

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS**

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The Secretary, United States Department of)	
Housing and Urban Development,)	
)	
Charging Party,)	
)	
on behalf of NAME REDACTED ,)	
)	HUD OHA No. _____
Complainant,)	FHEO No. 02-19-3289-8
)	
v.)	
)	
Robert Pascoal,)	
)	
Respondent.)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 30, 2019, **NAME REDACTED** (“Complainant”) filed a complaint with the U.S. Department of Housing and Urban Development (“HUD” or the “Department”) alleging that Robert Pascoal (“Respondent”) violated the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the “Act”), by discriminating against Complainant on the basis of her disability¹. Specifically, Complainant alleges that Respondent denied her reasonable accommodation request to keep an assistance animal and filed proceedings against her that resulted in evicting her from her unit.

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 act has occurred. 42 U.S.C. §§ 3610(g)(1)-(2); 24 C.F.R. § 103.400(a). The Secretary has delegated to the General Counsel, who has retained and re-delegated to the Regional Counsel, the authority to issue a Charge following a determination of reasonable cause. 76 Fed. Reg 42462, 42465 (July 18, 2011).

The Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for Region II, on behalf of the Assistant Secretary for FHEO, has authorized this Charge because he has determined after investigation that reasonable cause exists to believe Respondent

¹ The Act uses the term “handicap.” This Charge uses the term “disability,” unless quoting from the Act or applicable regulations. Both terms have the same legal meaning.

engaged in a discriminatory housing practice. *See* 42 U.S.C. § 3610(g)(1) and (2)(A); 24 C.F.R. § 103.400(a).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

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

A. LEGAL AUTHORITY

1. It is unlawful to discriminate against any person in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(1); 24 C.F.R. § 100.202(a).
2. 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 of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
3. For the purposes of 42 U.S.C. §§ 3604(f)(1) and (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).

B. PARTIES AND SUBJECT PROPERTY

1. Complainant is a person with a disability, as defined by the Act, 42 U.S.C. § 3602(h) and 24 C.F.R. § 100.201(a)(2). Complainant has a mental/emotional impairment that substantially limits her ability to concentrate at work, focus, sleep, do household chores, and engage in overall daily functioning.
2. Complainant moved into the subject property on March 1, 2019, after signing a month-to-month lease on February 24, 2019.
3. Complainant moved out of the subject property on or about August 15, 2019.
4. Complainant is an aggrieved person as defined by the Act, 42 U.S.C. § 3602(i); 24 C.F.R. § 100.20, and has suffered damages as a result of Respondent's conduct.
5. Respondent was the owner and landlord of an apartment complex located at 565 7th Street, Niagara Falls, NY 14301 ("Subject Property") until December 18, 2019 when he sold it to Capitold, LLC. There are 13 units in this apartment complex.

6. At all times relevant to this Charge, Complainant was renting **ADDRESS REDACTED** at the Subject Property, which is a dwelling as defined by the Act, 42 U.S.C. § 3602(b); 24 C.F.R. § 100.201.

C. FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

7. Complainant moved into the Subject Property with her dog **ANIMAL REDACTED**, who, at the time, was approximately 3 years old and weighed approximately 60lbs. Complainant did not notify Respondent that she had moved in with a dog.
8. Complainant's lease contained the following provision regarding pets:

Housing Provider strictly prohibits all pets (dogs, cats, fish, snakes, turtles, birds, etc). Exceptions are made only for animals deemed necessary for medical purposes or as service animals and in those cases Resident's [sic] must provide a letter from their doctor indicating such medical need. A mandatory, non-refundable deposit in the amount of five-hundred dollars (\$500.00) will be required.
9. On March 5, 2019, Complainant sent a text message to Respondent's wife asking to discuss something, but Respondent's wife did not confirm a time to have a conversation.
10. On April 16, 2019, Respondent texted the Complainant telling her that the building was a no-pet building and that he would be serving her with a 10-Day Notice to Cure.
11. On April 16, 2019, Complainant emailed Respondent in response to his text message, stating that she had requested to speak to him and his wife on March 5, 2019 about her situation. She explained that her dog was not a pet but an emotional support animal that was prescribed to her for her disability. Complainant also informed the Respondent that she had a copy of a doctor's note.
12. On April 17, 2019, Respondent served Complainant with a 10-Day Notice to Cure.
13. On or about April 17, 2019, Respondent texted Complainant that his insurance company would not allow **ANIMAL REDACTED**, and that if she needed an assistance animal, she would need to show proof of certification as well as a prescription. He also told Complainant that she would need to pay a \$500.00 non-refundable deposit.
14. Complainant responded to the text message by texting Respondent that he was not allowed to place a breed or weight restriction on an assistance animal, and that charging a fee for an assistance animal is illegal.
15. On April 19, 2019, Complainant sent Respondent a copy of a letter from her previous

