

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

The Secretary, United States Department)
of Housing and Urban Development, on)
behalf of Complainant [REDACTED])
)
Charging Party,)
)
v.)
)
Linda Barber, Bert Barber, and)
Lori Thompson,)
)
Respondents.)
_____)

ALJ No.

FHEO No. 10-11-0229-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On April 6, 2011, Complainant, [REDACTED] filed a timely complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Respondents Linda Barber and Bert Barber discriminated against her based on handicap, in violation of the Fair Housing Act (“Act”), as amended, 42 U.S.C. §§ 3601-3619. On March 7, 2012, HUD provided written notice to Respondents’ counsel that HUD was investigating allegations of retaliation in connection with the complaint. On March 20, 2012, the complaint was amended to name Lori Thompson as an additional Respondent.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of an aggrieved person 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)-(2). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400 and 103.405, who has redelegated the authority to the Regional Counsel, 76 Fed. Reg. 42463, 42465 (July 18, 2011).

The Regional Director for Fair Housing and Equal Opportunity, Region X, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, 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 of Discrimination. 42 U.S.C. § 3610(g)(2).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the complaint and the attached determination of reasonable cause, Respondents are hereby charged with violations of the Act, specifically, 42 U.S.C. Sections 3604(f)(2), 3604(f)(3)(B), and 3617, as set forth below.

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 handicap of that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).
2. For the purposes of Section 3604(f), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a handicap 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 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 42 U.S.C. Sections 3603-3606. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
4. The term "handicap" is defined in the Act as a physical or mental impairment which substantially limits one or more of a person's major life activities, a record of having such an impairment, or being regarded as having such an impairment.¹ 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

Parties and Subject Property

5. Complainant [REDACTED] ("Complainant") is a person with a handicap within the meaning of the Act. 42 U.S.C. § 3602(h). Complainant has Major Depressive Disorder, Post-Traumatic Stress Disorder and anxiety, which substantially limit one or more of her major life activities, including her ability to leave her home, attend to tasks of daily living, and hold a job. Complainant has received Social Security Disability benefits since 1994.
6. Complainant is an aggrieved person, as defined by the Act. 42 U.S.C. § 3602(i).

¹ "Disability" is used interchangeably with "handicap" herein.

7. Respondents Linda Barber and Bert Barber are the owners of a four-unit apartment building located at 1632 Minor Road, Kelso, Washington (the "subject property"). The subject property is a dwelling, as defined by the Act. 42 U.S.C. § 3602(b).
8. Respondents Linda Barber and Lori Thompson, and Ms. Barber's sister, Dee Areal, collectively managed approximately 80 rental units, including the subject property. Respondent Bert Barber was responsible for maintenance issues and financial matters for the Barbers' investment properties.
9. Beginning in mid-2009, Respondent Lori Thompson (a.k.a. Lori Leighton) was the property manager for the subject property. Ms. Thompson was paid by Respondents Barber to handle day-to-day management duties at their properties.
10. Respondents Linda Barber and Lori Thompson had the authority to grant reasonable accommodation requests for residents of the subject property.

Factual Allegations

11. In or about May, 2008, Respondent Linda Barber showed Complainant a two-bedroom apartment at the subject property. Complainant completed a rental application, dated May 19, 2008, listing her employment as "disabled" and her source of income as "Social Security Disability." Complainant sought to rent the unit with a Section 8 Housing Choice Voucher, and Respondent Barber inquired at length about why she had a housing voucher, asking detailed questions about Complainant's disabilities.
12. In this initial meeting, Complainant told Respondent Linda Barber that she planned to get a dog to help her with her disability. Respondent Barber told her that she could have a dog, because pets are allowed, but that she would have to pay a \$1,000 pet deposit.
13. On or about May 28, 2008, Complainant and Respondent Linda Barber signed a rental agreement for Unit #4 at the subject property, and Complainant moved in. Complainant did not get a dog because she could not afford the deposit.
14. Shortly after she moved in, Complainant obtained the first of many statements from her mental health care providers supporting her need for a dog to help her with her disability. When she provided the statements to Respondents, they told her that she would still need to pay the pet deposit.
15. In or about January, 2009, Complainant began paying \$50 per month toward the deposit in anticipation of obtaining an assistance animal. Complainant could not afford the payments because of medical bills and stopped paying after two months. Respondents refunded the deposit. Complainant did not obtain an assistance animal.

