

**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

**STATE DIVISION OF HUMAN RIGHTS**

on the Complaint of

**WENDY MARSHALL,**

Complainant,

v.

**COW BAY HOUSING DEVELOPMENT FUND  
CO., INC.,**

Respondent.

**NOTICE OF FINAL  
ORDER AFTER HEARING**

Case No. 3507316

**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 February 2, 2007, by Margaret A. Jackson, an Administrative Law Judge of the New York State Division of Human Rights (“Division”).

**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”).** 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 26th day of March, 2007.



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KUMIKI GIBSON  
COMMISSIONER

TO:

Wendy Marshall  
4-C Bay Green Lane  
Port Washington, NY 11050

Jeanne S. Schieck, Esq.  
200 Old Country Road Suite 590  
Mineola, NY 11501

Cow Bay Housing Development Fund Co., Inc.  
Attn: Jaime Pena, Manager  
Bay Green Lane  
Port Washington, NY 11050

Kenneth B. Mock, Esq.  
891 Nassau Road  
Uniondale, NY 11553-3131

State Division of Human Rights  
Caroline J. Downey, Acting General Counsel

Sara Toll East  
Chief, Litigation and Appeals

Albert Kostelny  
Chief, Prosecution Unit

Peter G. Buchenholz

Trevor G. Usher  
Chief Calendar Clerk



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF HUMAN RIGHTS  
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ELIOT SPITZER  
GOVERNOR

KUMIKI GIBSON  
COMMISSIONER DESIGNATE

February 2, 2007

Re: Wendy Marshall v. Cow Bay Housing Development Fund Co.,  
Inc., and Jaime Pena, as Managing Agent  
Case No. 3507316

To the Parties Listed Below:

Enclosed please find a copy of my proposed Recommended Findings of Fact, Decision and Opinion, and Order. Please be advised that you have twenty-one (21) days from the date of this letter to file Objections.

Your Objections may be in letter form, should not reargue material in the Record, and should be as concise as possible. Copies of your Objections must be served on opposing counsel, including Division counsel, if any, and on the General Counsel of the Division of Human Rights. Objections provide the parties with an opportunity to be heard on the issues in the case before the issuance of a final Order of the Commissioner. See Rules of Practice of the Division of Human Rights, 9 NYCRR § 465.17(c).

The Objections must be filed by February 22, 2007, with the Order Preparation Unit, at the address below.

NYS Division of Human Rights  
Order Preparation Unit  
One Fordham Plaza, 4th Floor  
Bronx, New York 10458

If we do not receive your Objections by the deadline noted above, the Division will assume that you do not object to the proposed order and will proceed to issue the final Order under that assumption.

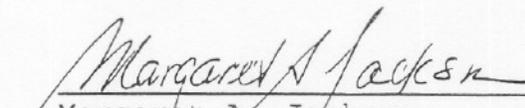
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as Managing Agent

Please contact Peter G. Buchenholz, Adjudication Counsel,  
at (718) 741-8340 if you have any questions regarding the filing  
of Objections.

Very truly yours,

  
Margaret A. Jackson  
Administrative Law Judge

Notice of Recommended Order

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as Managing Agent

TO:

Complainant

Wendy Marshall  
4-C Bay Green Lane  
Port Washington, NY 11050

Complainant Attorney

Jeanne S. Schieck, Esq.  
200 Old Country Road Suite 590  
Mineola, NY 11501

Respondents

Cow Bay Housing Development Fund Co., Inc.  
Attn: Jaime Pena, Manager  
Bay Green Lane  
Port Washington, NY 11050

Jaime Pena, Manager  
Cow Bay Housing Development Fund Co., Inc.  
Bay Green Lane  
Port Washington, NY 11050

Respondents' Attorney

Kenneth B. Mock, Esq.  
891 Nassau Road  
Uniondale, NY 11553-3131

State Division of Human Rights

Caroline J. Downey, Acting General Counsel  
One Fordham Plaza, 4th Floor  
Bronx, New York 10458

