

DATE: July 22, 2022
DETERMINATION: Reasonable Cause
CASE NAME: Doyle Mann V. Seminole Square Apartment III Association, Inc. et al.
CASE NUMBER: HUD No.: 04-22-1242-8/PC-22-038

I. JURISDICTION:

A complaint was filed with PCOHR on May 06, 2022, alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory refusal to rent; failure to permit reasonable modification; and failure to make reasonable accommodation. It is alleged that the respondent(s)'s acts were based on Disability. The most recent act is alleged to have occurred on February 19, 2022, and is continuing. The property is located at: Seminole Gardens, 11620 Park Boulevard N., B-103, Seminole, FL 33771. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Sections 804(f)(1)(A), 804(f)(3)(A), and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988, as amended.

The respondent(s) receive no federal funding.

II. COMPLAINANT'S ALLEGATIONS

Doyle Mann (CP Mann) is a visibly disabled man who with his wife Natalie Mann (AP Mann) attempted to rent a property located at Seminole Gardens 11620 Park Boulevard N., Apt. B-103 owned by Don Timko and managed by Seminole Square Apartment III Association Inc. On January 27, 2022, CP Mann turned in the association application to Mr. Timko, and met Duncan McCain (RP McCain). CP Mann states that he mentioned to R McCain the need of a ramp for his front door and a handicap space for his van that has a passenger door ramp for his wheelchair. RP McCain stated he did not see an issue with taking two parking spot spaces and turn them into a handicap space with access for the side door ramp. RP McCain also stated that they place a ramp in front of the door, paint it pink and place some pink cones and chairs on both sides of the ramp so people wouldn't trip.

On February 8, 2022, CP Mann received confirmation that they had been approved by the board from Mr. Timko and they would be contacted by RP McCain. On February 15, 2022, RP McCain set up the Homeowners Association (HOA) meeting for February 18, 2022. CP Mann and AP Mann met with RP McCain and three additional HOA representatives (names unknown). A reasonable accommodation request was made by both CP Mann and AP Mann to place a ramp on the outside door of the apartment to make it wheelchair accessible and the allocation of two parking spaces to be converted into a handicap space for CP Mann's vehicle. The HOA members stated that they wouldn't approve the ramp as they were concerned of other residents tripping over it and being an eyesore. CP Mann stated that the ramp could be placed against the building rather than the front impeding the walkway, the HOA members stated that the ramp would have to be in pink and there had to place chairs next to the ramp at both ends.

The HOA members denied the allocation of the two parking spots to create the van accessible disabled parking, because they didn't have enough parking spaces for the snowbirds as it is, and they were grandfathered in and are not required to have handicap spaces. RP Duncan suggested that CP Mann ask Mr. Timko to purchase a van for them with a ramp in the back instead of the side, another HOA board member suggested that they park in the gas station lot located next door to the complex. CP Mann states that the denial from RP Duncan and the HOA members is a violation of his rights due to his disability.

III. RESPONDENT'S DEFENSES:

In conjunction with the Complainant's application for a rental residency and initial interview with the Board of Directors of Seminole Square Apartment III Association, Inc. on February 18, 2022, Complainants were advised that each unit within the subject condominium is permitted one assigned parking space, with sixteen (16) overflow common element parking spots along the east property wall owned by all unit owners of Seminole Square Nos. I, II and 111, condominiums (a total of 93 units), on a first come, first serve basis. At that time, the Complainants were also advised that due to the assigned limited common elements, their designated parking space was B-103, which is a limited common element assigned to Unit B-103 and same is located directly in front of the unit. Other than the verbal request, no formal written request was submitted to the Board. At the time of their interview, Complainants were also advised that due to the nature of the governing documents and the ownership of the common elements, an amendment to the condominium documents assigning a second permanent space, or modification of the existing parking space location, was not possible without an amendment to the governing documents and requisite membership vote. It was also suggested they discuss with owners of other Units the possibility of swapping limited common element parking spaces, such as the parking space for Unit 310 which could better accommodate their vehicle. Unfortunately, without a membership vote, or consent of the unit owner holding an interest in another limited common element parking space, the Board had no authority to modify assigned parking spaces. The Complainants concluded that the subject unit would not accommodate their needs and abruptly left the interview meeting. Notwithstanding same, the Complainants could have proceeded with commencing their tenancy in the subject unit.

The Respondent did however, consent to temporary parking on the side of the building in an area with no assigned parking spaces to allow for use of their vehicle's side access door. Alternatively, the Board suggested that a handicap vehicle with a rear access door rather than side access door may afford the Respondents adequate access given the limitations of the condominium property. Additionally, the Board did, however, approve the installation of a handicap accessible ramp in front of the subject unit, and that the front screen door could also be removed to provide for easier access. No requests for reasonable accommodation similar in nature have been granted to any other unit owner given the space constraints of the property.

