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 , Charging Party, v. RiverBay Corporation, Vernon Cooper, and Henry T. Milburn, Jr., Respondents.	)	FHEO No. 02-09-0090-8

CHARGE OF DISCRIMINATION

JURISDICTION

On or about November 3, 2008, ("Complainant") filed a verified complaint with the United States Department of Housing and Urban Development ("HUD"). Complainant, who is a disabled person, alleged that Respondents RiverBay Corporation and Vernon Cooper had refused to grant him a reasonable accommodation in violation of the Fair Housing Act, 42 U.S.C. §§3601 *et seq.* ("Act"). In particular, Complainant alleges that RiverBay and Cooper unlawfully denied his request to keep a medically prescribed service animal as a reasonable accommodation, and then Respondents harassed him for keeping his service animal.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination ("Charge") on behalf of aggrieved persons following an investigation and 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 (a)(2)(i), 103.405), who has re-delegated to the Regional Counsel (73 Fed. Reg. 68441- 68442, Nov. 18, 2008), the authority to issue a Charge, following a determination of reasonable cause.

The 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 authorized this

Charge because he has determined after investigation that there is reasonable cause to believe that a discriminatory housing practice has occurred.

HUD's conciliation efforts have been unsuccessful. *See* 42 U.S.C. §3610(b).

LEGAL AUTHORITY IN SUPPORT OF CHARGE

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 a dwelling, because of a handicap of that person or a person residing in that dwelling after it is sold. 42 U.S.C. § 3604(f) (2) (A) and (B). 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).

2. It shall be 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 section 803, 804, 805, or 806 of the Act. 42 U.S.C §3617.

PARTIES

3. Complainant suffers from chronic depression. Because of his depression, Complainant's daily life activities, such as socializing with others, performing routine household chores and sleeping are substantially limited.

4. Complainant is a person with a handicap as defined by the Act. 42 U.S.C. § 3602(h).

5. Respondent RiverBay Corporation is a vast New York State middle and low-income Mitchell-Lama housing cooperative (commonly known as Co-op City), located in the Northeast Bronx. It has 15,372 residential units in 35 high-rise buildings and seven townhouse clusters and approximately 50,000 residents.

6. Respondent Cooper is RiverBay's Manager and Respondent Milburn is RiverBay's Director of Security.

FACTUAL ALLEGATIONS IN SUPPORT OF CHARGE

Failure to provide a reasonable accommodation

7. In April 2002, Complainant purchased Co-op City apartment located at Erskine Place, Bronx, New York from Respondent RiverBay. Complainant's apartment is a "dwelling" within the meaning of the Act. 42 U.S.C. §3602(b).

8. On or about April 30, 2002, Complainant and Respondent RiverBay signed a "CO-OP CITY RIVERBAY CORPORATION OCCUPANCY AGREEMENT" which contained the following provision: "No dogs or other animals of any kind shall be kept or harbored in the leased premises."

9. On or about January 6, 2008, Complainant wrote Respondent RiverBay, requesting a reasonable accommodation to its "no pets" policy because of his disability. Complainant specifically noted that his doctor had prescribed a "service animal" to "assist with his daily living."

10. Complainant also provided Respondent RiverBay with a letter, dated November 9, 2007, from his Board Certified Psychiatrist, , who had been treating Complainant for a depressive disorder since August of 2005. In his letter, Dr. stated that Complainant's dog was an "important source of comfort" and "would be of great help in dealing with his [Complainant's] present problems." Dr. closed his letter by stating "If any further information is necessary please get in touch with me."

11. Complainant completed Respondent RiverBay's "Application for Reasonable Accommodation of Dog Application Form" to complement his request for a reasonable accommodation. In the Application, Complainant noted he suffers from chronic depression and his service animal restores his ability to focus and alleviates his anxiety.

12. Complainant also gave Respondent RiverBay a letter dated January 18, 2008, from the City of New York's Department of Health and Mental Hygiene, verifying that Complainant's dog, , is a "service dog." The City's letter noted that both its "Service Dog Tag" and its "dog license tag" were "fee-exempt" because Complainant's dog was assisting a person with a "documented disability."

13. On February 5, 2008, three of RiverBay's employees interviewed Complainant in his apartment with respect to his request for a reasonable accommodation. During that interview Complainant stated that he had been treated for chronic depression for the past fifteen years and explained that despite taking several different medications to alleviate his symptoms his depression affected his ability to interact with neighbors, to focus and to sleep.