Migdalia Pares  
Chief Administrative Law Judge

Sara Toll East  
Chief, Litigation and Appeals

Albert Kostelny  
Chief, Prosecution Unit

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Peter G. Buchenholz  
Adjudication Counsel

Sharon J. Field, Esq.  
Adjudication Counsel

Trevor G. Usher  
Chief Calendar Clerk

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STATE DIVISION OF HUMAN RIGHTS  
on the Complaint of

WENDY MARSHALL,  
Complainant,  
v.  
COW BAY HOUSING DEVELOPMENT FUND  
CO., INC., and JAIME PENA, AS  
MANAGING AGENT,  
Respondents.

RECOMMENDED FINDINGS OF  
FACT, DECISION AND  
OPINION, AND ORDER

Case No. 3507316

PROCEEDINGS IN THE CASE

On 6/3/2003, Complainant filed a verified complaint, thereafter amended, 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 an 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 March 15, 2005.

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as Managing Agent

Complainant and Respondents appeared at the hearing. Complainant was represented by Jeanne S. Schieck, Esq.. Respondents were represented by Kenneth B. Mock, Esq..

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

#### FINDINGS OF FACT

1. Complainant moved into Respondent Cow Bay Housing Development (Cow Bay) in 1971. In early 2000, she took custody of her grandchildren, ages three and four, because their mother passed away. The children were diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and their therapist recommended that Complainant adopt a dog. Without consulting Cow Bay, Complainant adopted a Shepherd/Labrador puppy. (Tr. 14-16, 21)

2. The puppy grew to be a large dog. The dog barked at strangers and had to be tied when Respondent Pena and members of the maintenance staff came to Complainant's apartment to make repairs. (Tr. 85)

3. On April 11, 2000, Complainant received a letter stating that she had five days to remove the dog from the premises because she was in violation of Respondent Cow Bay's "no pet" rule. Respondent, Cow Bay, did not receive a response to its letter and Respondent Pena sent a second letter on May 2, 2000, advising Complainant that if she didn't remove the dog

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from the premises legal assistance would be sought in order to make her comply with the rules of the housing complex. (Tr. 68)

4. After receiving the May 2, 2007 letter, Complainant went to the main office to speak with Respondent Pena about the children's disabilities and their need for the dog. (Tr.22, 57, 88, Joint Exhibits 1 and 2)

5. Respondent Pena did not want to speak to Complainant, so she left the management office without leaving the documentation that she needed the dog because of the children's disabilities. (Tr. 69)

6. Immediately thereafter, Complainant went to her attorney, Jeanne Schieck, Esq., to discuss the impact that removing the dog would have on the children. (Tr. 23, 25, 58) On May 12, 2000, Schieck responded to Respondent Cow Bay's May 2, 2007 letter with a letter from a social worker detailing the necessity of Complainant keeping the dog in her home for the children's benefit. (Tr.71)

7. Respondent Cow Bay granted Complainant's request for a reasonable accommodation and did not take any further legal action against her. (Tr. 74, 77)

8. Two years later, in May of 2002, Respondents received a verbal complaint that the dog had attacked a child. In response, Respondent Cow Bay began sending letters to Complainant stating that she was again in violation of Respondent Cow Bay's "no pet" rule. (Tr. 74, 75, Joint Exhibits 4, 5A and 5B)

9. On August 20, 2002, Complainant's sister-in-law wrote a letter to Respondent Cow Bay expressing her fear for the children because the dog had "knocked down and scratched her three year old grandson in the face more than once". (Tr. 80, Joint Exhibit 11)

10. On January 10, 2003, Cow Bay served Complainant with a notice of eviction failure to pay rent arrears from November 2002, and for violating the "no pet" housing rule. (Tr. 55, 59, 81)

