

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

EVELYN J. LYMUS,

Complainant,

v.

**BOARD OF DIRECTORS OF LINDSAY PARK
HOUSING WITH ZENITH PROPERTIES, INC. AS
AIDERS AND ABETTORS,**

Respondent.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case No. 5806502

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 April 20, 2007, by Margaret 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 KUMIKI GIBSON, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:

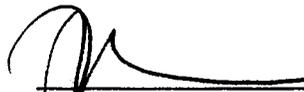
- As Complainant’s attorney has failed to provide the Division with sufficient documentation necessary to award attorney’s fees, as requested in the Recommended Order and subsequent correspondence, attorney’s fees shall not be awarded. All other

damages awarded, however, are approved, adopted, and issued as part of this 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 8th day of June, 2007.


KUMIKI GIBSON
COMMISSIONER

TO:

Complainant
Evelyn J. Lymus
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Apt. 5L
Brooklyn, NY 11206

Complainant Attorney

David Swerdlick, Esq.
310 Palafox Drive
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Respondent

Lindsay Park Housing, Board of Directors
Attn: Cora D. Austin, Director of the Board
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Brooklyn, NY 11201

Respondent Secondary Address

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Respondent Attorney

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Hon. Andrew Cuomo, Attorney General
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Matthew Menes
Adjudication Counsel

Trevor G. Usher
Chief Calendar Clerk

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on the Complaint of

EVELYN J. LYMUS,

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**BOARD OF DIRECTORS OF LINDSAY
PARK HOUSING WITH ZENITH
PROPERTIES, INC. AS AIDERS AND
ABETTORS,**

Respondents.

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

Case No. **5806502**

SUMMARY

Complainant was discriminated against on the basis of her age and disability when her parking permit was revoked. As a result, Complainant shall be granted the next available paid parking space in her housing development, and is awarded mental anguish damages in the amount of \$5,000.00 and punitive damages in the amount of \$10,000.00.

PROCEEDINGS IN THE CASE

On March 17, 2003, Complainant filed a verified complaint with the State Division of Human Rights (Division), charging Respondents 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 Respondents had engaged in unlawful discriminatory practice. 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 (A.L.J.) of the Division. Public hearing sessions were held on April 28, 2005.

Complainant and Respondent appeared at the hearing. Complainant was represented by David Swerdlick, Esq. Respondent Zenith properties was represented by Stanley B. Dreyer, Esq. The Board of Directors of Lindsay Park Housing was represented by the Law Offices of Gallagher and Berky, Michelle Quinn, Esq. of Counsel.

Permission to file post-hearing briefs was granted. Post-hearing briefs were timely filed.

FINDINGS OF FACT

1. For the past 39 years Complainant, who is 77 years of age, resided at Respondent Lindsay Park Housing Corp. (Lindsay Park), located at 54 Boerum Place, Brooklyn, New York. (Tr.8-9)
2. Respondent Zenith Properties (Board) manages Lindsay Park. (Tr.86-87) The property consists of seven multi-story residential buildings containing 2,702 apartments and outdoor parking for approximately 1,000 passenger motor vehicles. (Complainant's Exhibit 12)
3. In 1983, Complainant signed a parking license agreement and began paying a monthly fee for parking space #350 in the parking lot located at 54 Boerum Place, Brooklyn, New York. (Complainant's Exhibit 11)
4. In 1994, Complainant was diagnosed as being legally blind as a result of liver and kidney conditions associated with diabetes, arthritis and congestive heart failure. As a result of her disabilities, she cannot drive, needs assistance ambulating and falls occasionally if left unattended. (Tr. 10, 13, 26-27)
5. After 1999, Complainant neither owned a motor vehicle nor had one registered in her name but she continued paying Respondents a fee for parking space #350. (Tr. 14)
6. Because there are no designated visitor spaces at the housing development (Tr. 110) Complainant's sister, home attendant and nurse utilize her parking space when they visit to

provide daily living assistance. (Tr. 16) Her sister utilizes the space on a regular basis. The home attendant uses the space five times a week for three hours a day and the attending nurse uses the space every other week when she visits to provide physical therapy. (Tr. 30)

7. In 2002, Respondent Board changed the parking license agreement that it issued to its residents. Residents would no longer be issued a parking permit if they did not own a motor vehicle registered in the state of New York. Residents, however, were permitted to retain more than one parking space. (Tr.126 - 128) In addition, the Board established a waiting list for elderly and disabled residents, other than Complainant. (Tr. 137; Complainant's Exhibit 12)

8. In 2002, in accordance with its new agreement Respondent Board sent Complainant a notice. The notice stated that it was revoking Complainant's parking permit because she did not own a motor vehicle that was registered in the State of New York. (Tr. 125)

