

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

VICKI & ARTHUR NATHANSON,

Complainant,

v.

**BILL DEL VALLE, MANAGING AGENT,
KENNEDY STREET QUAD, LTD.,**

Respondents.

**NOTICE OF FINAL
ORDER AFTER HEARING**

Case No. 10104875

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 7, 2007, by Thomas S. Protano, 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 12th day of April, 2007.



KUMIKI GIBSON
COMMISSIONER

TO:

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c/o Kennedy Street Quad, Ltd.
18-75 Corporal Kennedy Street
Bayside, NY 11360

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STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

VICKI & ARTHUR NATHANSON,

Complainants,

-against-

BILL DEL VALLE, MANAGING AGENT, KENNEDY
STREET QUAD, LTD.,

Respondents.

RECOMMENDED FINDING
OF FACTS, DECISION AND
OPINION AND ORDER

Case No.
10104875

PROCEEDINGS IN THE CASE

On April 4, 2005, 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 an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (A.L.J.) of the Division. A Public hearing was held on June 20, 2006.

Complainants and Respondents appeared at the hearing. Complainants were represented by Eric B. Schultz, Esq. Respondents were represented by Goldstein & Greenlaw, LLP, by Andrew W. Schwarsin, Esq. Mr. Schwarsin noted that he also represented Mr. Del Valle, who was not an owner of the property, but merely managed the property. He no longer works as managing agent of Kennedy Street Quad. Mr. Schwarsin also represented that the correct name of the Respondent is Kennedy Street Quad, Ltd. This caption is amended accordingly.

Permission to file post-hearing briefs was granted. Counsel for both parties filed timely briefs.

FINDINGS OF FACT

Kennedy Street Quad is a cooperative that maintains a residential building at 209-39 23rd Avenue, Bayside, New York. (Tr. 114) Vicki and Arthur Nathanson are shareholders in the Respondent co-op and live in Apartment 4A at 209-39 23rd Avenue. They have lived there for 30 years. Mr. and Mrs. Nathanson both suffer from depression and kidney disease. (ALJ Exhibit II) Bill Del Valle is not an owner of the cooperative. He was previously the property manager, but, since January 11, 2006, Alicia Juarbe has been the property manager. (Tr. 179)

When Complainants moved into their apartment, they owned a Great Dane. He died about five years after they moved in. (Tr. 115, 158) The Nathansons did not get another dog until June of 2004, when they adopted Petey, a Boxer. (Tr. 147) Respondent has rules against dogs and is seeking to remove Petey from the building. Complainants assert that the dog has helped them to deal with their numerous health issues and is a comfort to them. (ALJ II)

For many years after they moved into Kennedy Street Quad, the Nathansons were a happy, well-adjusted couple with many friends. (Tr. 93) However, about ten years ago, things began to change for them. Mr. Nathanson developed renal failure in his kidneys, which caused him to become depressed and withdrawn. (Tr. 95, 116) The Nathansons began to socialize less with their friends and, over time, Mrs. Nathanson became depressed as well. (Tr. 118)

A few years later, Mrs. Nathanson's mother became ill. She was diagnosed with Alzheimer's disease. (Tr. 119) Complainants traveled to Florida, where Mrs. Nathanson's mother lived, every other weekend. (Tr. 120, 165) In the meantime, Mr. Nathanson's kidney's worsened and he faced the prospect of dialysis. (Tr. 117) Mrs. Nathanson said these circumstances "destroyed" her and she cried frequently. (Tr. 120) Her mother died in 2002. (Tr. 121)

The following summer, Mrs. Nathanson's father came from Florida to visit Complainants and he began acting strangely. For example, he would drive off and the Nathansons wouldn't be able to find him. And he would buy computers every day, only to return them the following day. He was diagnosed as Bi-Polar and had to be hospitalized. (Tr. 121-122)

At the same time, Mr. Nathanson's kidneys worsened further. It became clear he needed a kidney transplant. Mrs. Nathanson hoped to donate one of her kidneys to him. Unfortunately, Mrs. Nathanson was unable to donate her kidney, because it was discovered that she had kidney cancer. (Tr. 123) This made both Complainants sadder. (Tr. 124, 167)

During this time, Mrs. Nathanson sought psychological counseling to help her. When her mother was dying, she began seeing a psychologist. She saw the psychologist for about six to seven months then stopped. Mrs. Nathanson felt she "wasn't getting anything out of it." (Tr. 125-126) For the past seven years, Mrs. Nathanson has been taking Zoloft, an anti-depressant that her gynecologist originally prescribed. Her primary care physician now prescribes it for her. (Tr. 127)

