



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

BEVERLY SUE WALTER,

Complainant,

v.

HARTSDALE HIGHLANDS TENANTS CORP.,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10151075

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 September 28, 2012, by Robert J. Tuosto, 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 GALEN D. KIRKLAND, 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

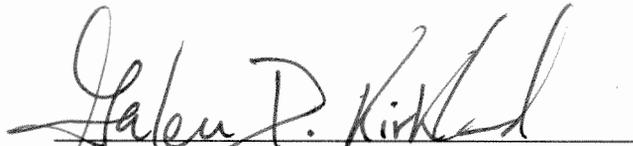
member of the public during the regular office hours of the Division.

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.

DATED:

11/28/2012
Bronx, New York


GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

BEVERLY SUE WALTER,

Complainant,

v.

**HARTSDALE HIGHLANDS TENANTS
CORP.,**

Respondent.

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

Case No. 10151075

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against her on the basis of her disability when her cooperative refused, as a matter of policy, to allow her to keep her dog as a reasonable accommodation. Complainant has proven her case and Respondent is directed to cease and desist from enforcing its "no pet" policy against her; civil fines and penalties, as well as attorney's fees, are awarded.

PROCEEDINGS IN THE CASE

On October 5, 2011, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

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

After due notice, the case came on for hearing before Robert J. Tuosto, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on July 25-26, 2012.

Complainant and Respondent appeared at the hearing. Complainant was represented by Karen Copeland, Esq., New York, New York. Respondent was represented by George Dieter, Esq., of the Law Office of Lori D. Fishman, Tarrytown, New York.

After the public hearing Ms. Copeland submitted to the undersigned statements for legal services rendered for November 28, 2011, July 28, 2012 and September 10, 2012. Each of these statements is hereby admitted into the record as ALJ Exhs. 5, 6, 7.

The parties timely filed post-hearing briefs.

FINDINGS OF FACT

1. Complainant alleged that Respondent unlawfully discriminated her against on the basis of her disability when her cooperative refused, as a matter of policy, to allow her to keep her dog as a reasonable accommodation. (ALJ Exh. 1)

2. Respondent denied unlawful discrimination in its verified Answer. (ALJ Exh. 4)

The Parties

3. In 1991 Complainant became one of Respondent's shareholders after purchasing 35 shares in its cooperative. (Respondent's Exh. 1; Tr. 172-73)

4. Respondent is a seventy-four unit cooperative housing corporation (“the cooperative”). The cooperative is governed by a five member Board of Directors (“the Board”) which, among other things, sets policies applicable to all shareholders. (Tr. 280, 330, 334)

Respondent’s Pet Policy

5. The cooperative’s House Rules dictate, in pertinent part, that “No bird or animal shall be kept or harbored in the Building unless the same in each instance be expressly permitted in writing by the Lessor; such permission shall be revocable by the Lessor.” (“the policy”). The policy has been in place since at least 1986, and was reiterated in 1990 when the Board voted not to amend same to allow shareholders to own dogs. (Respondent’s Exh. 1; Tr. 28, 281-2, 313, 331, 333, 358)

Complainant’s Medical Diagnosis of Ulcerative Colitis

6. In 2009 Complainant was diagnosed by her physician as suffering from chronic ulcerative colitis. Complainant presently takes steroids for her medical condition. I find that Complainant is “disabled” as that term is used in the Human Rights Law. (Complainant’s Exhs. 3, 4; Tr. 25-27, 175)

7. Previous to her diagnosis Complainant described herself as “extremely active.” Complainant would hike almost every weekend including hiking Mount Washington, New Hampshire, work out at a gym on a daily basis, run three to four miles daily including running eight miles on Sundays, and physically train various people. All of this was done while Complainant was employed at a full-time job. After Complainant became ill she could no longer perform any of these activities. (Tr. 40-41, 65, 97, 172, 241)

8. Since her diagnosis Complainant bleeds uncontrollably from her rectum, gets stomach cramps, has severe headaches, suffers from joint pain which affects her walking, and experiences

the constant urge to use the bathroom. Complainant only walks near those places which are in close proximity to a bathroom. Complainant never travels without two separate sets of clothes in case she suffers an accident and soils herself, something which could occur at any time.

