

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

Secretary, United States Department of )  
Housing and Urban Development, on behalf of )  
██ )  
Charging Party, )  
v. )  
Hillcrest East Building No. 22, Inc., )  
Rhodes Management, LLC, and )  
Donald Berger )  
Respondents. )

ALJ No. \_\_\_\_\_  
FHEO No. 04-14-0271-8

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

██████████ ("Complainant ██████████") timely filed a complaint with the U.S. Department of Housing and Urban Development (the "Department" or "HUD") on or about January 31, 2014, alleging that Respondents Hillcrest East Building No. 22, Inc. ("Hillcrest"), Rhodes Management, LLC ("Rhodes"), and Donald Berger ("Berger") subjected her to discriminatory terms and conditions, failed to make reasonable accommodations, published discriminatory notices and statements, and attempted to intimidate and retaliate against her, all in violation of the Fair Housing Act (the "Act"), 42 U.S.C. §§ 3601-3619.<sup>1</sup> The complaint was last amended on or about August 30, 2016 to add ██████████ "Complainant ██████████" as a complainant.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (the "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, who has redelegated to the Regional Counsel, the authority to issue such a Charge following a Determination of Reasonable Cause by the Assistant Secretary of Fair Housing and Equal Opportunity ("FHEO") or his or her designee. 24 C.F.R. §§ 103.400 and 103.405; 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

<sup>1</sup> The Fair Housing Act, and its implementing regulations, uses the term "handicap," whereas this document uses the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1988).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region IV has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized the issuance of this Charge. See 42 U.S.C. § 3610(g)(2).

## II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based upon HUD's investigation of the allegations contained in the aforementioned amended complaint and the Determination of Reasonable Cause, Respondents Hillcrest, Rhodes, and Berger, are hereby charged with violating the Act as follows:

### A. LEGAL AUTHORITY

1. It is unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
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 handicap of that person; a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.65(a)-(b).
3. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 3603, 3604, 3605, or 3606. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(a)-(c).
4. The Act's definition of "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).
5. The Act defines "disability" as physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such impairment, or being regarded as having such impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

6. The Act defines an "aggrieved person" as 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.
7. The Act defines "dwelling" as any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. 42 U.S.C. § 3602(b); 24 C.F.R. § 100.20.

**B. PARTIES AND SUBJECT PROPERTY**

8. Complainant [REDACTED] is a resident of Hillcrest East Building No. 22 (the "Subject Property") located at 4350 Hillcrest Drive, Hollywood, Florida 33021.
9. Complainant [REDACTED] is an individual with a disability as defined by the Act. Complainant [REDACTED] has been medically diagnosed with an anxiety disorder and depression. Complainant [REDACTED] is, and at all times relevant to this matter has been, an individual with a disability, as defined by the Act. Complainant [REDACTED] is the first cousin of Complainant [REDACTED].
10. Complainant [REDACTED] disability causes her to become anxious and agitated whenever she leaves her home. Therefore, whenever Complainant [REDACTED] leaves her home, she requires an emotional support animal to be with her to keep her calm and reduce anxiety. Complainant [REDACTED] emotional support animal is a dog.
11. Complainants [REDACTED] and [REDACTED] are both "aggrieved persons," as defined by the Act.
12. Respondent Hillcrest is a not-for-profit corporation organized under the laws of Florida. At all times relevant, Respondent Hillcrest owned the Subject Property.
13. Respondent Rhodes is a limited liability company organized under the laws of Florida. At all times relevant to this Charge, Respondent Rhodes had property management responsibilities at the Subject Property.
14. Respondent Berger was at all times relevant to the Charge, President of the Hillcrest East No. 22 Homeowners Association (the "Association").

15. The unit resided in by Complainant [REDACTED] at the Subject Property was a "dwelling," as defined by the Act.

16. Complainant [REDACTED] was to visit Complainant [REDACTED] residence at the Subject Property on two (2) separate occasions. On one (1) of the occasions, Complainant [REDACTED] attempted to visit the Subject Property but was denied access because of the presence of her emotional support animal. The first occasion occurred in or around November 2013 and the second occasion occurred in or around February 2014.