9. On January 14, 2003, Complainant became upset and contacted her attorney who appealed the notification that was sent to Complainant and faxed Respondent Board a letter requesting the parking space be given to Complainant as a reasonable accommodation. (Tr. 105, 135-136) Medical documentation was provided stating that Complainant had been hospitalized with congestive heart failure and was restricted to walking short distances. (Tr. 43; Complainant's Exhibit 9)

10. On February 14, 2003, Complainant was sent a letter notifying her that in spite of her medical documentation, her license to park at Respondent Lindsay Park facilities would be revoked after March 31, 2003, (Tr. 73, 76, 129)

11. On March 31, 2003, Complainant's parking permit was revoked. (Tr. 136-137)

12. As a result of the revocation, Complainant was left unattended in her vestibule for extended periods of time while her sister and home care attendants sought parking on local

streets. (Tr.39-40) Because the development does not have designated parking for persons with disabilities, Complainant's home care providers parked in the illegal parking zone in front of her building and risked having their cars stickered with illegal parking notices or being towed. (Tr. 34, 112-113, 118)

13. Complainant filed the instant claim alleging that she could no longer use and enjoy her dwelling after her parking space was taken and given to a younger resident with no disability.

(ALJ 1)

OPINION AND DECISION

Complainant alleged that Respondent discriminated against her based on her age and disability by interfering with the use and enjoyment of her dwelling when it revoked her parking permit. Respondent denied the allegations. However, the credible evidence supports a finding that Respondent did not provide a reasonable accommodation for Complainant's disability in violation of the Human Rights Law.

Under the Human Rights Law the term disability is broadly defined. The law provides that a disability is not limited to a physical or mental impairment but may also include medical impairments. N.Y. Exec. Law § 291. *et seq.* Hence, Complainant's legally blind condition and medical infirmities that include diabetes, arthritis and congestive heart failure are cognizable disabilities as the term is defined in Section 296(21) of the Human Rights Law. *See also, N.Y. State Div. of Human Rights v. Xerox*, 65 N.Y.2d 213, 219, 491 N.Y.S.2d 106 (1985).

The Human Rights Law, like federal disability statutes such as the Fair Housing Amendments Act of 1988 [42 U.S.C. § 3604 (2)(A)] requires covered entities to provide reasonable accommodations to persons with disabilities that may not be offered to other persons in order to ensure that persons with disabilities enjoy equal opportunities. Human Rights Law § 296

(18) (2) requires provision of reasonable accommodations in rules, policies, and practices when such accommodations may be necessary to afford said person with a disability an equal opportunity to use and enjoy a dwelling. Therefore, a reasonable accommodation can involve changing rules that are generally applicable so as to make its burden less onerous on the disabled individual. However, the required accommodations must be both reasonable and necessary to afford the disabled individual an equal opportunity to use and enjoy a dwelling.

To determine whether a proposed accommodation is reasonable, courts generally balance the burdens the contemplated accommodation imposed on the Respondent against the benefits to the Complainant. A landlord may be "required to incur reasonable costs to accommodate [a tenant's handicap] provided such accommodations do not pose an undue hardship or a substantial burden." *Shapiro v. Cadman Towers, Inc.*, 51 F. 3d 328, 335 (1995); *Lyons v. Legal Aid Society*, 68 F. 3d 1512, 1517 (2d Cir. 1995). The requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person. At the same time, an accommodation should not extend a preference to disabled residents relative to other residents, as opposed to affording them equal opportunity. In other words, accommodations that go beyond affording a disabled tenant an equal opportunity to use and enjoy a dwelling are not required by the law. *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187, (S.D.N.Y.1998) U.S. Dist. LEXIS 1561 (S.D.N.Y. 1998)

Respondent Lindsay Park is a housing development which houses 2,702 residents and has 1,000 parking spaces. The development does not have a parking area to facilitate the needs of its disabled residents. Nonetheless, the Board met and decided to change the parking license requirements to state that residents must own a car and meet their other guidelines in order to be given or retain their paid parking space. As a result, Complainant's parking permit was revoked

while other residents were allowed to keep two parking spaces because that portion of the agreement was not modified. Complainant became very upset and, through her attorney, wrote to Respondent Board requesting renewal of her parking permit explaining that she needed the space because of her deteriorating physical condition.

Respondents clearly do not wish to provide Complainant with an unfair advantage. Yet, other elderly and disabled tenants who have vehicles registered in the State of New York have parking permits or have been placed on a waiting list for a parking space. I find that Complainant's request was not unreasonable and was based on a matter of medical necessity. The accommodation that Complainant sought was retention of a parking permit that she had for many years even when she no longer owned a motor vehicle registered in the State of New York. That accommodation would have equalized Complainant's opportunity to use and enjoy her dwelling. The only question remaining is whether such an accommodation is unduly burdensome to Respondent. I find that it is not.