In June of 2004, Mrs. Nathanson heard about someone whose dog was about to have a litter of puppies. Mrs. Nathanson asked for one of the puppies and the owner agreed. (Tr. 130) Mrs. Nathanson felt that she "didn't have anybody to talk to, and I just felt I needed something that was going to love me for me and not for any other reason." (Tr. 128) Mrs. Nathanson got the dog because she "needed him so much in order to improve her health and well-being. The dog made Mrs. Nathanson feel better. (Tr. 130) For his part, Mr. Nathanson said the dog has lifted his spirits "tremendously" and the he would be "devastated" without the dog because "he's too much a part of me. Too much a part of us. Too much a part of our family right now." (Tr. 172) Both Mr. and Mrs. Nathanson knew that Respondent had a no dog policy when they got their dog. (Tr. 130, 146)

Dr. David Appelbaum is a clinical psychologist who examined the Complainants. He met with the Complainants twice prior to the hearing. He first met with them on June 6, 2006 and administered a Personality Assessment Inventory, which is a questionnaire comprising 320 questions. It is used to measure clinical syndromes and is accepted in the field of psychology. (Tr. 26-27) On June 15, 2006, he met with the Complainants and interviewed them together and separately. (Tr. 30) He gave the Complainants a structured clinical interview, which followed criteria set forth in The Diagnostic and Statistical Manual ("DSM-4"), a book that provides definitions of different mental conditions and the criteria that meet those conditions. The definitions in the DSM-4 are commonly used within the mental health fields. He also gave Complainants a more "open-ended" interview to assess their personalities. (Tr. 24-25, 28) He then compared data to assess their emotional difficulties.

Dr. Appelbaum determined that Mrs. Nathanson suffered from "a major depressive disorder" and that Mr. Nathanson also met the criteria for major depression. (Tr. 34, 35, 44) Dr. Appelbaum noticed the changes in Complainants' affect when they discuss the dog. He said the dog "is part of their life," and said that the dog "is very uplifting for" Mr. Nathanson. (Tr. 42) Dr. Appelbaum went on to say that the "the dog really is essential to them in terms of their depression and managing it." (Tr. 76) To remove the dog from the Complainants now would exacerbate their symptoms, according to Dr. Appelbaum. (Tr. 77)

Dr. Appelbaum has not done any studies on the effect pets can have on depression. He has read literature about the use of dogs in therapy and has worked at the University of the Sciences, where Prof. Susan Brown used pets for therapy. (Tr. 45, 63) The results, though anecdotal, were positive. (Tr. 63) Therapy must take into consideration what a person is responsive to. (Tr. 56) Mr. and Mrs. Nathanson feel the dog has been helpful to them. (Tr. 56, 129, 145, 172)

Respondent Kennedy Street Quad has a rule against dogs. (Tr. 187) On September 13, 2004, Respondents sent a letter to Complainants notifying them that they were in violation of that rule and directing them to remove the dog from the premises. (Complainants' Exhibit 1) On November 12, 2004 and again on January 17, 2005, an attorney for Complainants sent respondent letters informing them of Complainants' disabilities and requesting that Respondents allow Complainants to keep their dog. (Complainants' Exhibits 2 & 3) Thereafter Respondents sought to evict Complainants from their apartment, by bringing action in Queens Civil Court. (Complainants' Exhibit 5) Respondents were, on at least two occasions, supplied with a letter from a Doctor, Michael Gitman, M.D, who indicated that Mrs. Nathanson benefits from the dog's companionship. Dr. Gitman, who is associated with North Shore University Hospital in the Division of Nephrology and Hypertension, was treating Mrs. Nathanson for kidney disease, hypothyroidism and depression. He said removing the dog "will clearly worsen her depression as well as her overall medical health." (Complainants' Exhibits 3 & 6) Respondents received letters of complaint about Complainants' dog from Florence Friedman, another tenant in the building. Ms. Friedman complains generally that the dog is big and active and makes noise when it runs. She states that "the dog should not be living here." (Respondents' Exhibit E) The Respondents have not submitted any other evidence of complaints about Complainants' dog. The dog has received obedience training from the Academy of Canine Education, Inc. (Complainant's Exhibit 6)

The Nathansons have suffered distress over the prospect of losing their dog. Mr. Nathanson said he would be devastated without the dog. He "couldn't picture living without him." He could not live in his current residence without the dog and would move if forced to. (Tr. 172) Mrs. Nathanson expressed a similar sentiment. She said she "could not live without him." (Tr. 145)

OPINION AND DECISION

New York Courts have long recognized and upheld the validity of no pet clauses in leases. Harboring a pet in defiance of a no pet clause can be considered a substantial breach of the lease agreement. Crossroads Apartment Association v. LeBoo, 152 Misc. 2d 830, 578 N.Y.S.2d 1004 (Rochester City Ct., 1991). Complainants in the instant case argue that their disabilities are such that it is necessary for them to keep their dog in order to use and enjoy their apartment and, therefore, the no pet clause, as it relates to them, violates State Human Rights Law.

