UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARING AND APPEALS

The Secretary, United States Department of Housing and Urban Development, on behalf of	)	
[redacted]	)	HUDOHA No. _____
Charging Party,	)	FHEO No. 02-15-0578-8
v.	)	
111 East 88th Partners,	)	
Respondent.	)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On July 27, 2015, [redacted] ("Complainant") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD") alleging violations of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the "Act"). Specifically, Complainant alleges that 111 East 88th Partners ("Respondent") refused to grant his reasonable accommodation request to keep an emotional support animal. Complainant further alleges Respondent engaged in discriminatory interference and intimidation by requiring a burdensome quantity of unnecessary medical information to prove his need for an emotional support animal.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §§ 3610(g)(1) and (2). The Secretary has delegated to the General Counsel (24 C.F.R. §§ 103.400 and 103.405), who has re-delegated to the Regional Counsel the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011).

The Regional Director of the Office of Fair Housing and Equal Opportunity ("FHEO") for the New York/New Jersey Region, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that a discriminatory housing practice has

occurred in this case and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the above-mentioned verified complaint and the Determination of Reasonable Cause, Respondent is charged with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

2. For the purposes of 42 U.S.C. § 3604(f)(2), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

3. It is unlawful to coerce, intimidate, threaten, or interfere with a person's exercise or enjoyment of any right guaranteed by the Act. 42 U.S.C. §3617; 24 C.F.R. § 100.400.

B. PARTIES AND SUBJECT PROPERTY

4. Complainant is an "aggrieved person," as defined by 42 U.S.C. § 3602(i), and has suffered damages as a result of Respondent's conduct.

5. Complainant is an individual with a disability,[1] as defined by the Act. 42 U.S.C. § 3602(h). Complainant has been diagnosed with [redacted]

6. Respondent, a partnership, is the owner of apartment [redacted] in which Complainant resides ("subject property"). The subject property is located in a 10-story condominium building consisting of 61 units located at 111 E. 88th Street, New York, New York.

[1] The Act uses the term "handicap" instead of "disability." However, both terms have the same legal meaning. This Charge will use the term "disability."

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Complainant's parents were the original tenants of the subject property. The property is a rent-controlled unit, subject to the New York City Rent and Rehabilitation Law ("rent control").

8. Complainant's father entered into a written lease dated August 9, 1960, with Respondent's predecessor-in-interest. This is the only lease for the subject property. Article 35 and Rule and Regulation No. 8 of the lease prohibits tenants from keeping and/or harboring a dog without the express written permission of Respondents.

9. Complainant's parents vacated the subject property in 1980, and Complainant succeeded his parents as the statutory tenant of the subject property.

10. On June 18, 2015, Complainant requested a reasonable accommodation to retain his emotional support dog, [redacted] in his apartment based upon medical information provided by his physician and therapist.

11. Along with the request for a reasonable accommodation, Complainant provided Respondent with a letter dated May 16, 2015 from Complainant's treating physician, stating that Complainant had recently been diagnosed with [redacted] Complainant also included a letter from his therapist, dated June 8, 2015, stating that this illness had a severe impact on Complainant's mental and emotional state, and that if his support animal was removed from the apartment, it would exacerbate Complainant's physical and mental disabilities at a critical moment in his life, placing in peril his survival.

12. Among other things, Complainant's therapist's June 8, 2015 letter explained that living with [redacted] ameliorates the symptoms of Complainant's [redacted] disability. Elaborating, the therapist wrote that the amelioration of Complainant's [redacted] disability, through living with a support animal, is necessary to ensure that Complainant seeks medical treatment and adheres to the monitoring and self-treatment regimen for his [redacted] disability.

13. Respondent replied by letter, dated June 28, 2015, requesting that Complainant provide the following:

> Copies of all of…[Complainant's therapist's] session notes relating to his session with [redacted] If hand written, they are to be supported by typed copies of the same.
>
> Copies of [redacted] medical records and medical history, including but not limited to medical management provided, tests conducted with their results, [redacted], MRI, CT scan, ultrasound or contrast x-ray, for the period of times [redacted] and the [redacted] have been seeing/treating [redacted]

Respondent also reserved the right to have its physician examine Complainant and to interrogate Complainant, his treating physician, and his treating therapist under oath.

14. Complainant did not respond to Respondent's requests, believing them to be burdensome and unnecessary in light of the information he had already provided to support his request for a reasonable accommodation.

15. As a result of Respondent's discriminatory actions, Complainant has suffered actual damages, including, but not limited to, emotional distress, out of pocket expenses, and inconvenience.

D. FAIR HOUSING ACT VIOLATIONS

16. As described in the paragraphs above, Respondent discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when it refused to grant his request for a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).

17. As described in the paragraphs above, Respondent coerced, intimidated, threatened, or interfered with Complainant's exercise or enjoyment of a right guaranteed by the Act when it required burdensome and unnecessary medical information in response to Complainant's request for a reasonable accommodation. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604(f)(2), as defined by § 3604(f)(3)(B), and § 3617, and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent as set forth above violate Sections 804(f)(2), as defined by Section 804(f)(3)(B), and Section 818 of the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating on the basis of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling;

3. Mandates Respondent, its agents, employees, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

4. Awards such damages as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;

5. Assesses a civil penalty of $16,000 against Respondent for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

6. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted this 21st day of September, 2016,

John J. Cahill
Regional Counsel

Henry Schoenfeld
Associate Regional Counsel
for Program Enforcement and Litigation

David Heitner
Attorney-Advisor

U.S. Department of Housing and
Urban Development
26 Federal Plaza, Room 3237
New York, New York 10278-0068
(212) 542-7212