

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondent is hereby 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 of that person or any person associated with that person. 42 U.S.C. §3604(f)(2)(A) and (f)(2)(C); 24 C.F.R. § 100.202(b)(1) and (b)(3).
2. Unlawful discrimination under Section 804(f)(2) of the Act includes a refusal to make reasonable accommodation 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.
3. Pursuant to the Act, "aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. § 3602(i)(1); 24 C.F.R. § 100.20.
4. Disability means a physical or mental impairment which substantially limits one or more of a person's major life activities. 42 U.S.C. § 3602(h)(1); 24 C.F.R. § 100.201.

B. PARTIES AND SUBJECT PROPERTY

5. Complainant [REDACTED] has upper respiratory and gastrointestinal conditions, which substantially limit one or more of his major life activities, including, but not limited to, breathing. Due to these limitations, Complainant [REDACTED] has a disability as defined by the Act. 42 U.S.C. § 3602(h).
6. Complainant [REDACTED] is Complainant [REDACTED]'s spouse. Both Complainants own and reside at the subject property unit. Complainant [REDACTED] is an aggrieved person as defined by the Act. 42 U.S.C. § 3602(i).
7. Respondent The Links South at Harbour Village Condominium Association, Inc. ("Links South") is a condominium association that governs and enforces rules and regulations for The Links South at Harbour Village, a condominium complex with 188 units, including the subject property. The condominium association is governed by a Board of Directors ("Board"). Respondent Links South is part of Harbour Village Golf & Yacht Club Community Services Association ("CSA"), which is the master association for the entire community consisting of a number of condominium associations.

8. At all times pertinent to this Charge, Complainants owned 4670 Links Village Drive, Unit [REDACTED], Ponce Inlet, Florida 32127 (“the Subject Property”).

C. FACTUAL ALLEGATIONS

9. Complainant [REDACTED] is a retired General Superintendent from the New York City Department of Sanitation. As part of his duties, he spent over 400 days removing debris from the 9/11 disaster site. As a result, he was diagnosed with certain upper respiratory conditions, amongst other conditions, that are certified for coverage under the World Trade Center Health Program.
10. On October 27, 2017, Complainants received their first rule violation notice for leaving shoes outside of their front door. The notice informed Complainants that if the violation continued for 10 days after the date of issuance, Respondent would file an action to enforce the provisions of the Declaration.
11. On January 24, 2018, Complainants received another rules violation notice for leaving shoes outside of their front door. The notice referenced the Harbour Village Golf and Yacht Club Community Rules and Regulations that was adopted by the Board of Directors on May 15, 2015, effective July 1, 2015. Specifically, Rule #4 under the “Storage of Personal Items” section that was “Specific to Links South Only” stated:

Personal items may not be left at your front door such as shoes, chairs, towels, fishing poles, boogie boards, skateboards, etc. A doormat and a wreath are the only items allowed at your front door.
12. On January 31, 2018, Respondent removed Complainants’ shoes and placed them in the Condominium Association Office. Complainants contacted the Ponce Inlet Police Department who assisted with retrieving the shoes from the Condominium Association Office.
13. On February 21, 2018, Complainants received another rules violation notice for leaving shoes outside of their unit. On February 22, 2018, Respondent removed the shoes that were outside of the unit. Complainants contacted the police again to assist with retrieving the shoes from the office.
14. On March 2, 2018, Respondent mailed a letter advising Complainants to cease and desist placing personal belongings outside of their unit and that their continued violation will result in filing an injunction.
15. On April 18, 2018, Complainants requested a reasonable accommodation to allow them to leave their shoes outside of their unit due to allergies. Complainants provided two documents from Complainant [REDACTED]’s medical providers dated November 16, 2017: a doctor’s recommendation to not track outdoor allergens, chemicals, or pollutants into his home because of his severe allergies and a physician assistant’s request to allow Complainant [REDACTED] to leave shoes or work boots outside due to

allergies. In addition, Complainants provided documents referencing a shoeborne pathogen study and a letter from the World Trade Center Health program outlining Complainant's specific conditions.

