

September 27, 2021

Determination

Case Name: Lina Lindberg V. Lakeview of Largo South Condominium Association, Inc. et al

Case Number: 04-21-7231-8; PC-21-041

I. Jurisdiction

A complaint was filed with HUD on June 23, 2021 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: 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 May 26, 2021, and is continuing. The property is located at: Lakeview of Largo South , 11945 143rd St. , 7106, Largo, FL 33774. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida and Sections 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The respondent(s) receive no federal funding.

II. Complainant Allegations

Lina Lindberg (CP) is a disabled female who resides at 11945 143rd St. #7106, Largo, FL 33774. The property is governed by Lakeview of Largo South Condominium Association, Inc. (R Association). The property is managed by Professional Bayway Management Company (R Management).

CP states "ESA denied. Condo association & attorney representing the association denied my request for an ESA. Under the FHA laws I provided the mandated information under FHA ESA laws. The supporting documentation was provided by my primary care doctor. Dr. Allison Howard with Ancona Health Center. I have been a patient under her care for the 7 years. I meet all of the mandated medical care standards needed for an ESA. The association has violated my rights by the denial of my ESA. The association has violated my rights by requiring a Lakeview of Largo Application Form for an ESA this mandated form is a violation of my civil rights, this form which contradicts FHA law, also a horrendous over reach of confidential medical records and protected information under HIPPA."

"I was denied my ESA. When all the information supplied to the association. all my information adhered to FHA laws. the association violated my rights by making an ESA application form and an ESA rules form mandated the completion and submission of these forms as a condition of approval for an ESA to live with me."

CP Lindberg believes that the Respondent's actions constitute a violation of the Fair Housing Laws.

III. Respondent Defenses

Respondent states they became aware CP was maintaining a dog in her unit in violation of the governing documents. A violation letter was sent to Vince Lindberg. On May 25, 2021, CP submitted medical documentation that failed to establish that CP id disabled ad defined by the

Federal and Florida Fair Housing Laws. In response a letter to CP's physician asked that she complete the Association's Emotional/Service Animal Request Form or provide revised medical opinion establishing that CP meet the definition of a disabled person and that the animal is medically prescribed as a support animal.

On May 27, 2021, Dr. Howard provided fax communication that noted, "Pt. NOT disabled." Respondent states on June 1, 2021 they had no choice but to send a final violation notice to CP that the Association cannot approve her request.

Respondent states they received additional information from Dr. Howard on June 2, 2021 stating specifically, that "Lina Lindberg is not considered disabled according to the definition by the Federal and Florida Fair Housing Laws."

Respondent states to date, the Association has not received any additional information or documentation in relation to the request for the support animal. Therefore, the animal in question is not permitted a variance, and if such animal is on Condominium property, the owner would be in violation of the Association's pet restriction.

IV. Findings and Conclusions

A. FINDINGS:

1. 5/19/2021 Respondent became aware CP had a dog in her unit. (D-1)
2. 5/19/2021 Respondent sent violation letter to CP, with option to provide additional Information, stating "Alternatively, you may provide documentation directly from your medical provider on their letterhead."; (D-1)
3. 5/25/2021 CP provided Dr. statement. (D-1)
4. 5/27/2021 Respondent sent request for additional information to CP's physician; (D-1)
5. 5/27/2021 CP's physician faxed statement back that states, "Pt NOT disabled"; (D-1)
6. 6/1/2021 Respondent sent CP denial letter and demand to remove dog; (D-1)
7. 6/2/2021 CP's physician sent Respondent additional information stating, "Lina Lindberg is not considered disabled according to the definition by the Federal and Florida Fair Housing Laws."; (D-1)
8. 6/17/21 CP filed complaint with PCOHR. (B-1)
9. 8/10/21 Respondent filed an Injunction against CP. (C-9)
10. 8/13/21 CP submitted Dr. statement stating she has "major depression." (C-2)
11. 8/16/21 CP submitted Dr. statement stating her "psychiatric disorder." (C-3)
12. 8/19/21 Respondent denied RA. (C-6)

B. LAW & ANALYSIS:

CP was denied an accommodation due to her disability. CP states she needs her emotional support animal (ESA) due to her disabilities.