11. On May 6, 2003, Complainant filed a Complaint with the Division alleging that her disabled grandchildren were being denied the reasonable accommodation of having a pet in their home. (Complaint A.L.J.'s Exhibit 1)

12. Having been put on notice that the dog attacked a child, Respondent Cow Bay refused to grant Complainant a further accommodation before obtaining an evaluation of the animal's vicious propensity. (Respondents' Answer, A.L.J.'s Exhibit 1)

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13. On June 12, 2004, Complainant took the dog to the Queens Community Animal Shelter to have its temperment assessed. (Tr. 45-46)

14. On March 15, 2005, the evaluation which showed that the dog did not have a dangerous propensity was given to Respondent Cow Bay. (Joint Exhibit 10)

15. After reviewing the evaluation, Respondent Cow Bay immediately granted Complainant's request for the accommodation to keep the dog in her home. (Tr. 8, 52)

#### OPINION AND DECISION

Complainant is seeking an accommodation on behalf of two children residing in her home who have been diagnosed with Attention Deficit Hyperactivity Disorder. The Human Rights Law Section 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." The parties stipulated that Complainant's grandchildren are disabled as defined by the New York State Human Rights Law.

Section 296(18) (2) of the Executive Law states that it is "unlawful discrimination for the owner, lessee, assigns, managing agent of or other person having the right of possession

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or the right to rent or lease housing accommodations to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling." The Human Rights Law provides rights, procedures, remedies and judicial review that are substantially equivalent to the Federal Fair Housing Act. In defining "reasonable accommodation," the courts have routinely held that allowing a tenant with a disability a comfort animal despite a "no pets" agreement is, in fact, a reasonable accommodation and consequently, required unless the accommodation would place an undue financial or administrative burden upon Respondents. One Overlook Ave. Corp. v. N.Y. State Div. of Human Rights, 8 A.D.3d 286, 777 N.Y.S.2d 696 (2d Dept. 2004); Crossroads Apartments Associates v. LeBoo, 152 Misc. 2d 830, 578 N.Y.S. 2d 1004 (City Ct., Rochester, 1991).

Complainant maintains that Respondents were required to grant a reasonable accommodation for the disabled children in her home by allowing the dog to stay without having it evaluated for vicious propensities. Respondent Cow Bay had received numerous complaints about the dog barking, menacing maintenance workers and knocking down and scratching the face of a child.

Because of the serious nature of the complaints, Respondents were entitled to have the dog evaluated. It was Complainant who failed to provide the requisite documentation.

Courts have ruled that, "the vicious propensities which go to establish liability include a propensity to do any act that might endanger another." Rugg v. Blackburn, 292 A.D.2d 736, 737, 739 N.Y.S.2d 764 (2d Dept. 2002). Respondent Cow Bay's concern about the potential liability and possible financial burden that it might incur by allowing a resident to harbor an animal with possible vicious propensities was legitimate. Once Complainant presented documentation that the dog had been evaluated and did not have a vicious propensity, Respondent Cow Bay granted Complainant's request for a reasonable accommodation and let the dog remain in Complainant's household.

Accordingly, the claim is dismissed.

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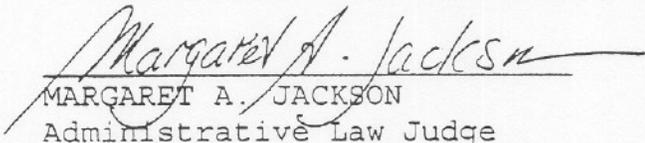
ORDER

Based on the foregoing Findings of Fact, Decision and  
Opinion and pursuant to the provisions of the Human Rights Law,  
it is

ORDERED that the complaint be, and the same hereby is  
dismissed.

DATED: February 2, 2007  
BRONX, NEW YORK

STATE DIVISION OF HUMAN RIGHTS

  
MARGARET A. JACKSON

Administrative Law Judge