Respondents maintained a policy under which holders of reserved parking spaces pay a monthly fee. But granting Complainant the use of a space near her apartment would not diminish the number of spaces available for rental or decrease Respondent's income from these spaces. Thus, Respondent would not be burdened by allowing Complainant to continue paying for a parking space near her residence. Under the facts of this case, there would be no additional cost associated with allowing Complainant to retain and pay for the parking space that she had for over twenty years. Respondents' contention that Complainant would be unfairly benefited relative to the other tenants by granting a parking permit for a space near her apartment for use by her relatives and home attendants is only correct if one ignores the significance of Complainant's disability, which is what necessitates the reasonable accommodation.

Complainant should have the same opportunity to use and enjoy her dwelling that other residents enjoy. Respondents did not make any offer of an accommodation resulting in a violation of the Human Rights Law.

It is not as if Complainant requested a free parking space. The taking of the parking space that she had for years without having a car made her very upset. Therefore, an award of \$5,000 will effectuate the purposes of the Human Rights Law. *Batavia Lodge*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974); *see also Manhattan and Bronx Surface Transit Auth. v. N.Y. State Div. of Human Rights*, 225 A.D.2d 553, 638 N.Y.S.2d 761 (2d Dept. 1996) (award reduced to \$7,500 where Complainant testified he felt “very upset” and “very angry”).

Complainant is also entitled to interest at a rate of nine percent per annum on the mental anguish award from the date of this Order until the date payment is made. *See N.Y. State Div. of Human Rights v. Marcus Garvey Nursing Home*, 249 A.D.2d 549, 672 N.Y.S.2d 130 (2d Dept. 1998).

Section 297(4)(c)(iv) of the Human Rights Law permits the Division to award punitive damages up to \$10,000 in cases of housing discrimination. In light of the Division’s broad mandate to fulfill, “[t]he extremely strong statutory policy of eliminating discrimination,” a punitive award of \$10,000 will serve to effectuate the purposes of the Human Rights Law. *Van Cleef Realty, Inc. v. N.Y. State Div. of Human Rights*, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2d Dept. 1995), *see also Feggoudakis v. N.Y. State Div. of Human Rights*, 230 A.D.2d 739, 646 N.Y.S.2d 175 (2d Dept. 1996).

Complainant is additionally entitled to attorney’s fees in an amount to be calculated utilizing the “lodestar” method. *See Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S.Ct. 939, 945 (1989); *Wilson v. Nomura Securities International, Inc.*, No. 01 Civ. 9290, 2002 WL 1560614

(SDNY 2002). Complainant's counsel shall submit, within thirty days of the date of this Order a request for fees including contemporaneous time records to the extent they exist. Within sixty days of the date of this order, Respondent's counsel may submit a response.

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 Respondent, its agents, representatives, employees, successors and assigns shall cease and desist from discriminating in housing in violation of the Human Rights Law; it is further

ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative actions to effectuate the purposes of the Human Rights Law:

1. Complainant shall be granted the next available paid parking space in her housing development.
2. Within thirty days of the receipt of the Final Order of the Commissioner, Respondent shall also pay to Complainant the sum of \$5,000.00 without any withholding or deductions, as compensatory damages for mental anguish and humiliation suffered by Complainant as a result of Respondent's unlawful discrimination. Interest on the compensatory damages award shall start to accrue within thirty days of receipt of the Final Order of the Commissioner, until said payment is made. Unless paid within thirty days of this Order, interest shall accrue thereon at 9% per annum from the date of this Order until payment is made.

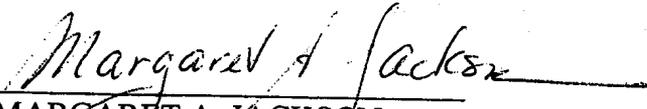
3. Within sixty days of the date of the Final Order, Respondent shall pay to Complainant punitive damages, without any deductions or withholding whatsoever, in the amount of \$10,000.00.

4. The aforesaid payments shall be in the form of certified checks made payable to the order of Complainant's attorney, David Swerdlick, Esq., at 310 Palafox Drive, Chapel Hill-NC-27516 and delivered by registered mail, Return Receipt Requested.

5. Respondent shall simultaneously furnish written proof of the aforesaid payments to Caroline J. Downey, Acting General Counsel, at her office address of One Fordham Plaza, 4th Floor, Bronx, New York 10458 by first-class mail and shall cooperate with representatives of the Division during any investigation into the compliance with the directives contained in this Order.

6. Complainant's counsel shall submit, within thirty days of the date of this Order a request for fees including contemporaneous time records to the extent they exist. Within sixty days of the date of this order, Respondent's counsel may submit a response.

DATED: April 20, 2007
Bronx, New York


MARGARET A. JACKSON
Administrative Law Judge