Complainant's medical condition has negatively impacted her marriage and has lessened the degree to which she socializes with others. Complainant doesn't feel good about herself, constantly wonders if she smells, and always feels dirty and "disgusting." As a result of her medical condition Complainant became depressed, anxious and began to suffer from obsessive-compulsive behavior. (Tr. 41, 43, 75-76, 101, 174-79)

9. Complainant unsuccessfully tried various things to improve her medical condition including preparing different food combinations, seeing a food allergist, undergoing acupuncture, and taking several medicines. In late 2010 Complainant began, on her own, to investigate pet therapy. (Tr. 49-50, 61, 173, 215-16, 252-53)

Complainant Gets a Dog

10. In early 2011 Complainant got a dog named "Zeppelin" to help with her medical condition. Zeppelin is a sixteen inch long, nine and one-half pound rat terrier who travels in a bag with Complainant when she takes him outside. Complainant did not inform the Board that she had gotten a dog. (Complainant's Exhs. 10, 11; Tr. 30-31, 43-45, 48, 217)

11. Complainant describes herself as having gone into remission after getting her dog because of the "comfort" he brings. Complainant describes her dog as "the biggest necessity in my life", and believes that he encourages her to take her medicine by crying when she is sick. Zeppelin curls up with Complainant when she is at home and the warmth and pressure from his body on her stomach allows her to sleep longer. Zeppelin sits outside with Complainant, and encourages her to go for walks. Zeppelin helps Complainant deal with her obsessive-compulsive

behavior as she is now more relaxed. As a result of having Zeppelin with her, Complainant went hiking for the first time in nearly one and one half years, socialized with friends, and went food shopping without having to worry about using the bathroom. Complainant has not soiled herself since getting Zeppelin. (Tr. 39-44, 75, 144, 147, 156, 180, 184-86, 199-202, 207-08)

12. The improvement in Complainant's medical condition was corroborated by one of her work colleagues who testified that Complainant would constantly be going to the bathroom when her dog was not there, and that this happens "a lot less" when her dog is present. (Tr. 154, 156, 158)

13. On March 21, 2012 Zeppelin was licensed as a service dog¹ by the Town of Greenburgh, New York. (Complainant's Exh. 6; Tr. 181-82, 253-54)

Complainant Begins Therapy

14. Complainant began therapy starting in 2011 and continuing into 2012. Ruth B. Helfrich, L.C.S.W.-R², one of Complainant's therapists, diagnosed her as suffering from "Anxiety Due to Medical Condition" and "Obsessive Compulsive Disorder." Both therapists supported Complainant continuing to keep her dog to effectively deal with the stress she experiences as a result of her medical condition. (Complainant's Exhs. 1, 2; Tr. 57-72, 79, 99, 119)

15. Ms. Helfrich testified as an expert in the field of mental health and opined that Zeppelin caused Complainant to go into remission by having her focus on something other than her obsessive-compulsive routine; that the stress and anxiety which aggravated her medical condition has been lessened because of the dog, thereby having the effect of allowing her to function socially; and that the dog's presence is vital for an extended remission. Ms. Helfrich

¹ Nothing in the Human Rights Law suggests that the duty to reasonably accommodate a pet is contingent upon it being designated a service animal.

² The acronym L.C.S.W.-R stands for "Licensed Clinical Social Worker-Restricted" with the word "Restricted" meaning that she does not need to be supervised. (Tr. 56)

further opined that, if forced to choose, Complainant should move rather than live without her dog. Ms. Helfrich testified that Complainant's dog is the only thing able to lessen her obsessive-compulsive traits which, in turn, positively impacts her medical condition. (Tr. 64-70, 75-79)

Events Leading to Respondent's Holdover Proceeding Against Complainant

16. On June 7, 2011 Complainant sent Respondent's property manager, who first learned about the existence of Complainant's dog during the previous month, an e-mail message seeking to keep her dog to "help with my husband's medical condition."³ This was in response to two previous letters sent by the property manager about her harboring the dog, and his threatening the possibility of a lawsuit. However, I credit Complainant's testimony that she lied about the dog being needed for her husband because she was humiliated about disclosing her own medical condition. (Respondent's Exh. 3; Tr. 34-35, 187, 232, 283-84, 294, 305, 335)