A “disability” under New York Human Rights Law is “...a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory techniques....” 18 Executive Law §292.21. In order to meet this definition, one must only suffer from some diagnosable impairment. Nowak v. EGW Home Care, Inc. 82 F.Supp.2d 101, 111 (W.D.N.Y., 2000), *citing*, State Division of Human Rights v. Xerox Corp., 65 N.Y.2d 213, 218-19, 491 N.Y.S.2d 106, 480 N.E.2d 695 (1985), and Reeves v. Johnson Controls World Servs., Inc., 140 F.3d 144, 154-56 (2nd Cir. 1998).

There is no question that Complainants both suffer from disabilities under State Human Rights Law. Dr. Appelbaum, a clinical psychologist, stated on the record that the Nathansons both suffer from major depression. As a professional in the field, he used commonly accepted practices to make the diagnoses of depression for both Complainants. In addition, Mr. Nathanson and Mrs. Nathanson both testified that they suffer from kidney disease. This testimony was un rebutted.

New York State 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...” NYSHRL § 2962-a (d)(2). When a Complainant demonstrates that he or she is disabled, is qualified for tenancy, that because of a disability it is necessary for him or her to keep a dog in order to use and enjoy the apartment and that reasonable accommodations can be made to allow him or her to keep the dog, the cooperative 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), *citing*, LeBoo, *supra*. In the instant complaint, Complainants, unlike the Complainant in Overlook, but like the plaintiff in LeBoo, provided psychological testimony that they require a dog in order to use and enjoy their apartment. Consequently, Respondent Kennedy Street Quad is required to make a reasonable accommodation in its house rules allowing Mr. and Mrs. Nathanson to keep their dog.

The Complainants suffered emotional distress over the prospect of losing their dog, as a result of Respondents’ unlawful acts. They stated that they would be forced to move if they could not keep their dog. They are entitled to compensatory damages, given their testimony. An award in the amount of \$7,500.00 for each Complainant will compensate them for the discriminatory actions of Respondents. Matteo v. New York State Division of Human Rights et al., 306 A.D.2d 484, 485 (2nd Dept., 2003). (Upholding an award of \$7,500.00 each to two Complainants in a housing discrimination case.)

Section 297 (4)(c)(iv) of Human Rights Law permits the Division to award punitive damages in cases of housing discrimination. The Division is vested with an “extremely strong statutory policy of eliminating discrimination.” Van Cleef Realty, Inc. v. State Division of Human Rights, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2nd Dept., 1995); *quoting*, Batavia Lodge v N.Y. State Div. of Human Rights, 35 N.Y.2d 143, 146 (1974). Punitive damages, however, require more than just a mere showing that the law has been violated. They may be awarded for

violations when a respondent acts with reckless or callous disregard for the complainant's rights and intentionally violates the law. Ragin v. Harry Macklowe Real Estate Co., 6 F.3d 898, 909 (2nd Cir., 1993), *citing*, Smith v. Wade, 461 U.S. 30, 51 (1983). There should be a finding of "wanton, willful or malicious behavior." Ragin v. Harry Macklowe Real Estate Co., 801 F. Supp 1213, 1230-1234 (SDNY, 1992).

In the instant case, Respondents did not act wantonly, willfully or maliciously when they denied Complainants the right to have a dog. Respondents acted to enforce the rules of the co-op after they learned of the dog. It was not placed on notice that the dog was a medical necessity until after the dog was acquired and after they sought to have the dog removed. Complainants have, therefore, not proven that Respondents acted with the requisite "state of mind" that would warrant an award of punitive damages. Id., at 1234.

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 within fourteen days of the issuance of the Commissioner's Final Order, Respondents shall make a reasonable accommodation in housing to Vicki and Arthur Nathanson by withdrawing any eviction proceedings based upon a "no pets" rule; issuing a document to them stating that regardless of any Respondent Kennedy Street Quad's rules regulations, proprietary leases or previous agreements between the parties, they are permitted to keep their present dog in their apartment for the life of the dog; and upon the demise of the dog should Vicki and/or Arthur Nathanson require the reasonable accommodation of a comfort pet, such accommodation will be granted; and it is further

ORDERED, that within thirty days of the Commissioner's Final Order Respondents will pay to Vicki Nathanson \$7,500.00 and to Arthur Nathanson \$7,500.00 as compensatory damages owing to their emotional distress. Payments shall be made in the form of certified checks and delivered to their attorney, Eric B. Schultz, Esq. at 33 Willis Avenue, Mineola, NY 11501; and it is further

ORDERED, that the Respondents shall furnish written proof of the payments and the document permitting Complainants to keep their dog, as described above, to the General Counsel of the Division and shall cooperate with the Division during any investigation into its compliance with the directives contained in this Order.

DATED: February 7, 2007
Bronx, New York



THOMAS S. PROTANO
Administrative Law Judge