IV. FINDINGS:

1/27/2022 CP Mann met with potential landlord, Mr. Don Timko at the unit to turn in a deposit and rental application. CP Mann and Mr. Timko spoke about reasonable accommodations that Mr. Timko would make for the CP Mann to the interior of the

unit. Mr. Duncan McCain of the respondent board speaks to CP Mann suggests a parking space after hearing the CP Mann's request for a reasonable accommodation from Mr. Timko.

2/8/2022 CP Mann was approved by the respondent to rent unit from Mr. Timko.

2/10/2022 Respondent notified CP Mann that the background check was passed.

2/18/2022 CP Mann attended meeting Respondent board, in which they approved his request for a wheelchair ramp into his unit provided it was painted pink in color and had chairs on each side. CP Mann's request regarding an accommodation for parking was denied and the following alternatives were given, that CP Mann could park on grass, CP Mann could park at a gas station next door, the CP Mann could purchase another vehicle and that CP Mann could swap parking with another unit if he found a resident that was agreeable.

V. ANALYSIS:

To establish a violation under Section 804(f)(3)(B), failure to make a reasonable accommodation. The prima facie elements must demonstrate that:

1. The complainant is a person with a disability.
2. The respondent knew or reasonably should have known that the complainant is a person with a disability.
3. The complainant requested an accommodation in the rules, policies, practices, or services of the respondent.
4. The requested accommodation may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling.
5. The respondent refused the complainant's request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.

CP Mann is a person with a disability. Thus, it is believed element #1 has been met.

CP Mann has a readily apparent disability, as he is wheelchair bound and the Respondent knew or should have reasonably known that Mr. Mann is a person with a disability. Thus, it is believed element #2 has been met

CP Mann made a reasonable accommodation request and Respondent acknowledges the request in their position statement by stating a "verbal" request was made. Thus, element #3 has been met.

There is evidence to show that CP Mann's disability required that an accommodation be made to afford him an equal opportunity to use and enjoy the dwelling. Thus, element #4 has been met.

The Respondent denied the request for reasonable accommodation and presented alternatives that were not feasible based on the nature of CP Mann's disability. Thus, it is believed element #5 has been met.

To establish a violation under Section 804(f)(3)(A), failure to permit a reasonable modification. The prima facie elements must demonstrate that:

1. The complainant is a person with a disability.
2. The respondent knew or reasonably should have known that the complainant is a person with a disability.
3. The complainant requested permission to modify his dwelling or the common areas of the housing.
4. The requested modification may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling.
5. The respondent refused the complainant's request to make such modification or failed to respond or delayed responding to the request such that it amounted to a denial.

CP Mann is a person with a disability. Thus, element #1 has been met.

CP Mann has a readily apparent disability, as he is wheelchair bound and the Respondent knew or should have reasonably known that CP Mann is a person with a disability. Thus, it is believed element #2 has been met.

CP Mann made a reasonable modification request for a ramp and Respondent acknowledges the request in their position statement by stating a “verbal” request was made. Thus, element #3 has been met.

There is evidence to show that CP Mann’s disability required that a modification be made to afford him an equal opportunity to use and enjoy the dwelling. Thus, it is believed element #4 has been met.

The Respondent approved the request for reasonable modification regarding the ramp. Thus, element #5 has not been met.

To establish a violation under Section 804(f)(1)(A) refusal to rent. The prima facia elements must demonstrate that:

1. The complainant is a member of a protected class.
 2. The complainant applied for and was qualified to rent or purchase the dwelling.
 3. The complainant's application was rejected.
 - 4a. The dwelling remained available thereafter.
- OR
- 4b. The respondent rented or sold the dwelling to a person not of the complainant's protected class.

CP Mann is a person with a disability. Thus, element #1 has been met.

CP Mann applied for and was qualified to rent the dwelling. Thus, element #2 has been met. The complainant’s application was approved. However, element #3 has effectively been met due to the denial of CP Mann’s Reasonable Accommodation request.

The dwelling remained available thereafter and was subsequently rented to a person not of the CP Mann's protected class. Thus, it is believed element 4a. and 4b. have been met.

In summary the Respondent's position is that without a membership vote, or consent of the unit owner holding an interest in another limited common element parking space, the Board had no authority to modify assigned parking spaces. CP Mann's made a verbal request and concluded that the subject unit would not accommodate their needs and abruptly left the interview meeting. The Respondent did consent to temporary parking on the side of the building in an area with no assigned parking spaces to allow for use of their vehicle's side access door. Alternatively, the Board suggested that a handicap vehicle with a rear access door rather than side access door may afford the Respondents adequate access given the limitations of the condominium property. The Respondent concludes that assigned spaces are limited common elements passing appurtenant to title for the exclusive use of each respective unit owner. The remaining parking is a common element, owned in undivided shares appurtenant to title by all condominium unit owners.

Additionally, the Board did, however, approve the installation of a handicap accessible ramp in front of the subject unit, and that the front screen door could also be removed to provide for easier access.