17. In June, 2011 Complainant's physician, a specialist in gastroenterology, noted that she was experiencing a flare up of her medical condition due to "recent stressors." The physician further noted that "Her dog has provided great comfort and a reduction in her stress level. The prospect of not having a dog is causing her considerable stress and therefore a worsening of her gastrointestinal symptoms. Please consider this fact as it has become an issue in trying to control her gastrointestinal symptoms." (Complainant's Exh. 3; Tr. 77)

18. On June 30, 2011 Complainant sent Respondent's legal counsel a letter enclosing her previous e-mail message to Respondent's property manager, and requesting that the Board allow her dog to reside in her apartment. (Respondent's Exh. 3)

³ Complainant testified that her husband suffers from depression and anxiety. (Tr. 183-84)

19. On July 11, 2011 Complainant wrote a letter to both Respondent's property manager and its legal counsel again seeking approval for her dog. (Respondent's Exh. 4; Tr. 187, 191)

20. On July 11, 2011 Respondent's counsel sent Complainant a letter enclosing a 'Notice to Terminate Proprietary Lease' based on her harboring a dog without written permission of the Board and in violation of the House Rules. Complainant had thirty days from the date of the aforementioned Notice to cure the default before her proprietary lease would be terminated. (Respondent's Exh. 5; Tr. 33, 297)

21. On July 15, 2011 Complainant sent a letter to both Respondent's property manager and its legal counsel stating her belief that she was not in violation of the House Rules. (Respondent's Exh. 6; Tr. 36, 187, 191)

22. On September 10, 2011 Complainant began therapy with another therapist, Rosalind Bank, L.C.S.W. Ms. Bank diagnosed Complainant as suffering from "Anxiety Due to a Medical Condition", and represented that Complainant's dog "...appears to provide effective stress relief which seems to lead to less outbreaks of Ms. Walter's condition, which in turn appears to have improved her quality of life." (Complainant's Exh. 2)

23. September 23, 2011 Complainant, through her attorney, made a formal written request for a reasonable accommodation from Respondent in order to allow her to keep her dog. Said request enclosed letters from Complainant's treating physician and one of her therapists attesting to her medical conditions and recommending that she be allowed to keep her dog. (Complainant's Exh. 13)

24. Respondent subsequently initiated a holdover landlord-tenant proceeding against Complainant which is still pending. (Tr. 36, 38, 187, 191)

Complainant Otherwise Qualified for Her Tenancy

25. During the public hearing both sides stipulated to the fact that Complainant was otherwise qualified for her tenancy. (Tr. 8)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for "...the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of 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..." Human Rights Law § 296.18(2).

New York courts have long recognized and upheld the validity of no pet clauses in leases as a matter of public policy such that harboring a pet in defiance of a no pet clause can be considered a substantial breach of the lease agreement. *Crossroads Apartment Ass'n. v. LeBoo*, 578 N.Y.S.2d 1004 (1991).

However, Complainant argues that her disability makes it necessary for her to keep her dog in order to use and enjoy the apartment and, therefore, the no pet clause, as it relates to her, violates the Human Rights Law.

Thus, Respondent must alter its policy to allow the dog should Complainant demonstrate that she is disabled, is qualified for the tenancy, that because of a disability it is necessary to keep her dog in order to use and enjoy the apartment, and that reasonable accommodations can be made to allow her to do so. *One Overlook Ave. Corp. v. New York State Div. of Human Rights*, 777 N.Y.S.2d 696 (2d Dept. 2004), *lv. denied* 5 N.Y.3d 714, 806 N.Y.S.2d 165 (2005).