14. Complainant also explained how his emotional support animal, , helped him function and moderated his depression and its symptoms. Complainant provided his interlocutors with a copy of registration as a service animal, proof that had received all required vaccinations and the letter from his psychiatrist urging Respondent to allow to remain with Complainant.

15. By letter dated April 14, 2008, Respondent Cooper denied Complainant's request for a reasonable accommodation. Respondent stated that the facts did not show Complainant had a disability which required a support animal in order for him to use and enjoy his apartment.

Respondent's unlawful interference with Complainant's right to have an emotional support animal

16. Following its denial of Complainant's request for a reasonable accommodation, Respondents took the following actions to coerce, threaten and interfere with Complainant in the exercise of his right to maintain an emotional support animal:

- From July through December 2008, Respondents RiverBay and Cooper refused Complainant's rent payments;

- On or about August 2, 2008, RiverBay's security officers detained Complainant's wife because she was with Complainant's emotional support animal;

- RiverBay issued Complainant summonses on a number of occasions because of his support animal, at least one of which was issued after Complainant requested that Respondent Milburn direct his officers not to continue such harassment;

- RiverBay's security officers came to Complainant's home to question Complainant about his emotional support animal;

- On September 11, 2008, RiverBay filed a Holdover Petition in New York City Housing Court demanding that Complainant vacate his apartment because of his support animal;

- On October 20, 2008, Complainant appeared in court and Respondent withdrew its Petition to Vacate based on New York City's 90 day pet waiver law, however, Respondent continued to refuse to accept Complainant's rent;

- On or about December 15, 2008, RiverBay threatened to suspend Complainant's garage privileges because of non-payment of rent; and

- On January 9, 2009, RiverBay rescinded its December 23, 2008, grant of a reasonable accommodation and re-affirmed its refusal to grant Complainant a reasonable accommodation, but stated that it would no longer contest presence in Complainant's apartment "due to the 90 day pet waiver laws."

17. Because of Respondents' unlawful denial of Complainant's request for a reasonable accommodation, Complainant has suffered, and continues to suffer, from severe anxiety, distress and emotional trauma.

18. Complainant has also suffered severe emotional trauma, distress and anxiety because Respondents have unlawfully threatened, intimidated and interfered with Complainant because he exercised his right to a reasonable accommodation.

FAIR HOUSING ACT VIOLATIONS

19. Respondents have violated the Act because they have discriminating against Complainant in the terms, conditions or privileges of a sale of a dwelling, or in the provision of services or facilities in connection with such a dwelling, by refusing to make a reasonable accommodation in its rules, policies, practices, or services, when such an accommodation was necessary to afford Complainant equal opportunity to use and enjoy his dwelling. 42 U.S.C. §3604(f)(2) and (f)(3)(B); 24 C.F.R. § 100.204.

20. Respondents have violated the Act by harassing Complainant and filing a petition to evict Complainant for maintaining an emotional support animal. 42 U.S.C §3617.

CONCLUSIONS

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) and (f)(3)(B) and 42 U.S.C. §3617 and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§3601-3619;

2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating because of handicap status 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 RiverBay, 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;

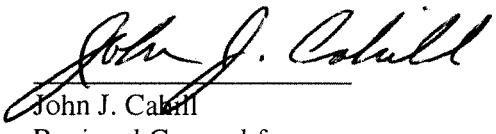
4. Enjoins Respondents from intimidating, coercing, threatening, or interfering with Complainant's rights granted or protected by the Act;

5. Awards such damages pursuant to 42 U.S.C. §3612(g)(3) as will fully compensate Complainant for damages caused by Respondents' discriminatory conduct;

6. Awards a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. §3612(g)(3) and 24 CFR§180.671 (2011) ; and

7. Award such additional relief as may be appropriate under 42 U.S.C. §3612(g)(3).

Respectfully submitted,



John J. Cahill
Regional Counsel for
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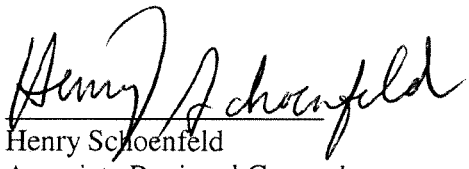

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