**C. FACTUAL ALLEGATIONS**

17. At all times relevant to the Charge, it was a violation of Respondent Hillcrest's rules and regulations for dogs to be at or on the Subject Property. Respondent Hillcrest's reasonable accommodation policy was encapsulated in Respondent's Reasonable Accommodation for Assistive Animal form.

18. The Request for Reasonable Accommodations for Assistive Animal form stated that it was required to be accompanied by the following documents:

- a) A letter from a licensed health care provider establishing the disability and stating the following:
  - The medical diagnosis and the length of time that the person seeking the accommodation has suffered from such condition;
  - The nature of the disability and how the impairment substantially limits one or more major life activities (such as walking, seeing, working, learning, washing, dressing, etc.);
  - The named person's prior treatment for the foregoing disability, including a statement as to prior hospitalizations, prescribed medications and other components of the treatment plan, including the time periods related thereto;
  - A statement as to why the assistive animal is necessary in order to use the condominium unit;
- b) Documents showing that the assistive animal has been individually trained;
- c) A veterinarian's certificate that the assistive animal has received all necessary immunization and other required shots and that the assistive animal is in satisfactory physical condition;
- d) A photograph of the assistive animal standing next to the person seeking the accommodation;

- e) Such other information as the Board of Directors may reasonably require to determine whether a reasonable accommodation for the assistive animal is required.
19. Based on knowledge and belief, the Request for Reasonable Accommodations for Assistive Animal form is still utilized by Respondents.
20. On or about September 11, 2013, Complainant [REDACTED] made both a verbal and written request (the "first request") to Respondent Berger, the President of the Association, for permission to allow Complainant [REDACTED] and her emotional support animal to attend an upcoming Thanksgiving dinner at Complainant [REDACTED] residence.
21. The written request submitted by Complainant [REDACTED] consisted of a completed Request for Reasonable Accommodations for Assistive Animal form provided to her by Respondent Hillcrest and Respondent Berger, two (2) letters from Dr. [REDACTED] a geriatric psychiatrist documenting Complainant [REDACTED] need for an emotional support animal, and the National Service Animal Registry ("NSAR") identification card for Complainant [REDACTED] emotional support animal.
22. In response to Complainant [REDACTED] verbal request, Respondent Berger informed Complainant [REDACTED] that it was against Respondent Hillcrest's rules and regulations to allow animals at the Subject Property. Respondent Berger subsequently instructed security personnel at the Subject Property to write an incident report if the security personnel witnessed Complainant [REDACTED] and her emotional support animal.
23. In response to Complainant [REDACTED] written request, Respondent Berger issued a letter, on or about November 11, 2013, denying Complainant [REDACTED] request. The letter stated in part, "your request must be denied, and we expect that you will comply with building rules and by-laws." Based on information and belief, the decision to approve or deny a reasonable accommodation request is made by Respondent Hillcrest's Board of Directors.
24. At no point during this process did Respondent's Berger, Hillcrest, or Rhodes attempt to engage in an interactive process with either Complainant [REDACTED] or Complainant [REDACTED] in order to discuss the disability-related need for the requested accommodation or possible alternative accommodations.