16. In February, Complainant obtained a statement from her mental health care provider, Brent Francisco, Advanced Registered Nurse Practitioner, in support of her request for an assistance animal. The statement, written on PeaceHealth Behavioral Health letterhead and dated February 4, 2009, read:

██████████ is under my care for depression. It would be very helpful for her to be allowed to have a dog as a service animal to help with her depression. /s/ Brent Francisco, MN, ARNP, PMHNP, PH/CBS
Psychiatric Nurse Practitioner

17. Complainant gave the February 4, 2009, medical statement to Respondent Linda Barber. Ms. Barber told Complainant that she could have a dog, but she would still have to pay the \$1,000 pet deposit. Respondents made no effort to follow up with Complainant for additional information.
18. In or about July, 2010, Complainant gave Respondent Lori Thompson a second letter from her mental healthcare provider, Brent Francisco, dated July 27, 2010, which stated in relevant part,

██████████ is under my care for the treatment of depression. It would greatly benefit her to be able to have a dog as a therapy animal, and it would be my hope that this will be accommodated at her current residence.

19. In January, 2011, over two-and-a-half years after she moved into the subject property, Complainant's next-door neighbor offered to give Complainant her dog, "Scrappee Anne," a miniature schnauzer, after noticing that Complainant had bonded with the dog. Complainant contacted Respondent Thompson to notify Respondents that she had adopted her neighbor's dog.
20. On February 3, 2011, at Respondents' insistence, Complainant signed a Pet Agreement. The agreement required her to pay a \$1,000 deposit, \$350 of which was a nonrefundable fee. Complainant's neighbor (Scrappee Anne's prior owner) had not been required to pay a nonrefundable fee as part of her deposit. Complainant's deposit was to be paid in monthly installments of \$50.
21. On or about March 12, 2011, Complainant gave Respondent Lori Thompson a letter from her mental health counselor, Ellen Walker, in support of her request for a reasonable accommodation. The letter, on PeaceHealth Behavioral Health letterhead and dated March 7, 2011, stated, in part:

██████████ has been in individual counseling with me since March 4, 2010. Her diagnosis is Major Depressive Disorder.... She also suffers from Posttraumatic Stress Disorder (PTSD), anxiety, and fear of going into public places. ██████████ lives alone and benefits greatly from her dog

companion, who keeps her company and also helps to relieve her Depression and anxiety. [REDACTED] reports that her dog "contributes to her quality of life." I believe that it is in [REDACTED] best interest for her mental health to continue to own and take care of her dog. /s/ Ellen Walker, MFA, MS, LMHC, Mental Health Specialist III

22. On or about March 16, 2011, Complainant met with her case worker at the Kelso Housing Authority. Complainant asked whether she could deduct from her income as a medical expense the \$50 she pays each month toward her deposit. The case worker told Complainant that a landlord cannot charge a deposit or fees for a service or assistance animal. The case worker referred Complainant to HUD's Office of Fair Housing and Equal Opportunity (FHEO) to file a complaint.
23. About a week later, Complainant told Respondent Lori Thompson that she was going to file a complaint with HUD about the pet deposit and fees for her assistance animal. Ms. Thompson told Complainant that an assistance animal did not apply to her case.
24. On or about March 24, 2011, Complainant contacted HUD FHEO; on April, 6, 2011, the instant complaint was filed.
25. In May, 2011, in response to the complaint, Respondents asserted that the information they had received was not sufficient to merit a reasonable accommodation for an assistance animal. Respondents further asserted that they had no evidence the Complainant had a continuing disability or that the dog had any training to assist her with her disability.
26. On or about July 25, 2011, Complainant sent another letter to Respondents, reiterating her request for a dog as a reasonable accommodation for her disability, and attached a copy of a June 2, 2011, prescription from Tina Taylor, ARNP. The prescription, written on a St. John Medical Center – PeaceHealth form, stated,

Pt has a disability & its medically necessary to have equal opportunity to enjoy the dwelling. Therefore, I am prescribing a companion/service animal for this patient based on above factors.

27. In a letter dated August 8, 2011, Respondents, through their attorney, replied to Complainant's July 25, 2011, request for a reasonable accommodation by asking her to have her treating physician complete a "Service Animal Certification Form." The form, which must be completed by a treating physician, begins "**WARNING: THIS DOCUMENT WILL BE USED IN COURT PROCEEDINGS. YOU MAY BE CALLED TO TESTIFY TO DEFEND YOUR DIAGNOSIS AND YOUR BELIEF A SERVICE ANIMAL IS JUSTIFIED. READ AND ANSWER THIS FORM CAREFULLY,**" asks the physician to "explain in detail what work or service the proposed animal will perform to ameliorate the unique problems of the handicapped

person,” and requires both the treating physician and patient to sign the document under penalty of perjury.