As to the third prima facie case element, a complainant must show more than “an ambiguous statement of his physician that depressed people may benefit from having pets and notes from his medical records that he was anxious about possibly losing his dog.” *Landmark Properties v. Olivo*, 783 N.Y.S. 745 (App. Term, 2d dept. 2004); *but cf. Janush v. Charities Housing Development Corp.*, 169 F. Supp.2d 1133 (N.D. Ca. 2000) (court denied defendant’s motion for summary judgment after plaintiff’s treating physician testified that her living with emotional support animals “lessen[s] the effect of this disability by providing her with companionship and are necessary to her mental health.”; *Auburn Woods/Homeowners Association v. Fair Employment and Housing Commission*, 121 Cal. App.4th 1578 (Cal. App. Ct., 3d Dist. 2004) (evidence that taking care of a dog alleviated complainants’ symptoms of severe depression and allowed complainants to function more productively).

Here, the record shows that the first, second and fourth elements of the prima facie case have been met. First, Complainant established that she was “disabled” within the meaning of the Human Rights Law when medically diagnosed with ulcerative colitis; additionally, she was diagnosed by two therapists as suffering from “Anxiety Due to [a] Medical Condition”, with one of the therapists also diagnosing her with “Obsessive Compulsive Disorder.” 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....” Human Rights 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 (1985), and *Reeves v. Johnson Controls World Servs., Inc.*, 140 F.3d

144, 154-56 (2nd Cir. 1998). Next, as per the stipulation entered into by both sides, Complainant was otherwise qualified for her tenancy. Finally, Complainant established that reasonable accommodation can be made to allow the dog given that Respondent's own House Rules permit shareholders to harbor animals upon Board approval. Therefore, the analysis in this case turns solely on whether Complainant has established the all important third element of the prima facie case.

In order to show that allowing Complainant's dog would afford her the equal opportunity to use and enjoy her dwelling, she must establish, by acceptable evidence, actual necessity for same; the fact that the dog helped Complainant with the symptoms of her medical condition is not enough. *Kennedy Street Quad, Ltd. v. Nathanson*, 879 N.Y.S.2d 197, 198 (2d Dept. 2009), *lv. to appeal denied*, 13 N.Y.3d 714 (2009). In *Kennedy*, the Appellate Division did not articulate what constituted "actual necessity." However, case law suggests that, at a minimum, evidence of actual necessity be neither ambiguous nor conclusory. *Landmark Properties* at 748; *105 Northgate Co-op. v. Donaldson*, 863 N.Y.S.2d 469, 470 (2d Dept. 2008) Further, establishing that the dog would afford Complainant an equal opportunity to use and enjoy her dwelling mandates a showing that she required the dog, i.e., had an emotional and psychological dependence, such that she must keep it in her apartment. *Id.* at 470; *Crossroads Apartment Ass'n.* at 1007.

Complainant, in addition to her own testimony, proffered evidence of one physician and two social workers, one of whom was accepted as an expert in the field of mental health. The physician, a specialist in gastroenterology, represented that Complainant's dog had provided a reduction in her stress level, that the prospect of not having the dog was causing increased stress leading to a worsening of her medical condition, and noted that the fact of Complainant's

increased stress was an issue in trying to control her gastrointestinal symptoms. Moreover, the expert (Ms. Helfrich) opined that, not only did Zeppelin help Complainant by inducing remission of her medical condition, Zeppelin was so instrumental in her recovery that, if forced to choose, she should move rather than live without her dog. The second therapist (Ms. Bank) echoed this by stating that the stress relief afforded Complainant by the presence of her dog improved her medical condition which, consequently, has had a beneficial impact on her quality of life. This evidence, combined with Complainant's candid and credible retelling of the positive effect Zeppelin has had in allowing her to resume some of the productive activities she engaged in prior to her diagnosis, leads to the conclusion that she is emotionally and psychologically dependent upon her dog to lessen the symptoms of her illness so as to allow her to use her home and have a more normal life. Therefore, Complainant has proven the required element needed to sustain this claim.

Nothing in the record rebuts the aforementioned by suggesting an undue hardship to Respondent in making a limited exception for Complainant's disability by allowing her to keep her dog.

Therefore, this claim has been proven.

Damages

The "make whole" provisions of the Human Rights Law allows various remedies to restore victims of unlawful discrimination, including directing that a respondent cease and desist from unlawfully discriminatory practices. Human Rights Law § 297.4 (c)(i).