25. On or about November 20, 2013, Complainant [REDACTED] attorney [REDACTED] sent a written correspondence to Respondent Berger informing him that Complainant [REDACTED] was an individual with a disability, that Complainant [REDACTED] must be accompanied by her emotional support animal, and that Respondent Berger and Respondent Hillcrest's denial of Complainant [REDACTED] verbal and written request was discriminatory and a violation of the Act.
26. On or about November 28, 2013, Complainant [REDACTED] attempted to visit the Subject Property with her emotional support animal. Complainant [REDACTED] was informed by an employee of Respondent Rhodes that dogs were not allowed on the Subject Property. As a result of the denial to allow Complainant [REDACTED] entry with her emotional support animal, Complainant [REDACTED] was unable to visit the Subject Property, Complainant [REDACTED] was unable to host Complainant [REDACTED] at her residence for Thanksgiving dinner, and Complainants were forced to relocate Thanksgiving dinner.
27. On or about February 18, 2014, Complainant [REDACTED] submitted a written note to Respondent Berger (the "second request"), stating that Complainant [REDACTED] and her emotional support animal intended to again visit the Subject Property. A handwritten annotation on the note dated February 21, 2014 states, "BOD accepted dog visiting, but dog must be contained." Based on information and belief, "BOD" refers to Respondent Hillcrest's Board of Directors.
28. On or about February 22, 2014, Complainant [REDACTED] received a telephone call from Ana Dongo, the Office Manager at Respondent Hillcrest. Ms. Dongo informed Complainant [REDACTED] that Complainant [REDACTED] could bring her emotional support animal but that the animal must be carried into the building and hidden from sight.
29. Complainant [REDACTED] did not visit or attempt to visit the Subject Property in February 2014.
30. In or about April 2014, Respondent Hillcrest's Board of Directors drafted and distributed to all Hillcrest residents a document entitled "Building Survey from Hillcrest No. 22 Board of Directors" (the "Building Survey"). The Building Survey begins by stating "[r]ecently Hillcrest 22, our building, has been involved in several complaints to HUD about issues with both owners and guests who want to bring a cat or a dog into our 'no pet' building." The description of the Building Survey concludes by stating "[i]n order to help your Board defend your rights and this

building rule we ask you to fill out the survey below to help us respond to HUD complaints. Thank you for your participation.”

31. On or about May 5, 2014, Respondent Hillcrest’s Board of Directors approved a policy regarding visitors with assistive animals. A “Policy on First Time Visiting Assistive Animals” was published and made available for dissemination by Respondent Rhodes Management as a result of Respondent Hillcrest’s actions.

32. The Policy on First Time Visiting Assistive Animals articulated various procedures and guidelines including:

- a) It must be declared to the Security Staff upon the first visit to the building that the animal requiring entrance is properly certified and qualifies as an assistive animal.
- b) The person(s) accompanying the animal must understand that this is a ONE TIME ONLY waiver of the building requirement to register and provide all necessary documentation to the building office prior to any future visit.
- c) The animal must be carried by the accompanying person OR on a leash at all times.
- d) The animal must be brought directly to the unit being visited and exit the building directly from that unit.
- e) The animal is not to visit or use any other common areas on the property.
- f) The animal and person(s) accompanying the animal must use the designated elevator for animal transport.
- g) Visiting Assistive Animals are not to stay in the building overnight.
- h) If you desire to have the visiting assistive animal come onto the Condominium property in the future, it will be necessary to fill out an application requesting that reasonable accommodations be provided, including medical evidence of the disability, how the assistive animal is part of a treatment plan for the disability and other information which the Association may require.

33. Based on knowledge and belief, the Policy on First Time Visiting Assistive Animals is currently being enforced by Respondents.

**D. FAIR HOUSING ACT VIOLATIONS**

34. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act by making, printing, or publishing, or causing to be made, printed, or published

- the "Reasonable Accommodation for Assistive Animal" form which is a notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on handicap. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
35. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act by making, printing, or publishing, or causing to be made, printed, or published the "Policy on First Time Visiting Assistive Animals," which is a notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on handicap. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
36. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act because it discriminated against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by implementing and applying the discriminatory policy encapsulated in the "Reasonable Accommodation for Assistive Animal" form. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
37. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act by discriminating against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by denying Complainant's first request for reasonable accommodations in rules, policies, practices, or services on or about November 11, 2013, when such accommodations were necessary to afford Complainants full enjoyment of the premises of her dwelling. 42 U.S.C. § 3604(f)(2)(C); 24 C.F.R. §§100.202(b) and 100.203(a).
38. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act by discriminating against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by denying Complainant's second request for reasonable accommodations in rules, policies, practices, or services on or about February 2014, when such accommodations were necessary to afford Complainants full enjoyment of the premises of her dwelling. 42 U.S.C. § 3604(f)(2)(C); 24 C.F.R. §§100.202(b) and 100.203(a).
39. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act because it unlawfully coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed of, any right granted or protected by section 3603, 3604, 3605, or 3606

by creating and distributing the "Building Survey from Hillcrest No. 22 Board of Directors." 42 U.S.C. § 3617; 24 C.F.R. § 100.400(a)-(c).

