

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

**ANELL LIPANI as ADMINISTRATOR OF THE
ESTATE OF JOHN LIPANI, and ANELL LIPANI,
and LONG ISLAND HOUSING SERVICES, INC.,**

Complainants,

v.

**BRETTON WOODS CONDOMINIUM VIII,
Respondent.**

**NOTICE AND
FINAL ORDER**

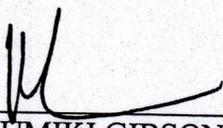
Case Nos. 3507168
3507169

PLEASE TAKE NOTICE that the attached is a true copy of the Alternative Proposed Order, issued on July 11, 2007, by Matthew A. Menes, Adjudication Counsel, after a hearing held before 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 Alternative Proposed Order, and all objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE ALTERNATIVE
PROPOSED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE
KUMIKI GIBSON, 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, this 6th day of August, 2007.


KUMIKI GIBSON
COMMISSIONER

TO:

Complainant

Anell Lipani
Administrator Estate John Lipani
16 Woodmont Court
Holtsville, NY 11742

Mrs. Anell Lipani
16 Woodmont Court
Holtsville, NY 11742

Michelle Santantonio, Executive Director
Long Island Housing Services, Inc.
640 Johnson Avenue, Suite 8
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Complainant Attorney

Richard F. Bellman, Esq.
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Respondent

Bretton Woods Condominium VIII
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Respondent Attorney

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Commack, NY 11725

Hon. Andrew Cuomo, Attorney General
Attn: Civil Rights Bureau
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New York, New York 10271

State Division of Human Rights

Joshua Zinner, Deputy Commissioner for Enforcement
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Thomas S. Protano
Administrative Law Judge

Sara Toll East
Chief, Litigation and Appeals

Caroline J. Downey
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Matthew Menes
Adjudication Counsel

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

STATE DIVISION OF HUMAN RIGHTS

on the Complaint of

**ANELL LIPANI AS ADMINISTRATOR OF
THE ESTATE OF JOHN LIPANI, and
ANELL LIPANI, and LONG ISLAND
HOUSING SERVICES, INC.,**

Complainants,

v.

**BRETTON WOODS CONDOMINIUM VIII,
Respondent.**

**ALTERNATIVE PROPOSED
ORDER**

Case Nos. **3507168
3507169**

SUMMARY

Complainant John Lipani suffered from progressive supranuclear palsy, a neurological disease considered a disability under the Human Rights Law. As a result, he had limited mobility and would ambulate only with assistance, a wheelchair or scooter. Complainants alleged that Respondent refused to reasonably accommodate John Lipani's disability by failing to provide adequate parking accommodations, thereby violating the Human Rights Law. However, Respondent did take reasonable steps to accommodate John Lipani and acted in accordance with the Human Rights Law. The complaint is, therefore, dismissed.

PROCEEDINGS IN THE CASE

On March 17, 2003, Complainants filed verified complaints with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to housing in violation of the Human Rights Law of the State of New York.

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

After due notice, the case was heard before Margaret A. Jackson, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held from November 17 to 19, 2004.

The caption was amended at the hearing to correctly reflect Long Island Housing Services as a Complainant. (Tr. 1-2) The ALJ also noted that John Lipani had died since the complaint was filed and directed that the estate be substituted as Complainant. Accordingly, Anell Lipani, as Administrator of the Estate of John Lipani, was substituted as Complainant herein for John Lipani. Anell Lipani remains a Complainant.

Complainants and Respondent appeared at the hearing. Complainants were represented by Richard F. Bellman, Esq. Respondent was represented by Stanley J. Somer, Esq.

Counsel for both parties filed timely post-hearing briefs.

ALJ Jackson issued a Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order") on August 30, 2006 dismissing the complaint. On December 5, 2006, former Commissioner Michelle Cheney Donaldson reopened the record and directed that the case be reassigned to a new ALJ, "in the interests of justice." The former Commissioner further directed that the new ALJ should reconsider the case. The case was reassigned to ALJ Thomas S. Protano. A conference was held on January 22, 2007, at which time the parties were given an opportunity to comment on the former Commissioner's Order. Counsel for both parties filed comments.

Subsequently, upon review of the file, it was discovered that there were two exhibits marked into evidence as Respondent's Exhibit F. One was placed in evidence on November 18, 2004, and one was placed in evidence on November 19, 2004. The document entered into evidence on November 18, 2004, was re-marked at hearing as Respondent's Exhibit F1. The

document entered into evidence on November 19, 2004, was re-marked at hearing as Respondent's Exhibit F2.

On June 12, 2007, ALJ Protano issued a Recommended Order recommending liability. Objections to the Recommended Order from the Complainant dated June 28, 2007, were received by the Commissioner's Order Preparation Unit.

