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Florida Commission on Human Relations

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Dr. Donna Elam
Chair

Derick Daniel
Executive Director

Certified Mail Receipt No.: [REDACTED]

FCHR No.: [REDACTED]

HUD No.: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 8

COMPLAINANT

[REDACTED]
[REDACTED] Board President
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RESPONDENTS

LEGAL CONCURRENCE: CAUSE

On February 21, 2008, Complainant, [REDACTED], filed a complaint with the United States Department of Housing and Urban Development (hereinafter referred to as "HUD") alleging that Respondents, [REDACTED] and [REDACTED], discriminated against her based upon her disability in violation of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and the Florida Fair Housing Act. An investigation of the complaint was conducted and revealed the following:

1. Respondent is a Florida, non profit corporation with the ability to sue and be sued. Respondent is responsible for the administration and operation of the [REDACTED] and is authorized to enforce the association's rules and regulations, which specify that "[n]o pets are permitted, with the exception of caged birds, fish, and such dogs or other pets as are required by handicapped persons to perform their daily tasks."

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2. Complainant requested that Respondent waive its "no pet" rule so that she could have an emotional support animal (a dog) as a reasonable accommodation of her disability.

3. All other facts and conclusions set forth in the Determination are incorporated by reference and adopted herein.

ANALYSIS

4. The analysis under the Federal Fair Housing Act (hereinafter referred to as the "Act"), as amended, is instructive and persuasive when considering claims under the Florida Fair Housing Act because of the similarity in both language and purpose. *See Loren v. Sasser*, 309 F.3d 1296, 1299 (11th Cir. 2002); *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002). Additionally, HUD's interpretation of the Act commands considerable deference because it is the agency primarily assigned to implement and administer Title VIII. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 107 (1979).

5. 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--

- (A) that person;
- (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (C) any person associated with that person.

42 U.S.C. § 3604(f)(2) (2006); FLA. STAT. ch. 760.23(8) (2007). Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to allow a disabled person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B) (2006); FLA. STAT. ch. 760.23(9)(b) (2007).

6. In order to establish a *prima facie* case of failure to accommodate discrimination, a complainant must establish that: (1) he or she suffers from a handicap; (2) the respondent knew of the handicap or should reasonably be expected to know of it; (3) accommodation of the handicap may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling; and (4) the respondent refused to make such accommodation. *Jacobs v. Concord Vill. Condo. X Ass'n, Inc.*, 2004 WL 741384, at *1 (S.D. Fla. February 17, 2004). A respondent can deny an accommodation request only if it results in an undue financial or administrative burden, or it results in a fundamental alteration of the program, *i.e.* that the accommodation is not reasonable. *Id.*

7. A handicap is defined in the Act as "a physical or mental impairment which substantially limits one or more of such person's major life activities." 42 U.S.C. § 3602(h)(1) (2006). A physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addition (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

24 C.F.R. § 100.201(a) (2006). Major life activities are functions such as “caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” 24 C.F.R. § 100.201(b) (2006). “[A]n individual faces a ‘substantial limitation’ when he is: (i) Unable to perform a major life activity that the average person in the general population can perform; or (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.” *Wells v. State Manufactured Homes, Inc.*, 2005 WL 758463 *6 (D. Me. 2005) (quoting *Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12, 15 (1st Cir. 1997)).

8. Many courts have found that chronic depression and its related manifestations can meet the definition of disability under antidiscrimination laws. See *Auburn Woods I Homeowners Ass’n, v. Fair Employment and Hous. Comm’n*, 121 Cal. App. 4th 1578, 1592-3 (Cal. App. 3d Dist. 2004); *HUD v. Riverbay Corp.*, Fair Housing-Fair Lending Reporter para. 25,080 (H.U.D.A.L.J. 1994); *Majors v. Hous. Auth. of DeKalb County*, 652 F.2d 454 (5th Cir. 1981); *Whittier Terrace Ass’n v. Hampshire*, 532 N.E. 2d 712 (Mass. App. Ct. 1989); *Crossroads Apartments Assocs. v. LeBoo*, 578 N.Y.S. 2d 1004 (N.Y. City Ct. 1991). Case law establishes that the waiver of a “no pet” rule is a reasonable accommodation for a person with a mental or physical disability who requires the companionship of an animal. *HUD v. Dutra*, Fair Housing-Fair Lending Reporter para. 25,124 (H.U.D.A.L.J. 1996); *Riverbay, supra*; *Majors*, 652 F.2d 454. A support animal is necessary to a mentally disabled person’s enjoyment and use of a dwelling if there is a showing that the animal has a therapeutic effect and “will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.” *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995); see also *Riverbay, supra*; *Dutra, supra*.

