has proven her case. Here, Complainant transferred her apartment to her brother in response to Respondents' March 8, 2012 letter which incorrectly stated that the Division had ruled against her. As a result of Respondents' incorrect assertion, Complainant is no longer living in the building. This makes moot the request for a reasonable accommodation.

Retaliation

In order to establish a prima facie case of retaliation, a Complainant must show that: (1) she engaged in activity protected by the Human Rights Law § 296; (2) the respondent was aware that she participated in the protected activity; (3) she suffered from an adverse action, and (4) there is a causal connection between the protected activity and the adverse action. *Pace v. Ogden Services Corp.*, 257 A.D. 2d 101, 103, 692 N.Y.S.2d 220 (3d Dept. 1999), citing, *Fair v Guiding Eyes For the Blind*, 742 F. Supp. 151, 154 (S.D.N.Y. 1990); *Matter of Town of Lumberland v. New York State Div. of Human Rights*, 229 A.D. 2d 631, 636 (3d Dept. 1996).

The proof established that Respondent retaliated against the Complainant for opposing discrimination and filing a complaint. Complainant filed her Division complaint on September 17, 2010. After filing the Division complaint, Respondents removed Complainant's parking privileges even though they had notice that Complainant was disabled, had difficulty walking, used a cane and had a handicapped license plate. The proof established that Complainant suffered a hardship when Respondents revoked her parking privileges in so far as Complainant could not make doctor's appointments in the afternoon, for fear of not having a place to park her car upon return. Complainant also felt "trapped" in her apartment without the parking privilege.

Respondent further retaliated against Complainant by communicating incorrect information via letter dated March 8, 2012, in which they asserted that the Division had ruled in their favor. Respondent's misinformation caused Complainant to move out of the building. Respondent's conduct is in violation of the Human Rights Law's prohibition against retaliation.

Damages

The Human Rights Law allows for the awarding of both compensatory and punitive damages, Human Rights Law § 297.4 (c) (iii) and (iv).

A complainant is entitled to recover compensatory damages for mental anguish caused by a respondent's unlawful conduct. In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is reasonably related to the wrongdoing, supported in the record and comparable to awards for similar injuries. *State Div. of Human Rights v. Muia*, 176 A.D.2d 1142, 1144, 575 N.Y.S.2d 957, 960 (3d Dept. 1991).

Because of the "strong antidiscrimination policy" of the Human Rights Law, a complainant seeking an award for pain and suffering "need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous

provision.” *Batavia Lodge v. New York State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). Indeed, “[m]ental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct.” *New York City Transit Auth. v. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *New York State Dep’t of Corr. Servs. v. New York State Div. of Human Rights*, 225 A.D.2d 856, 859, 638 N.Y.S.2d 827, 830 (3d Dept. 1996).

It is difficult to differentiate between the mental anguish suffered by Complainant as a result of the unlawful discrimination of Respondents relative to the mental anguish that she suffered as a result of her preexisting medical conditions. Nonetheless, Complainant is awarded \$5,000 as compensatory damages given the exacerbation to her mental state by Respondents’ actions, the stress she experienced, the effect it had on her no longer feeling at home in the building and causing her to move out. Such an award is proper given Complainant’s compelling testimony. *Van Cleef Realty v N.Y. State Div. of Human Rights*, 216 A.D. 2d 306, 627 N.Y.S. 2d 744 (2d Dept. 1995); *State Division of Human Rights Rights (McKiever) v Dynasty Hotel*, 222 A. D. 2d 263, 635 N.Y.S. 2d 204 (1st Dept. 1995).

In light of the fact that the Division “has been vested with broad powers to fulfill ‘[t]he extremely strong statutory policy of eliminating discrimination”, an award of \$10,000 in punitive damages will serve to effectuate the purposes of the Human Rights Law. *Van Cleef Realty, supra, quoting Batavia Lodge v. N.Y. State Div. of Human Rights*, 35 N.Y. 2d 143, 146 (1975); *Feggoudakis v N.Y. State Div. of Human Rights*, 230 A.D. 2d 739, 646 N.Y.S. 2d 175 (2d Dept. 1996); *Matteo v. New York State Division of Human Rights*, 306 A.D. 2d 484, 761 N.Y.S. 2d 517 (2d Dept. 2002).

The Human Rights Law also vests with the Commissioner broad powers to “effectively eliminate specified unlawful discriminatory practices” as the statute is to be constructed liberally to accomplish its purposes. *300 Gramatan Avenue Associates v. New York State Div. of Human Rights*, 45 N.Y.2d 76 (CTA 1978), *Batavia Lodge No. 196, Loyal Order of Moose v. New York State Div. of Human Rights*, 35 N.Y.2d 143 (4th Dept. 1973), *Gaynor v. Rockefeller*, 15 N.Y.2d 120 (CTA, 1965).