FINDINGS OF FACT

1. In May of 2002, John and Anell Lipani moved into the Bretton Woods Condominium complex, which is a two hundred acre development located in Coram, New York. (Tr. 19; ALJ Exhibit I) The complex is divided into several sections. Each section has its own governing board. The Lipanis lived in Section VIII, Unit 917. (Tr. 33, 479-80)
2. John Lipani suffered from a neurological disease called progressive supranuclear palsy. As a result, he had limited mobility and would ambulate only with assistance, a wheelchair or scooter. (Tr. 29, 65) Mr. Lipani passed away on February 11, 2004. (Tr. 14)
3. The Lipanis' unit faced a main road, Skyline Drive. A walkway goes around the unit and along Skyline Drive. (Respondent's Exhibit D, E1, F1) When the Lipanis moved into the condominium, there were several parking spots on Skyline Drive to the left of their apartment's front door. Two were designated as handicapped spaces. (Tr. 39)
4. There were also handicapped spaces to the right of Lipanis' unit and some to the rear. (Respondent's Exhibits D, E2, F1; Tr. 533)
5. None of the parking spaces in the development were assigned to specific units or residents. Both the handicapped and the regular parking spaces were occupied on a first come, first served basis. In parking lot 16, which was the lot adjacent to the Lipanis' unit, there were

74 parking spaces. Of those 74, nine were designated handicapped parking spaces. (Tr. 35, 301; ALJ Exhibit II)

6. Soon after she moved in, Anell Lipani spoke to Harvey Mendelsohn ("Mendelsohn"), a member of the Board of Managers for Respondent, and requested that the parking spot closest to her apartment be designated as a handicapped space. Mendelsohn and the Board granted the request. (Tr. 48)

7. Anell Lipani also asked if a ramp with a grab bar could be installed in front of her door, so that John Lipani could get in and out of their apartment more easily. Anell Lipani's brother installed a portable ramp after Mendelsohn agreed to allow it. (Tr. 51, 528)

8. Shortly thereafter, in July 2002, Anell Lipani again made a request to Mendelsohn. This time, she requested that Respondent put a curb cut at the end of the walkway to the right of her unit. The curb cut was constructed at Respondent's expense. (Tr. 68-69, 138, 532)

9. Despite the new curb cut, the Lipanis were still not satisfied. Anell Lipani alleged she could not push John Lipani up the slight grade to get to and from the handicapped parking spaces towards the back of their unit. In addition, when John Lipani used his scooter, the passing cars on the street would create a hazard because of his poor eyesight. (Tr. 78, 273)

10. John Lipani would also fall on occasion. As a result, Anell Lipani did not feel it was safe to leave him alone. (Tr. 109, 170)

11. The Lipanis felt their best option was to park in the lot on Skyline Drive, in front and slightly to the left of their apartment unit. There was a walkway next to the two handicapped spaces on Skyline Drive that led to a set of stairs. However, they often found a car parked in that walkway, which blocked access to their car. The car belonged to a neighbor of the Lipanis, named "Sam." (Tr. 47)

12. Anell Lipani spoke to Mendelsohn and informed him that Sam's car often blocked the walkway. (Tr. 51) In response, Mendelsohn spoke to Sam, and asked him not to park in the walkway. Regardless of Mendelsohn's requests, Sam continued to park in the walkway. (Tr. 55, 548)

13. As a further attempt to accommodate the Lipanis, Respondent re-striped the parking area on Skyline Drive in October 2002. In the place where there had been two handicapped spaces, Respondent narrowed the walkway in which Sam had been parking and placed three new handicapped spaces. (Tr. 82, 218)

14. The Lipanis alleged that this new arrangement was inadequate for them. They claimed the spaces, although designated with a handicapped sign, had no access aisles and were too narrow. (Tr. 82, 136, 301)

15. Anell Lipani went to Mendelsohn's apartment and again complained to Mendelsohn. This time, she was very angry and "screamed" at him. Mendelsohn asked Anell Lipani to leave his apartment. (Tr. 83-84, 550)

16. Thereafter, the Lipanis sought assistance from Long Island Housing Services ("LIHS"). (Tr. 93)

17. In December 2002, LIHS drafted a letter for the Lipanis to send to Respondent. The letter requested that a ramp be placed near the stairway leading to the parking area on Skyline Drive and asked that all handicapped parking spaces conform to New York State Housing and Community Renewal Law § 1101.1(d)(4), which they claimed required all handicapped parking spaces to have eight foot access aisles. (Complainants' Exhibit 6; Tr. 93-96)

18. Arnold Rovner ("Rovner"), President of the Board of Managers for Respondent, received the letter dated December 31, 2002, and promptly responded in a letter dated

January 13, 2003. Rovner requested further details regarding the proposed ramp and any specific accommodations for which the Lipanis were asking. Rovner indicated in his letter that the "Board, I believe, would have no objections in principle to modifications to afford Mr. Lipani easier access to your residence." Rovner also indicated to LIHS that he would "call an emergency Board meeting in an attempt to resolve this problem." (Complainants' Exhibit 7, 8, 11)

19. The Respondent met with Complainants on February 3, 2003, in order to fashion an accommodation that would be suitable for the Lipanis. Ultimately, Respondent agreed to create and provide an eight-foot handicapped parking space with an eight-foot access aisle in a location most convenient for the Lipanis at Respondent's expense. (Tr. 232-33, Complainants' Exhibit 9, 10)

20. On March 17, 2003, Complainants filed the instant verified complaints with the Division, charging Respondent with unlawful discriminatory practices.