9. Complainant has demonstrated a *prima facie* case of discrimination. Complainant is protected by the Act because of her handicap. See 42 U.S.C. § 3604(f)(2)(A). Complainant has permanent impairments that substantially limit her ability to care for herself, concentrate, interact

with others, sleep, and work. According to her medical provider, Complainant suffers post-traumatic stress disorder and anxiety as a result of the loss of her son. He husband works long hours away from home for long periods of time, and a companion dog helps her anxiety greatly. Therefore, the accommodation is necessary for Complainant's use and enjoyment of the dwelling. Complainant is not required to prove that the requested accommodation is the only corrective measure available; but rather, "the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability." *Bronk*, 54 F.3d at 429.

10. On, or about, November 26, 2007, Complainant provided Respondent a prescription note from her family physician indicating that Complainant would "need a therapy dog for her physical and emotion health and well being." Respondent took no action with regard to Complainant's request until it conducted a board meeting on February 9, 2008 when it discussed the request. Respondent determined that additional information was needed, so on February 13, 2008, it sent a request for additional information to Complainant's physician. Respondent's correspondence stated, "Prior to any evaluation of this matter additional information must be had from you with respect to whether your note is intended to fall within the purviews of finding [Complainant] so disabled. If so, it is necessary for the board of directors to be advised as to what particular subcategory this refers to and what tests were performed and ultimate findings made to support such diagnosis. Certainly your brief note does not reference any prevailing state or federal law and as such is insufficient upon which to base any evaluation." Complainant then provided Respondent with a second prescription note from her family physician requesting that Complainant be "allowed her assisting animal to help her with her PTSD, grief and anxiety." These communications were sufficient to put Respondent on notice that Complainant was seeking approval for a dog as an accommodation for her disability. It is not necessary that a complainant use the phrase "reasonable accommodation" or any other magic words to trigger the interactive process. *Auburn Woods*, 121 Cal.App. 4th at 1598.

11. After being informed of a tenant's impairment, a landlord must adequately investigate whether the tenant is actually disabled. *Armant v. Chat-Ro Co.*, 2000 WL 1092838, at *2 (E.D.La. Aug. 1, 2000). While a housing provider may request information regarding the extent to which a person's medical condition limits his or her activities, it may not inquire into the nature or severity of the handicap. *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996). According to a joint statement of HUD and the United States Department of Justice regarding reasonable accommodations under the Fair Housing Act, issued May 17, 2004,

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information

verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

See <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

12. Respondent has not shown that the accommodation is unreasonable. Rather, in its position statement, Respondent states that unless Complainant provides sufficient documentation establishing her disability, that her disability requires a reasonable accommodation, that the accommodation would be in the form of a service animal, the qualifications of the dog as a service animal, and the services the dog would perform, Respondent is bound to enforce its governing documents restricting pets. Respondent raised the same issues in its February 13, 2008 letter to Complainant's physician. The evidence would allow one to reasonably conclude Complainant has a mental impairment, she was requesting to keep the dog in her home, and the dog was necessary to ameliorate the symptoms of her mental impairment. Respondent has not provided any evidence that the dog would cause a nuisance or an undue burden; which would be a basis for denying the accommodation.

13. Some courts have held that a service animal should receive some training to distinguish it from an ordinary pet. *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1256 (D. Hawaii 2003); *In Re Kenna*, 2001 WL 1567358 (W. Va. 2001); *Green v. Hous. Auth. of Clackamas County*, 994 F. Supp. 1253, 1256 (D. Or. 1998). HUD's Administrative Law Judge (hereinafter referred to as "ALJ") opinions dealing with companion animals have not directly addressed the issue of training. However, in both *Dutra* and *Riverbay Corp.*, the ALJ focused on whether the animal provided a "therapeutic benefit" to the disabled person. See also, *Bronk*, 54 F.3d at 429; *Auburn Woods*, 121 Cal. App. 4th at 1593-5. This standard recognizes that there is fundamental difference between traditional "service animals" such as guide dogs for sight impaired persons and "companion animals" which are typically needed by mentally disabled persons. A traditional service animal must perform certain tasks whereas the mere presence of the "companion animal" helps to ease the anxiety and depression experienced by disabled persons. Even assuming Complainant's dog was classified as a service animal, she would not need documentation confirming that her service animal is trained. FLA. STAT. ch. 413.08(3)(a) (2007). Thus, because Complainant's dog provides a therapeutic benefit to her as a companion animal and not as a service animal, it is concluded that it is not necessary that the dog receive special training or be certified as a service animal.

CONCLUSION

Based on the foregoing, it is my legal concurrence that there is reasonable cause to believe that Respondent discriminated against Complainant in violation of 42 U.S.C. § 3604(f)(2)(A) and section 760.23(8), *Florida Statutes*.

Cheyenne M. Costilla
Cheyenne M. Costilla
Staff Attorney

DATED: June 16, 2008