40. As described in paragraphs 8 through 34 above, Respondent Hillcrest violated the Act because it unlawfully coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed of, any right granted or protected by section 3603, 3604, 3605, or 3606 by issuing and enforcing the "Policy on First Time Visiting Assistive Animals." 42 U.S.C. § 3617; 24 C.F.R. § 100.400(a)-(c).
41. As described in paragraphs 8 through 34 above, Respondent Rhodes violated the Act by making, printing, or publishing, or causing to be made, printed, or published the "Reasonable Accommodation for Assistive Animal" form, which is a notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on handicap. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
42. As described in paragraphs 8 through 34 above, Respondent Rhodes violated the Act by making, printing, or publishing, or causing to be made, printed, or published the "Policy on First Time Visiting Assistive Animals," which is a notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on handicap. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
43. As described in paragraphs 8 through 34 above, Respondent Rhodes violated the Act because it discriminated against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by implementing and applying the discriminatory policy encapsulated in the "Reasonable Accommodation for Assistive Animal" form. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.75(a)-(d).
44. As described in paragraphs 8 through 34 above, Respondent Rhodes violated the Act because it unlawfully coerced, intimidated, threatened, or interfered with a person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed of, any right granted or protected by section 3603, 3604, 3605, or 3606 by creating and distributing the "Building Survey from Hillcrest No. 22 Board of Directors." 42 U.S.C. § 3617; 24 C.F.R. § 100.400(a)-(c).
45. As described in paragraphs 8 through 34 above, Respondent Rhodes violated the Act because it unlawfully coerced, intimidated, threatened, or interfered with a

person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed of, any right granted or protected by section 3603, 3604, 3605, or 3606 by issuing and enforcing the "Policy on First Time Visiting Assistive Animals." 42 U.S.C. § 3617; 24 C.F.R. § 100.400(a)-(c).

46. As described in paragraphs 8 through 34 above, Respondent Berger violated the Act by discriminating against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by verbally denying Complainant's first request for reasonable accommodations in rules, policies, practices, or services on or about September 11, 2013, when such accommodations were necessary to afford Complainants full enjoyment of the premises of her dwelling. 42 U.S.C. § 3604(f)(2)(C); 24 C.F.R. §§100.202(b) and 100.203(a).

47. As described in paragraphs 8 through 34 above, Respondent Berger violated the Act by discriminating against Complainant [REDACTED] and Complainant [REDACTED] in the terms, conditions, or privileges of Complainant [REDACTED] tenancy by denying Complainant's first request for reasonable accommodations in rules, policies, practices, or services, in writing, on or about November 11, 2013, when such accommodations were necessary to afford Complainants full enjoyment of the premises of her dwelling. 42 U.S.C. § 3604(f)(2)(C); 24 C.F.R. §§100.202(b) and 100.203(a).

### 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 Respondents with engaging in discriminatory housing practices in violation of the Act and prays that an order be issued that:

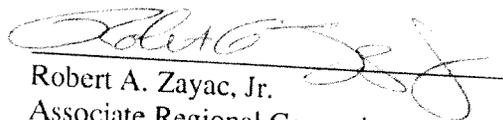
1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate the Act, as amended, 42 U.S.C. § 3601, *et seq.*;
2. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with any of them, from discriminating because of disability in any aspect of the rental of a dwelling pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(b)(3)(ii);
3. Mandates Respondents, their agents, employees, successors, and all other persons in active concert or participation with any of them, to attend training that addresses the Act's prohibitions against discrimination on the basis of disability;

4. Awards such damages as will fully compensate Complainants for the actual damages caused by Respondents' discriminatory conduct, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.670(b)(3)(i);
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. § 189.671(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. § 180.671(b)(3).

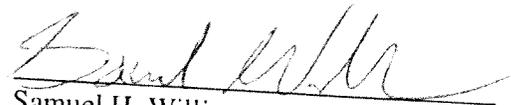
Respectfully submitted,



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