

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC
SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HA22MW-67547

█.,)
)
Complainant,)
)
v.)
)
5000 Boardwalk Condominium)
Association,)
)
Respondent.)

Administrative Action
FINDING OF PROBABLE CAUSE

On July 17, 2019, █.¹ (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about June 27, 2019, her homeowners association (HOA), 5000 Boardwalk Condominium Association (Respondent or 5000 Boardwalk), discriminated against her based on disability in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied Complainant’s allegations of discrimination in their entirety. DCR’s investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is the governing body for a 324 unit condominium building in Atlantic City known as 5000 Boardwalk. 5000 Boardwalk has a strict “No Pets” policy.

Complainant alleged that Respondent denied her request for a reasonable accommodation for her disability when it refused to recognize her dog, █., as a service animal and instead classified █. as an emotional support animal (ESA) subject to Respondent’s restrictive rules and regulations that govern ESA’s living at the subject property.

In its Position Statement, Respondent contended that it granted Complainant the reasonable accommodation of having █. live with her as an ESA. Respondent argued that Complainant failed to provide adequate documentation to demonstrate that █. was a service animal. According to Respondent:

[Complainant] did not provide any evidence to support that her dog qualifies as a service animal. Specifically, she did not provide any documents or information explaining

¹ █.

that her dog was trained as a service dog or what tasks her dog was trained to do.

Even without sufficient documentation demonstrating that [Complainant's] dog was a service dog, 5000 Boardwalk accommodated [Complainant] and reauthorized her emotional support dog exception to its No Pets Policy.

The investigation showed that, in December 2007, Complainant purchased a unit at 5000 Boardwalk as a part time summer residence and rental. On or about May 2014, Complainant gave Respondent a note from her psychiatrist [REDACTED] and requested an exception to the No Pets Policy for her small mix breed puppy, [REDACTED]. The note stated in part:

Her disability causes multiple impairments in her daily functioning. I have prescribed an emotional support animal, which has alleviated her difficulties and I am requesting that she be permitted to keep her emotional support animal with her at the condominium.

There was no dispute that soon thereafter Respondent granted Complainant an "emotional support dog exception" to its No Pets Policy. Respondent's "emotional support dog exception" states in part:

Emotional support animals must be contained within the residential area of the resident at all times, except when transported outside the private residential area in an animal carrier, carried, or controlled by leash or harness.

Respondent told DCR that between 2014 and 2018, Complainant rented her unit and seldom stayed at the property. On July 6, 2018, Complainant gave Respondent a letter from a neurologist, dated March 1, 2018, which stated in part, "The above patient is totally disabled & requires a service dog at all times with her."

On July 23, 2018, Respondent's then attorney sent Respondent's general manager, Sandy Montano, a guidance letter which stated in part:

In the present matter, you have not been provided with an objective treating doctor's opinion that the emotional support animal is medically necessary and serves as a therapeutic aid to the individual who would like to bring her dog into 5000 Boardwalk building. Due to this fact, she is not permitted to keep her pet at the 5000 Boardwalk building.

On July 24, 2018, Montano forwarded the attorney's letter to Complainant via email.

On July 31, 2018, Complainant gave Respondent a July 30, 2018 letter from [REDACTED], which stated in part:

(1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD prohibits housing discrimination based on disability. N.J.S.A. 10:5-12(g) and (h). Disability discrimination includes a “refus[al] to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.” N.J.A.C. 13:13–3.4(f). Under the LAD, allowing an individual with a disability to live with a service animal in a situation where the housing provider of community has a “no pets” policy is a reasonable accommodation. Oras v. Housing Authority of City of Bayonne, 373 N.J. Super. 302, 315 (App. Div. 2004). The LAD further provides that a person with a disability who has a service dog shall be entitled to full and equal access to all housing accommodations. N.J.S.A. 10:5-29.2.

Respondent acknowledged that, in 2018, Complainant provided two doctor’s notes stating that [REDACTED] is a service dog, including [REDACTED] note that explains how [REDACTED] is trained to do a number of specific tasks that help Complainant manage her disabilities and describes those tasks. However, Respondent argues that [REDACTED] note is insufficient and that Complainant needs to proffer to it some specific certifications demonstrating that [REDACTED] was a service dog as opposed to an ESA. This assertion conflicts with the definition of “service animal” under the LAD, N.J.S.A. 10:5-5(dd), and with HUD’s guidance of what constitutes an “assistance animal” under the federal Fair Housing Act (FHA). See U.S. Dep’t of Hous. and Urban Dev., *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs* 1 (April 25, 2013), https://www.hud.gov/sites/dfiles/FHEO/documents/19ServiceAnimalNoticeFHEO_508.pdf.

Neither New Jersey nor federal law require that a service animal to be maintained in housing have any special certifications or be trained by a special type of trainer to fall under the ambit of the definition of “service animal” and “assistance animal” respectively. N.J.S.A. 10:5-5(dd)²; see also, Oras, supra, 373 N.J. Super. at 314-17 (citing Green v. Housing Authority of Clackamas County, 994 F. Supp. 1253, 1255-56 (D. Or. 2001) and Bronk v. Ineichen, 54 F.3d 425, 430 (7th Cir. 1995) for the proposition that having an animal professionally certified is not necessary for that animal to be considered a “service animal”). In fact, “there is no requirement as to the amount or type of training a service animal must undergo” to be deemed an “assistance animal”. Id. at 316-17 (citing Green, supra, 994 F. Supp. at 1256).³ While the individual with a disability is required to provide something more than a vague personal statement that the animal is a trained service animal, the evidentiary threshold for showing that the animal is a service animal is quite low. See Prindable v. Ass’n of Apt. Owners of 2987 Kalakaua, 304 F. Supp. 2. 1245, 1257 (D. Haw. 2003) (stating that an affidavit describing the dog’s training, a declaration from the dog’s veterinarian or a certificate from a licensed training school could each individually be sufficient to prove that the dog was a service animal under the FHA).

² The LAD defines a service dog as one that is “individually trained to the requirements of a persons with a disability including, but not limited to minimal protection, rescue work, pulling a wheelchair or retrieving dropped items.” N.J.S.A. 10:5-5(dd).

³ Compare N.J.S.A. 10:5-29 (requiring a service dog to be trained by a recognized training agency or school to access a public facility) with N.J.S.A. 10:5-29.2 (without requirement that training be conducted by a recognized training agency or school for service animal to access housing accommodations).

Here [REDACTED], who has been Complainant's physician since 2012, wrote a letter stating the Complainant has a disability and detailing the tasks that [REDACTED] is trained to undertake to help alleviate the symptoms related to her disability. The performance of these tasks is sufficient to qualify [REDACTED] as a service animal. If Respondent had questions concerning the training [REDACTED] received, it could have asked Complainant about the training. Instead, Respondent required [REDACTED] to meet a training standard that is not required by the LAD. Respondent's decision to treat [REDACTED] as an ESA and not a service animal precluded Complainant from the use and enjoyment of those common areas on the property, and amounts to a failure to accommodate her disability under the LAD and FHA. Oras, supra, 373 N.J. Super. at 317 (holding that where individual with disability shows that service dog is necessary to afford her "an equal opportunity to use and enjoy the dwelling", housing provider must prove that requested accommodation is unreasonable or grant the requested accommodation).

At this threshold stage in the process, there is sufficient basis to warrant proceed[ing] to the next step on the road to adjudication on the merits." Frank, supra, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant's allegations of discrimination on the basis of disability.



Rachel Wainer Apter, Director
NJ DIVISION ON CIVIL RIGHTS

Date: March 27, 2020