16. On April 20, 2018, Respondent requested all of Complainants' supporting documentation with an explanation as to why an accommodation was necessary.
17. On April 27, 2018, Complainants explained that the April 18th letter was the first written request for accommodation and that prior communications were verbal or informal. In a separate letter, Complainants explained that they are requesting to leave shoes outside of their unit as an accommodation. The letter explained that Complainant [REDACTED] was diagnosed with respiratory and digestive conditions and provided the same supporting documents from the April 18th letter.
18. On May 3, 2018, Respondent responded that the provided documentation on April 27th did not establish a causal relationship between Complainants' shoes to "an undefined allergy or disability." Respondent requested (1) to inspect and photograph the unit and examine all shoes and vegetation within the unit and balcony, (2) authenticated copies of Complainant's medical records for the past two years relating to any allergies or medical conditions that serve as a basis for accommodation, (3) authenticated copies of Complainant's prescription records or over the counter medication being taken in the past year related to allergies, (4) copies of any test results of the Unit for any allergens or molds within the past year, and (5) any authoritative materials, which substantiate the correlation between an allergy documented by Complainant and the need to store shoes outside.
19. On May 22, 2018, Complainants explained that Complainant [REDACTED] does not have an "undefined allergy or disability," but rather a diagnosis approved by the World Trade Center Health Program. Complainants also provided prescription records, CPAP receipts, a copy of Dr. [REDACTED]'s shoe study on the occurrence of bacteria on shoes, pictures of the unit, and explanations on how they make every attempt to make their home hypoallergenic. In addition, Complainants provided a letter from his allergist's office dated May 14, 2018, which noted that he is being treated for multiple allergens and stated the following:

Although issues may or may not occur when shoes are inside, some potential allergens and pesticides could cause extreme or even life-threatening respiratory distress or gastrointestinal inflammation that are hard to recover from. All caution should be taken to avoid these high-risk outcomes. It would be beneficial to make an arrangement for shoes to be stored outside of the home.

20. On May 30, 2018, Respondent replied that the May 14th letter from the allergist's office did not establish a nexus between Complainant's allergies or other disabilities and his shoes. Further, Respondent noted that the disability is not obvious and "the medical professional's opinion must satisfy the definition of disability." In addition,

Respondent's Counsel requested a professional opinion on whether placing the shoes in a sealed container inside the home would resolve the concerns.

21. Complainants spent much of the remaining year out of town. On February 5, 2019, Complainants provided another letter from Complainant's physician. The letter specified and explained Complainant's conditions and stated that he "is allergic to mold, mites, dust, pollen, trees, and grasses, all of which may exacerbate his conditions." The letter further explained:

These upper respiratory conditions cause difficulty primarily with breathing and swallowing, but can also affect speaking, eating, and hearing . . . [Complainant] takes regular allergy injections to control swelling and carries an epi-pen to ensure his ability to breathe and swallow.

22. The physician recommended that Complainant [REDACTED] leave his shoes outside and "bringing his recently worn shoes indoors puts [Complainant] at unnecessary risk of inflammation, difficulty breathing or swallowing, a possible complete inability to breathe or swallow."
23. The letter noted that a patient with Complainant's conditions should employ many strategies to minimize exposure to allergens and recommended leaving "their most recently worn shoes outside where such pollutants may dissipate over time in open air without the risk of transfer to Complainant's living area."
24. Lastly, the physician rejected the suggestion that Complainant place his shoes in a sealed container and explained "allowing contaminated objects to remain in a small enclosed space does not allow allergens, bacteria, and pollutants to dissipate, creating a greater chance of contamination, reaction, and inflammation."
25. On February 19, 2019, Respondent replied that "the doctor's letter does not connect the dots by stating specifically the nexus of such allergies to the specific substance presumably on his shoes." Respondent also asked if a doctor or laboratory performed tests on Complainant [REDACTED]'s shoes, how his doctor advised him to deal with shoes inside his vehicle, and if they had any peer-reviewed medical articles that substantiated the correlation between his allergies and leaving his shoes outside.

D. FAIR HOUSING ACT VIOLATIONS

26. Respondent violated Subsections 804(f)(2) and (f)(3)(B) of the Act by discriminating in the terms and conditions of housing because of disability when Respondent continuously denied Complainants' 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.

III. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, 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 the Act and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Act, 42 U.S.C. § 3601, *et seq.*;
2. Enjoins Respondent, its agents, employees, and successors, and all other persons in active concert or participation with from discriminating against any person because of disability in any aspect of the rental, sale, use, or enjoyment of a dwelling;
3. Mandates Respondent, its agents, employees, 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 Complainants for their actual damages, including inconvenience, emotional distress, and out-of-pocket losses caused by Respondent;s discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3); and
5. Awards a civil penalty against each Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(b)(3)(iii); and
6. Awards any additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3).

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