



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**DELIA CRESPO,**

Complainant,

v.

**HARLEM EAST LIFE PLAN,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10202316

**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 August 9, 2024, by Thomas S. Protano, 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 DENISE M. MIRANDA, ESQ., ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:**

- The first paragraph on Page 7 of the Recommended Order inadvertently cites to

Human Rights Law § 296.14 when discussing “service animals.” This section pertains to “service dogs” which by definition must be professionally trained. Instead, the cite should be directly to 296.2(d)(iv) which covers “service animals” (dogs and miniature horses trained to perform tasks, though not necessarily professionally trained).

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, NY 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, NY 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED.**

DATED: January 30, 2025  
Bronx, NY



DENISE M. MIRANDA  
ACTING COMMISSIONER



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on the Complaint of

**DELIA CRESPO,**

Complainant,

v.

**HARLEM EAST LIFE PLAN,**

Respondent.

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

Case No. **10202316**

**SUMMARY**

Complainant charged Respondent with discrimination in a place of public accommodation based on age, disability, gender identity or expression, marital status, race and color, sexual orientation, and sex. Complainant has failed to prove her claims and her case is dismissed.

**PROCEEDINGS IN THE CASE**

On July 11, 2019, Complainant filed a complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to public accommodation 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 Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on February 28, 2024 and February 29, 2024.

Complainant and Respondent appeared at the hearing. The Division was represented by Alyssa Talanker, Esq., Senior Attorney. Respondent was represented by Peter T. Shapiro, Esq., and Daniel R. Axelrod, Esq.

### **FINDINGS OF FACT**

1. Complainant suffers from post-traumatic stress disorder (“PTSD”), bipolar disorder, anxiety, depression, borderline personality disorder and a traumatic brain injury. (ALJ Exhibit 2; Tr. 139)
2. Complainant is 39 years of age (DOB: July 9, 1984). She is married, Hispanic, and identifies as a transgender male, though uses the pronouns she/her. (ALJ Exhibit 2; Tr. 248)
3. Respondent operates a clinic that administers a methadone maintenance treatment program. (Tr. 15)
4. Complainant participated in Respondent’s methadone maintenance treatment program, beginning in or about 2017. (Tr. 15)
5. Because of her disabilities, in July of 2018, Complainant acquired a Cane Corso/American Pit Bull, Thor, who assists her with her anxiety and panic attacks. (Tr. 16)
6. Thor is a trained service animal. (Complainant’s Exhibit 1)

7. Complainant trained Thor to perform tasks that alleviate Complainant's anxiety, depression, and PTSD. (Tr. 23-24)

8. Thor provides deep pressure therapy for Complainant and calms Complainant by putting his paws on her shoulders. Thor can also act as a shield between Complainant and others when they are in public. (Complainant's Exhibits 10, 11 & 12; Tr. 23-24, 79)

9. In July of 2018, Complainant attended Respondent's clinic six times per week, with her wife, Taylor, who was also a patient of Respondent. (Tr. 135)

10. When Complainant and Taylor attended the Respondent clinic, they each took turns waiting outside with Thor while the other went into the clinic. (Tr. 141)

11. Respondent has a no loitering policy by which "all patients are required to receive services then leave" the ten-block radius around the facility. (Respondent's Exhibit 5)

12. In early November of 2018, Sheryl Monroe-Hunte, opioid treatment administrator, was informed that Complainant had been loitering outside the facility with Thor. (Respondent's Exhibit 6; Tr. 293)

13. Hunte met with Complainant on November 5, 2018, to discuss the loitering report. (Tr. 293)

14. At the November 5, 2018, meeting, Complainant told Hunte that Thor was a service dog and asked to be allowed to bring Thor into the facility. (Respondent's Exhibit 6; Tr. 294)

15. Hunte then scheduled a meeting with Complainant, Joanne King, administrative director, Desiree Linton-Dudley, Complainant's counselor, and Hunte for November 7, 2018. (Respondent's Exhibit 7)

16. Respondent offered Complainant an accommodation by which she could come in for her medication at 1:45 PM. By that time, few patients would be in the facility, and Thor, a large dog, would not disrupt the Respondent's operations. (Tr. 272-73, 296)

17. Respondent was concerned that "in a small facility with confined spaces and large patient population it is difficult to accommodate" a large dog. (Respondent's Exhibit 8)

18. Complainant rejected the accommodation offered because she said she has "a lot of doctor's appointments" and preferred to go to the Respondent's facility in the morning. (Tr. 35, 194)

19. Thereafter, on November 14, 2018, Complainant met with Dr. Fernando Jose Borrego, medical director. (Respondent's Exhibit 8; Tr. 316-17)

20. Borrego attempted to elicit information about Thor. Borrego asked Complainant to identify any tasks Thor could perform as a result of his training. Complainant failed to provide that for Borrego. (Tr. 321)

21. Borrego also reviewed a letter from Aviva Epstein, Complainant's physician assistant, who described Thor as an "emotional support animal." The letter requests that Thor be allowed to live with Complainant. (Complainant's Exhibit 2; Tr. 326)