Additionally, a complainant is also entitled to recover compensatory damages for mental anguish caused by a respondent's unlawful conduct. In considering an award of compensatory damages for mental anguish, the Division must be especially careful to ensure that the award is

reasonably related to the wrongdoing, supported in the record and comparable to awards for similar injuries. *State Div. of Human Rights v. Muia*, 575 N.Y.S.2d 957, 960 (3d Dept. 1991). Because of the “strong antidiscrimination policy” of the Human Rights Law, a complainant seeking an award for pain and suffering “need not produce the quantum and quality of evidence to prove compensatory damages he would have had to produce under an analogous provision.” *Batavia Lodge v. New York State Div. of Human Rights*, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28 (1974). Indeed, “[m]ental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct.” *New York City Transit Auth. v. State Div. of Human Rights (Nash)*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991). The severity, frequency and duration of the conduct may be considered in fashioning an appropriate award. *New York State Dep’t. of Corr. Servs. v. New York State Div. of Human Rights*, 638 N.Y.S.2d 827, 830 (3d Dept. 1996).

Here, in the absence of any proof in the record of mental anguish solely attributable to Respondent, an award of damages for mental anguish may act as a windfall insofar as Complainant will best be “made whole” by the imposition of a cease and desist order, *infra*.

Civil Fines & Penalties

Human Rights Law § 297 (4)(e) requires that “any civil penalty imposed pursuant to this subdivision shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” The additional factors that determine the appropriate amount of a civil fine and penalty are the goal of deterrence; the nature and circumstances of the violation; the degree of respondent’s culpability; any relevant history of respondent’s actions; respondent’s financial resources; and other matters as justice may require. *See, Gostomski v. Sherwood Terr. Apts.*, SDHR Case Nos. 10107538 and

10107540, November 15, 2007, *aff'd*, *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights (Gostomski)*, 877 N.Y.S.2d 595 (4th Dept. 2009); *119-121 East 97th Street Corp, et. al., v. New York City Commission on Human Rights, et. al.*, 642 N.Y.S.2d 638 (1st Dept.1996).

Here, a consideration of the aforementioned factors leads to the conclusion that the imposition of a minimal civil fine is appropriate.

As to the factor of furthering deterrence, such a fine will likely be significant enough to act as an inducement to compliance with the Human Rights Law, deter Respondent and others from noncompliance with same, and present an example to the public that the Human Rights Law will be vigorously enforced.

As to the nature and circumstances of the violation and the factor of the degree of Respondent's culpability, such a fine is consistent with the record evidence which showed that Respondent attempted to enforce its "no pet" policy in good faith, irrespective of the fact that Complainant was nonetheless entitled to a reasonable accommodation on the basis of her disability.

Finally, there is nothing in the record regarding any relevant history of Respondent's actions, the Respondent's financial resources, or the consideration of other matters which justice may require.

Therefore, Respondent is directed to pay a civil fine of \$5,000 to the State of New York. *Housing Opportunities Made Equal, Inc. v. Mosovich*, SDHR Case No. 10118849, February 5, 2009 (\$5,000 civil fine awarded by Division).

Punitive Damages

Section 297.4(c)(iv) of Human Rights Law permits the Division to award punitive damages in cases of housing discrimination. Punitive damages may be awarded "where the

wrong complained of is morally culpable, or is actuated by... reprehensible motives, not only to punish the (respondent) but to deter him, as well as others who might otherwise be so prompted, from indulging in similar conduct in the future.” *Micari v. Mann*, 481 N.Y.S.2d 967 (1984). The Division is vested with an “extremely strong statutory policy of eliminating discrimination.” *Van Cleef Realty, Inc. v. State Div. of Human Rights*, 627 N.Y.S.2d 744 (2d Dept. 1995) (quoting *Batavia Lodge v. New York State Div. of Human Rights*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (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 (2d Cir. 1993) (citing *Smith v. Wade*, 461 U.S. 30, 51 (1983)). There should be a finding of “wanton, willful or malicious behavior.” *See also Umansky v. Masterpiece International Limited*, 715 N.Y.S.2d 638 (2d Dept. 2000).