There is sufficient evidence in this record to establish that Respondents adopted a “strict” discriminatory policy of not allowing dogs. Further, Respondents continue to enforce said policy.

Civil Fines & Penalties

The Human Rights Law § 297 (4)(e) requires that “any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” The additional factors that determine the appropriate amount of a civil fine and penalty are the goal of deterrence; the nature and circumstances of the violation; the degree of respondent’s culpability; any relevant history of respondent’s actions; respondent’s financial resources; and other matters as justice may require. *See, Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and 10107540, November 15, 2007, *aff’d*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 877 N.Y.S.2d 595 (4th Dept. 2009); *119-121 East 97th Street Corp, et. al., v. New York City Commission on Human Rights, et. al.*, 220 A.D.2d 79; 642 N.Y.S.2d 638 (1st Dept.1996).

A civil fine is appropriate in this matter. Human Rights Law §297 (4) (c) (vi) directs the Division to assess civil fines and penalties, “in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act...”

As to the nature and circumstances of the violation and the factor of the degree of Respondents’ culpability, such a fine is consistent with the evidence which showed that Respondents did not bother to engage in the interactive process upon receiving Complainant’s request for a reasonable accommodation. Respondents revoked Complainant’s parking privileges knowing Complainant was a disabled individual who had a handicapped license plate and used a cane to assist her to walk. Respondent further incorrectly told Complainant that she had lost her case before the Division and she was required to remove the dog by a certain date thereby causing Complainant to leave from the building. Respondents’ strict no dog policy does not allow for a waiver of the policy as a reasonable accommodation. Respondents’ actions warrant an imposition of a civil fine and penalty. Considering Respondents’ actions they are assessed a penalty of \$5,000 payable to the State of New York.

Respondents are small enterprises and the civil fine will serve as a deterrent against engaging in future disability discrimination and retaliation against tenant shareholders that engage in protected activity. As to the factor of furthering deterrence, such a fine will likely be significant enough to act as an inducement to compliance with the Human Rights Law, deter Respondents and others from noncompliance with same, and present an example to the public that the Human Rights Law will be vigorously enforced.

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 Respondents, its agents, representatives, employees, successors and assigns shall cease and desist from discriminatory practices in housing; and it is further

ORDERED that Respondents shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

1. Within sixty (60) days of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$5,000 as compensatory damages for mental anguish and humiliation Complainant suffered as a result of Respondents' unlawful discrimination against her. Interest shall accrue on this award at the rate of nine (9) percent per annum, from the date of the Commissioner's Final Order until payment is actually made by Respondents. Said payment shall be made by Respondents in the form of a certified check payable to Roseann Birch and delivered by certified mail, return receipt requested, to Complainant's home address. A copy of the certified check shall be mailed to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York, 10458.

2. Within sixty (60) days of the Commissioner's Final Order, Respondents shall pay to Complainant the sum of \$10,000 as punitive damages. Said payment shall be made by Respondents in the form of a certified check payable to Roseann Birch and delivered by certified mail, return receipt requested, to Complainant's home address. A copy of the certified check shall be mailed to Caroline Downey, Esq., General Counsel of the Division, at One Fordham Plaza, 4th Floor, Bronx, New York, 10458.

3. Within sixty (60) days of the Commissioner's Final Order, each Respondent shall pay civil fines to the State of New York in the amount of five thousand dollars (\$5,000) for having violated the Human Rights Law. Payment of the civil fine shall be made in the form of a certified check made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel of the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. Interest shall accrue at a rate of nine (9) percent per annum on any amount paid after sixty days from the date of this Final Order until payment is made. *See NYCRR §466.12 (e)*.

4. Within sixty (60) days of the Commissioner's Final Order, Respondents shall create standard policies and procedures consistent with the New York State Human Rights Law to evaluate shareholders requests for a reasonable accommodation. Said policies and procedures shall be disseminated to all shareholders and posted on all public bulletin boards. A copy of the standard policies and procedures for shareholders who seek a reasonable accommodation shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights at One Fordham Plaza, 4th Floor, Bronx, New York 10348.

5. Within sixty (60) days of the Commissioner's Final Order, Respondents shall develop and implement training in the prevention of unlawful discrimination in accordance with the Human Rights Law. Respondents shall provide the formal training to all personnel and Board members on an annual basis. A copy of the training program shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights at One Fordham Plaza, 4th Floor, Bronx, New York 10348.

DATED: September 24, 2013
Bronx, New York



Migdalia Parés
Administrative Law Judge