22. During the meeting, Complainant became upset and revealed she was recording the conversation, without Borrego's consent and in violation of Respondent's rules. At that point, Borrego terminated the meeting. (Respondent's Exhibit 8; Tr. 320)

23. Borrego determined that Thor was an emotional support animal based upon the information he had rather than a service animal. (Respondent's Exhibit 8; Tr. 320)

24. Subsequently, in a letter dated March 11, 2019, Epstein described Thor as a "service animal." Borrego did not have this letter available to him when he determined that Thor was an

emotional support animal. There is no evidence in the record that this letter was provided to Respondent. (Complainant's Exhibit 2)

25. Complainant continued to receive treatment from Respondent for about a year after her accommodation request. (Tr. 195, 321)

### **OPINION AND DECISION**

Pursuant to N.Y. Exec. Law art. 15 (the "Human Rights Law") § 296.2 (a) it is an unlawful discriminatory practice for "any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the...disability...of any person, directly or indirectly, to refuse, withhold from or denied to such person any of the accommodations, advantages, facilities or privileges thereof..."

Such discriminatory practices include a refusal to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages, or accommodations to individuals with disabilities, unless such person can demonstrate that making such modifications would fundamentally alter the nature of such facilities, privileges, advantages, or accommodations. Human Rights Law § 296.2 (c).

The statute defines "place of public accommodation, resort or amusement" to include clinics. Human Rights Law § 292.9. Respondent operates a medical clinic and is therefore subject to the Human Rights Law.

To prevail, Complainant must make out a prima facie case of discrimination by showing that she was denied the use of a place of public accommodation based upon her membership in a protected class under circumstances from which one could infer that the Human Rights Law has been violated. Once she has done this, the burden shifts to Respondent to rebut the presumption

of discrimination by putting forth legitimate, nondiscriminatory reasons for its actions. Once the presumption has been rebutted, Complainant is then required to show that the reasons proffered were merely a pretext for discrimination. *North Shore University Hospital v. Rosa*, 86 N.Y.2d 413, 420, 633 N.Y.S.2d 462, 464 (1995).

Complainant in this case fails to make out a prima facie case of discrimination based upon disparate treatment. She was not denied the use of Respondent's place of public accommodation. Complainant participated in Respondent's program, without incident, from 2017 through November of 2018 when she sought an accommodation and then for one year thereafter. Since she was not denied service, her claims of disparate treatment based on age, disability, gender identity or expression, marital status, race and color, sexual orientation and sex are dismissed.

In addition, Human Rights Law § 296.2(c)(i) requires a place of public accommodation "to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages or accommodations to individuals with disabilities . . ." Human Rights Law § 296.2(d)(iv) states that a reasonable modification "...includes modification to permit the use of a service animal by a person with a disability..."

A disability is "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques," a record of such impairment, or the perception of such impairment. Human Rights Law § 292.21. This definition has been interpreted to include any medically diagnosable impairments and conditions which are merely "diagnosable medical anomalies." *State Div. of Human Rights v. Xerox Corp.*, 65 N.Y.2d 213, 219, 491 N.Y.S.2d 106, 109 (1985).



Complainant suffers from a disability as described under the Human Rights Law. She has been diagnosed with multiple disabilities. In addition, Complainant maintains a service animal, Thor. Thor is trained to perform specific tasks that assist Complainant during her daily life. A service animal under the Human Rights Law need not be trained by a professional trainer but must be individually trained to do work or perform tasks for a person with a disability. Human Rights Law § 296.14. Complainant has provided such training for Thor.

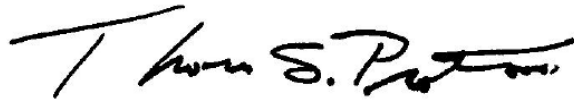
Complainant asked Respondent to provide an accommodation that would allow her to bring Thor into Respondent's facility. However, Complainant failed to provide Respondent with information regarding Thor's training, became upset when Borrego sought information, violated Respondent's rules by attempting to record the conversation without Borrego's consent and gave Borrego a letter that stated Thor was an emotional support animal. Borrego then determined, based upon the information he had been given, that Thor was in fact an emotional support animal. Borrego's determination cannot be considered unreasonable. Moreover, Complainant could have brought Thor into Respondent's facility after 1:45 PM but chose not to take that option. Complainant failed to avail herself of the accommodation offered, then failed to cooperate when Respondent attempted to clarify Thor's status. She provided no information about Thor's training and gave Respondent a letter that referred to Thor as an emotional support animal. Respondent cannot be held liable for failing to treat Thor as a service animal. Therefore, Complainant's claim of failure to accommodate is dismissed.

**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 the case be dismissed.

DATED: August 1, 2024  
Bronx, New York

A handwritten signature in black ink, appearing to read "Thomas S. Protano". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke extending to the right.

Thomas S. Protano  
Administrative Law Judge