- mental health professional, obtained when she lived in North Carolina and used to show her previous landlord her need for an assistance animal. The letter stated that Complainant had been diagnosed with a mental disability. The recommended treatment included that an “emotional support dog be with her at all times.”
16. On April 26, 2019, Respondent texted the Complainant telling her that the letter she submitted did not meet the requirements of a legitimate emotional support animal (“ESA”) letter, and that she needed to provide a legitimate ESA letter.
 17. On April 29, 2019, Complainant was served with a 30-Day Notice to Vacate.
 18. On June 2, 2019, Respondent wrote Complainant a letter asking for a “legitimate” assistance animal letter, on letterhead, and signed by a doctor, within 10 days. The letter also stated that Complainant’s dog had displayed aggressive behavior by biting the coat sleeve of another tenant, and by intimidating visitors to the building. Respondent said that he would be asking Officer **NAME REDACTED**, an animal control officer with the Niagara Falls Police Department, for a written report on whether the dog posed a threat to other tenants.
 19. On or about April 22, 2019, Officer **NAME REDACTED** had responded to a report that Complainant’s dog had bitten the coat sleeve of another tenant at the Subject Property. Officer **NAME REDACTED** confirmed to the Department that the bite did not break the tenant’s skin, and the dog immediately let go of the coat sleeve. Officer **NAME REDACTED** told the Department that he did not think that **ANIMAL REDACTED** posed a safety threat.
 20. Respondent did not contact Officer **NAME REDACTED** after he sent Complainant the June 2nd letter.
 21. On June 13, 2019, Respondent filed a Holdover Petition against Complainant and received a court date of July 9, 2019 for a hearing.
 22. On July 9, 2019, during the hearing, Complainant’s attorney presented a new assistance animal letter, dated June 7, 2019, and signed by Mental Health Professional, **NAME REDACTED**, LCSW. The letter stated:

Ms. **NAME REDACTED** is a person who suffers from a psychological impairment which substantially limits her ability to concentrate, a major life activity...Ms. **NAME REDACTED** dog, **ANIMAL REDACTED**, a **ANIMAL REDACTED**, currently provides emotional support by improving motivation through emotional bonding which successfully ameliorates the effects of her disability...I therefore, prescribe that **NAME REDACTED** be permitted to live with an emotional Support Animal in her dwelling, despite any rules, policies, procedures or regulations restricting or limiting animals, and be provided any other reasonable accommodations in housing...

23. The court set a new hearing date for July 22, 2019.
24. On or about July 10, 2019, Complainant was served with a 24-Hour Inspection of Premises Notice.
25. On July 13, 2019, Respondent's wife conducted an inspection of the unit and found it to be in good condition.
26. A second Hearing was held on July 22, 2019.
27. Respondent received the court's decision on July 31, 2019, granting the eviction.
28. On July 26, 2019, a warrant was issued for Complainant to be locked out of her unit at the subject property on August 20, 2019.
29. Complainant moved out of the unit on or around August 15, 2019.
30. As a result of Respondent's discriminatory conduct, Complainant suffered actual damages, including eviction, loss of housing opportunity, out-of-pocket expenses, emotional and physical distress, as well as embarrassment and humiliation.

D. FAIR HOUSING ACT VIOLATIONS

31. As described in the paragraphs above, Respondent violated the Act by making housing unavailable to Complainant because of her disability when Respondent refused to grant her request for a reasonable accommodation and instead terminated her tenancy at the Subject Property. 42 U.S.C. § 3604 (f)(1) and (3)(B); 24 C.F.R. §§ 100.202(a) and 100.204(a).
32. Respondent also discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling based on disability when he refused to grant her request for a reasonable accommodation. 42 U.S.C. §§ 3604(f)(2)(A) and (3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).

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)(1) and (f)(2), as defined by § 3604(f)(3)(B), 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)(1) and (f)(2), as defined by Section 804(f)(3)(B) of the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with him, from discriminating because of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling pursuant to 42 U.S.C. § 3612(g)(3);
3. Mandates Respondent, his agents, employees, and successors, and all other persons in active concert or participation with him, 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 pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondent's discriminatory conduct;
5. Assesses a civil penalty 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).

Date: April 30, 2021

Respectfully submitted,



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