

**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.

**FINAL ORDER AFTER
REMITTAL**

Case Nos. **3507168**
3507169

PLEASE TAKE NOTICE that the attached is a true copy of an Order issued by the Honorable Galen D. Kirkland, Commissioner of the New York State Division of Human Rights (“Division”), after remittal by the Appellate Division. 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.

DATED: **JUN 02 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

TO:

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By Order and Decision issued November 12, 2008, the Supreme Court, Appellate Division for the Second Department, annulled the Division's August 6, 2007, Final Order in this matter and remitted the case to the Division to "reconsider the administrative complaint and the evidence before it, without reference to . . . attempts at conciliation and the conciliation agreement, and render a new determination thereafter." *Lipani v. New York State Div. of Human Rights*, 867 N.Y.S.2d 505, 2008 N.Y. Slip Op. 08739 (2d Dept. 2008). Accordingly, having reviewed only the relevant and admissible evidence in the record, it is determined that the credible record does not support a finding of discrimination. The complaint must be dismissed.

FINDINGS OF FACT

1. In May 2002, John and Anell Lipani moved into the Bretton Woods Condominium complex, a two-hundred-acre development located in Coram, New York. (Tr. 19; ALJ's Exhibit I)

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 in, there were several parking spots on Skyline Drive to the left of their apartment's front door. Two were designated handicapped. (Tr. 39) There were also handicapped spaces to the right and the rear of the Lipanis' unit. (Respondent's Exhibits D, E2, F1; Tr. 533)

4. None of the parking spaces were assigned. Both handicapped and non-handicapped were occupied on a first come, first served basis. In lot 16, adjacent to the Lipanis' unit, there were 74 spaces, nine of which were designated handicapped. (Tr. 35, 301; ALJ's Exhibit II)

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

6. 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)

7. Shortly thereafter, in July 2002, Anell Lipani made another request to Mendelsohn 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)

8. Thereafter, Anell Lipani asserted she could not push John Lipani up the grade of the curb-cut. In addition, when John Lipani used his scooter, passing cars created a hazard. (Tr. 78,

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

9. At this point, 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. Though there was a walkway next to the handicapped spaces on Skyline Drive, they often found a car parked in that walkway, which blocked access to their car. The car belonged to a neighbor named "Sam." (Tr. 47)

10. Anell Lipani informed Mendelsohn that Sam's car often blocked the walkway. (Tr. 51) Mendelsohn asked Sam not to park in the walkway, but Sam continued to do so. (Tr. 55, 548)

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

12. The Lipanis asserted this new arrangement was inadequate. They claimed the spaces, though designated handicapped, had no access aisles and were too narrow. (Tr. 82, 136, 301)

13. Anell Lipani 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)

14. The Lipanis thereafter sought assistance at Long Island Housing Services ("LIHS"). (Tr. 93)

15. 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). (Complainants' Exhibit 6; Tr. 93-96)

16. Arnold Rovner, Respondent's President of the Board of Managers promptly responded, requesting further details regarding the proposed ramp and any specific accommodations for

which the Lipanis were asking. Rovner indicated that the “Board, I believe, would have no objections in principle to modifications to afford Mr. Lipani easier access to your residence.” Rovner also informed LIHS that he would “call an emergency Board meeting in an attempt to resolve this problem.” (Complainants’ Exhibits 7, 8, 11)

17. Respondent met with Complainants on February 3, 2003, in order to fashion a suitable accommodation 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. 232-38, Complainants’ Exhibits 9, 10)

18. On March 17, 2003, Complainants filed the instant complaint. (ALJ’s Exhibit D).

OPINION AND DECISION

N.Y. Exec. Law, art. 15 (“Human Rights Law”) § 296.18 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.

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 the instant case, the relevant evidence demonstrates that Respondent made sufficient

attempts to reasonably accommodate Complainant. When the Lipanis moved in, there were two handicapped parking spaces to the left of their unit plus handicapped spaces to the right and 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 accommodate the Lipanis, Respondent designated the parking spot closest to their apartment as a handicapped space. Respondent also gave the Lipanis permission 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 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.

Ultimately, the parties engaged in settlement negotiations which led to the breakdown of any agreement between them. However, considering all of the evidence outside of those negotiations, it is apparent that Respondent made every reasonable effort to meet all of the Lipanis' accommodation requests.

The relevant evidence demonstrates Respondent made reasonable efforts to accommodate Complainants' needs. The record shows that Respondent did not discriminate against those with disabilities. Accordingly, the instant complaint is hereby dismissed.

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: 6/1/09
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS

GALEN D. KIRKLAND
Commissioner