28. Rather than complete the Service Animal Certification Form, Complainant’s mental health care provider Tina Taylor, wrote, “Please see letter and prescription given to pt” across the face of the form and attached a letter on PeaceHealth Medical Group letterhead, dated October 4, 2011, which stated,

██████████ has been under my care for her mental illness since March 2011, and before that under the care of Brent Francisco since 2005. She is in need of having her dog as she helps her with ██████████ physical and mental disabilities. This dog helps give ██████████ needed emotional assistance to manage her anxiety and depression so she can maintain her mental functioning in her daily living. /s/ Tina Taylor, M.N., A.R.N.P.
PeaceHealth Behavioral Outpatient

29. Respondents did not respond to Complainant regarding the October 4, 2011, letter from Tina Taylor. In the absence of a response, Complainant continued to pay \$50 each month toward the deposit.
30. Respondents’ responses upon receiving a medical note from Complainant ranged from no response to telling Complainant that service animals are only for persons with physical disabilities to Respondent Thompson telling Complainant not to give her any more notes because Respondent Barber did not want to see them.
31. At no time prior to the filing of the complaint did Respondents initiate an interactive process to resolve the request for a reasonable accommodation.
32. After Complainant filed her HUD complaint, Respondent Linda Barber told her that she knew the judges who would hear Complainant’s discrimination case and Complainant would lose.
33. After Complainant filed her complaint, Respondents required her to submit all maintenance requests in writing. Respondents did not require other tenants to submit maintenance requests in writing and had previously allowed Complainant to submit requests orally.
34. After Complainant filed her complaint, Respondents required Complainant to keep her dog on a leash at all times. Respondents had not enforced the leash requirement with Complainant or other tenants, including the dog’s prior owner, prior to the filing of the complaint.
35. Complainant’s dog, Scrappee Anne, has helped reduce Complainant’s symptoms of depression and anxiety. Petting and holding Scrappee Anne and knowing that Scrappee

Anne needs her has helped to improve Complainant's feelings of self-worth and motivate her in her daily activities. Complainant was denied these benefits of having an assistance animal for more than two years because she could not afford to pay a pet deposit.

36. On or about May 31, 2012, Complainant moved from the subject property into a smaller, one-bedroom apartment in a public housing project, giving up her Section 8 Housing Choice Voucher. Complainant moved in part because she was uncomfortable living at the subject property after she filed her complaint; she felt like she was being watched and singled out by Respondents in retaliation for filing her complaint.
37. Complainant paid \$50 each month toward the pet deposit and fee from February, 2011, to May, 2012. When Complainant moved out of the subject property, Respondents refunded only \$213 from her combined pet and security deposits.

Legal Allegations

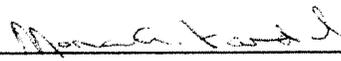
38. Respondents violated Subsections 804(f)(2) and 804(f)(3)(B) of the Act when they discriminated against Complainant in the terms, conditions, or privileges of rental of the subject property based on disability by, among other things, refusing to make reasonable accommodations to their policy of charging a pet deposit and fees, and requiring her to pay a \$1,000 deposit of which \$350 was a nonrefundable fee, for assistance animals for persons with emotional or mental disabilities, and imposing unreasonable conditions on Complainant's request for a reasonable accommodation, including insisting that only a treating physician could provide verification of disability and need for an accommodation, and requiring a detailed explanation of the services the dog will perform to ameliorate the "unique problems" of Complainant's disability. 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(B); 24 C.F.R. §§ 100.202(b), 100.204(a).
39. Respondents violated Section 818 of the Act when they coerced, intimidated, threatened or interfered with Complainant in the exercise of her rights or on account of her having exercised her rights granted under Section 804 of the Act, by, among other things, requiring Complainant and her treating physician to complete a Service Animal Certification Form, under penalty of perjury, which contained a warning to the doctor that the form would be used in litigation and the doctor may be called to testify; telling Complainant that Respondent Linda Barber knew the judges who would hear her case and she would lose if she pursued her complaint; and retaliating against Complainant after she filed her complaint by requiring her to comply with rules that were not enforced for other tenants. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
40. As a result of Respondents' discriminatory conduct, Complainant has suffered actual damages, including economic loss, emotional distress, and the loss of a Section 8 voucher.

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604 and 3617 and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents, as set forth above, violate Sections 804(f)(2), 804(f)(3)(B) and 818 of the Act, 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(B) and 3617.
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of disability in any aspect of the sale or rental of a dwelling;
3. Awards such monetary damages as will fully compensate Complainant;
4. Awards a civil penalty against each Respondent for his or her violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and,
5. Awards such additional relief as may be appropriate, pursuant to 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 21st day of March, 2013.



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