As with damages for mental anguish, I likewise decline to award punitive damages insofar as the record is devoid of any proof that Respondent acted in a way which could be described as fraudulent, malicious or oppressive.

Attorney’s Fees

The Human Rights Law was amended in 1999 to authorize an award of reasonable attorney’s fees to prevailing Complainant’s counsel in housing matters. Human Rights Law § 297.10.

The amount of an attorney’s fee in a civil case is determined by the “lodestar” method, i.e., estimating the amount of the fee award by multiplying the number of hours reasonably expended in the litigation by a reasonable hourly rate, allowing for a downward adjustment when counsel does not provide contemporaneous records which support the fee request. *McGrath v.*

Toys “R” Us, Inc., 3 N.Y.2d 421, 430, 788 N.Y.S.2d 281, 285 (2004). The party seeking fees bears the burden of showing reasonableness as to both the claimed rate and number of hours worked.

Here, given the complexity of the issues involved and counsel’s experience in handling these types of cases, I find that counsel charged a reasonable hourly rate and spent a reasonable time in preparing and litigating this matter, as well as drafting the post-hearing brief. The burden is on counsel to keep and present records from which it may be determined the nature of the legal work done, the need for same, and the amount of time reasonable required to achieve it. Given that counsel submitted contemporaneous time records in support of her claim for attorney’s fees, I find that here should be no downward modification of her fee request.

Complainant’s counsel has submitted three “Statements for Legal Services Rendered,” two of which relate solely to her work in this action and the other for work done on the “Town Court Holdover eviction proceeding and HUD/DHR proceeding.” They are dated November 28, 2011, July 28, 2012 and September 10, 2012, respectively. (ALJ Exhs. 5, 6, 7) Counsel appears to have been handling housing discrimination matters for an extended period of time, and has billed her client at an hourly rate of \$300. As to the two DHR statements, she has recorded 28 1/4 hours of work and an outstanding balance of \$2,475 (a total bill of \$8,475, minus total retainers paid of \$6,000). As to the remaining statement, counsel has denominated her Division work relative to work done in the other proceedings. The remaining statement records 14.5 hours of work which I have halved, as well as halving the \$3,000 retainer, given that part of this work was for a non-Division matter. This means that counsel is to be awarded an amount equal to 7.25 hours at \$300 per hour (\$2,175) less one half of the \$3,000 retainer actually paid (\$1,500) for a total outstanding balance of \$675. As a result, the grand total due and owing to Complainant’s

counsel is \$3,150 (\$2,475 added to \$675).

Therefore, Respondent is directed to pay Complainant's counsel \$3,150 as reasonable attorney's fees.

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, and its agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in housing; and

IT IS FURTHER ORDERED, that Respondent shall take the following action to effectuate the purposes of the Human Rights Law, and the findings and conclusions of this Order:

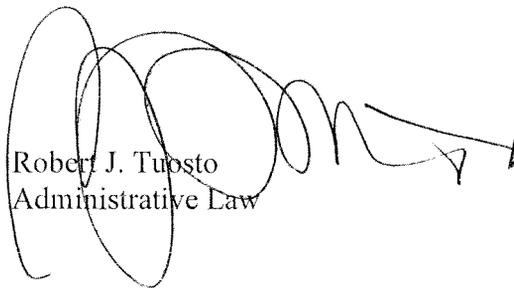
1. Respondent is hereby directed to cease and desist from enforcing its "no pet" policy against Complainant, Beverly Sue Walter;

2. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay a civil fine and penalty to the State of New York in the amount of \$5,000 for having violated the Human Rights Law. Payment of the civil fine and penalty shall be made in the form of a certified check, made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq. General Counsel of the Division, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Interest shall accrue on this award at the rate of nine percent per annum, from the date of the Commissioner's Final Order until payment is fully made by Respondent.

3. Within sixty (60) days of the date of the Commissioner's Order, Respondent shall pay attorney's fees in the amount of \$3,150 to Karen Copeland, Esq., 521 Fifth Ave., Suite 1700, New York, New York 10175;

4. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: September 28, 2012
Bronx, New York



Robert J. Trosto
Administrative Law