As CP Mann is a person with a readily apparent disability and is dependent on a mobility device to ambulate, the Respondent's defense that the assigned parking spaces cannot be altered is valid as they are limited common elements passing appurtenant to title for the exclusive use of each respective unit owner. Investigation showed that the accommodation request was made for an accommodation/modification in the first available residential/guest parking that is not assigned in a common area. The Respondent maintains that the remaining parking is a common element, owned in undivided shares appurtenant to title by all condominium unit owners.

Investigation showed that CP Mann made a verbal request for a reasonable accommodation for parking in the common area of the condominium property that can be accessed and used by both residents and guests on a first come/first serve basis. Handicap signage and striping would be needed to create a van accessible Handicap designated spot for CP Mann to park in. The Respondent defends their denial with the position that the spots CP Mann is referring to would be in the first come first serve parking area. Said area is a common element area and all condominium unit owners have ownership interest in said area. Respondent maintains that the Board cannot unilaterally modify the common area without a vote of the entire condominium association membership pursuant to the governing documents. No board vote on the matter was conducted.

The alternatives suggested by the Respondent that CP Mann could park on grass was not reasonable. CP Mann maintains that due to the weight of the ramp, his wheelchair, and his person, in the event of inclement such as rain would create a safety hazard for him. The second alternative that CP Mann could park at the gas station next door is not feasible as the gas station is private property that CP Mann has no arbitrary right to use or expect use of from its owner. The next alternative suggested was that CP Mann purchase another van that was rear instead of side accessible. Due to the nature of the cost of a modified vehicle, CP Mann could not bear that financial burden and is therefore unreasonable. Another alternative suggested by the Respondent is that CP Mann temporarily park

his vehicle on the side of the building. That alternative would not work because the nature of it being “temporary” and the fact that it was not a clearly marked parking space that would give CP Mann and other vehicles sufficient room to maneuver while in motion. The last alternative suggested is that CP Mann swap parking spots with another owner. Being that CP Mann was in the process of renting the dwelling CP Mann had no knowledge of the persons or way to contact them. CP Mann advised the Respondent would not assist. Regarding the respondent’s offer to CP Mann to allow him to park in the overflow parking, this was not a granting of his reasonable accommodation request because he had needed more space, reserved for him, for side entry into his disability van. This was the reason for his original request for two spaces so he could enter and exit his van by the side. Thus, the respondent’s response recommending CP Mann to park in the overflow, without any further granting of a wider, reserved space, was equivalent to a denial of the original request. It is noted that CP Mann left during the Board’s discussion. However, they have maintained their defense that even the common area, overflow parking was unable to be modified without a board approval, something not necessary under Law for Association’s to comply with Federal Law.

As CP Mann is confined to a wheelchair, the denial of an accommodation or modification for parking in a common area that is accessible to not only residents, but guests, also denied him the opportunity to rent the dwelling that he was approved for. As such the denial forced CP Mann to seek alternative living accommodations. CP Mann was refunded his deposit from Mr. Timko.

The Respondent through counsel submitted four (4) affidavits from board members who attended the meeting and also submitted digital images of both the assigned parking spot for the unit and images of overflow parking. The affidavits from Duncan McClain, President and Alwyn Painter, Treasurer, Pam Finelli and Louis Finelli in summary said that CP Mann asked for reasonable accommodation. Affiants advises CP Mann requested an accommodation for two parking spaces when the unit he was attempting to rent only came with one assigned spot. Affiants reiterated that due to the Respondents governing documents that the board could not approve the request without membership approval and a change to the documents, however CP Mann was offered to park one of his vehicles in the overflow parking. However, as discussed above, CP Mann’s original request to accommodate his van was not granted, only that he parks his 2nd vehicle there. As indicated, CP Mann would have needed more space specifically reserved for him.

In regard to the digital images submitted by the Respondent, the images clearly depict that the CP Mann’s side entrance handicap van would not be able to provide CP Mann with ingress or egress to his vehicle while in his wheelchair. The images do however depict ample space in the overflow parking area to mark a designated handicap space if the request for accommodation was not refused.

VI. CONCLUSION:

Based on the foregoing evidence and analysis of the investigation, set forth above, The Pinellas County Office of Human Rights concludes there is “No Reasonable Cause” that the Respondents violated Sections 804(f)(3)(A).

However, it is recommended that “Reasonable Cause” exists to believe that the Respondent engaged in illegal discriminatory housing practice in violation of Section 804(f)(3)(B) and 804(f)(1)(A) of the Act, and Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County.

VII. ADDITIONAL INFORMATION:

Notwithstanding this determination by the Pinellas County Office of Human Rights, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless the respondent requests that no such release be made. Such request must be made by the respondent within thirty (30) days of receipt of the determination to the Field Office of Fair Housing and Equal Opportunity at the address contained in the enclosed summary. Notwithstanding such request by the respondent, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

A copy of the final investigative report can be obtained from the Pinellas County Office of Human Rights:

Betina Baron

Betina Baron, Compliance Manager

07/22/22

Date