21. On June 17, 2003, Respondent again agreed, this time in writing, to provide the above-referenced handicapped parking space. In addition, Respondent agreed in writing to an additional request, i.e. to attend fair housing training to be conducted by LIHS. (Respondent's Exhibit N)

22. In response, the Lipanis requested that the above-referenced handicapped parking space be reserved solely for their use. (Tr. 597)

23. The Respondent informed the Lipanis that the Respondent would "not be able to police that area whether it had her name on there or not." Respondent was not equipped to ensure third-party compliance. In addition, the Respondent's Board did not want to have the liability of

having to tow cars and act as a police force. Respondent explained this to Complainants, but Complainants "refused to sign off on that." (Tr. 553-54, 597-98)

24. In November of 2003, the Lipanis moved out of their condominium. (Tr. 110-11)

OPINION AND DECISION

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.18(18), makes it an unlawful discriminatory practice for a condominium to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. The Human Rights Law provides substantially equivalent rights, procedures, and remedies as the federal Fair Housing Act ("FHA"). Thus, because the two statutes are analogous, housing claims under the Human Rights Law can be interpreted by looking to federal precedent. *See McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429, 788 N.Y.S.2d 281, 284 (2004).

Whether a requested accommodation is required under the state or federal law is highly fact-specific, requiring case-by-case determination. *See United States v. California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994). The requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person. *See Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995). An accommodation need only afford disabled residents an equal opportunity to use and enjoy the dwelling and need not extend a preference to disabled residents relative to other residents. *See California Mobile Home Park* at 1418.

In some cases, courts have held that when disabled tenants require nearby parking as a substantial factor in their use and enjoyment of their dwelling, their condominium boards may be required to provide parking. *See Shapiro v. Cadman Towers, Inc.* 51 F.3d 328, 335 (2d Cir.

1995). However, this is not the sole means of providing a reasonable accommodation. In fact, courts have specifically held that the FHA (and, thereby, the Human Rights Law) does not create a right to an assigned handicapped space any more than it creates a right to an increase in the number of handicapped parking spaces. It only creates a right to be reasonably accommodated. See *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 896 (7th Cir. 1996). The designation of the most desirable parking spaces for disabled residents is only required if the creation of handicapped spaces is insufficient to provide an opportunity to use and enjoy the dwelling equal to that of non-disabled residents. In short, the question is whether at least one of the handicapped parking spaces was sufficiently close to the Lipanis' apartment and whether the space would have been available for regular use. See *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187 (S.D.N.Y. 1998). Here, the handicapped spaces were sufficiently close, and there is no evidence that the spaces were not regularly available.

When the Lipanis moved in, there were two handicapped parking spaces to the left of their unit plus handicapped spaces to the right and to the rear. In total, of the 74 parking spaces in the parking lot adjacent to their unit, nine were designated handicapped parking spaces.

In an attempt to further accommodate the Lipanis, Respondent designated the parking spot closest to their apartment as a handicapped space at Anell Lipani's request. Respondent also gave permission to the Lipanis to install a ramp with a grab bar in front of their door, so that John Lipani could get in and out of their apartment more easily. Shortly thereafter, Respondent, at its own expense, put a curb cut at the end of the walkway to the right of the Lipanis' unit as per Anell Lipani's request.

As a further attempt to accommodate the Lipanis, Respondent re-striped the parking area on Skyline Drive. Finally, Respondent agreed to create and provide an eight-foot handicapped

parking space with an eight-foot access aisle in a location most convenient for the Lipanis, at Respondent's expense, and, attend fair housing training to be conducted by LIHS.

In response, the Lipanis requested that the above-referenced handicapped parking space be reserved solely for their use. Respondent informed the Lipanis that Respondent would "not be able to police that area whether it had her name on there or not." Respondent explained this to the Complainants, but the Complainants "refused to sign off on that."

Respondents acted reasonably in their attempts to accommodate John Lipani's disability. Their efforts were consistent with those required by law.

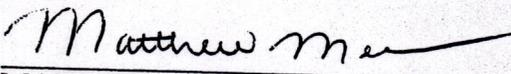
ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and the laws applicable to this case, it is hereby

ORDERED, that the complaint be, and hereby is, DISMISSED.

DATED: July 11, 2007
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS



MATTHEW MENES
Adjudication Counsel