The PF elements for a Reasonable Accommodation case would be as follows:

1. Complainant has a disability or is a person associated with a disabled person;
2. Respondent knew of the disability or could have been reasonably expected to know of it;
3. Accommodation of the disability may be necessary to afford complainant an equal opportunity to use and enjoy the dwelling and;
4. Respondent refused to make the requested accommodation.
5. Accommodation is not an undue burden on respondents.

During the process of CP requesting a reasonable accommodation due to her disability, CP provided several statements from two different doctors, CP's primary medical doctor Alison J. Howard, D.O. and Tracey Sanderbeck, APRN, PMHNP-BC, a Psychiatric Nurse Practitioner. CP's primary medical doctor provided statements to Respondent that stated specifically CP was

not disabled. CP continued to dispute this claiming she is disabled. In the statement dated June 2, 2021, provided by CP's medical doctor, it states, "Lina Lindberg is not considered disabled according to the definition by the Federal and Florida Fair Housing Laws. Lina has been referred to a Psychologist for further evaluation." Although it was the opinion of Dr. Howard that CP is not disabled, Dr. Howard did state that she was referring CP to a psychologist for further evaluation. In Dr. Howard's final statement dated August 13, 2021, it states, in part, "Mrs. Lindberg has major depression and would benefit from living with an emotional support pet. It is my professional opinion that an emotional support pet is medically necessary to Mrs. Lindberg's health and wellbeing." (D-1)

CP followed through with Dr. Howard's suggestion to be further evaluated and saw Tracey Sanderbeck, APRN, PMHNP-BC, a Psychiatric Nurse Practitioner. Ms. Sanderbeck provided CP two statements, the first states, "Lina Lindberg (DOB 5/7/1973) is a current patient of mine and has been diagnosed with a psychiatric disorder that is listed in the DSM-5. It is my recommendation that Lina have an Emotional Support Animal (Canine) to assist her with her psychiatric disorder and to ameliorate the symptoms of the disorder." The second states, "Lina Lindberg (DOB 5/7/1973) is a current patient of mine and has been diagnosed with a psychiatric disorder that is listed in the DSM-5. It is my recommendation that Lina have an Emotional Support Animal (Canine) to assist her with her psychiatric disorder and to ameliorate the symptoms of the disorder. The canine will provide therapeutic emotional support for anxiety by sitting with Lina during times of increased anxiety as well as providing comfort by sitting on Lina's lap or allowing Lina to hold her during anxiety provoking activities and/or places." (C-3, C-4)

The statements provided by Ms. Sanderbeck provide sufficient information to suggest CP is disabled under the Fair Housing Act. Therefore, the first element is met. Furthermore, due to the progressive structure of the statements provided by Dr. Howard, suggesting CP receive further evaluation and the final statement of a diagnosis and opinion that an ESA is medically necessary to CP's health and wellbeing, Respondent was put on notice that CP may provide additional information as to her disability. With that, element two is met.

Dr. Howard's statement dated August 13, 2021 state an ESA is "medically necessary" and Ms. Sanderbeck's statements dated August 16, 2021 both state that an ESA is recommended to assist CP with her psychiatric disorder. Element three is met.

Respondent denied CP her ESA reasonable accommodation request based on the information Dr. Howard provided to them. Although this is understandable based on the fact Dr. Howard stated CP was not disabled in two of her statements, Dr. Howard also informed Respondent she was referring CP to a psychologist for further evaluation. Once CP was seen by Ms. Sanderbeck, CP provided Respondent with additional documentation of her disability and need for an ESA. Even after CP provided this additional documentation, Respondent further denied CP. However, in Respondent's denial with the additional information, Respondent went a step further in asking for additional information which is against HUD guidance. In Respondent's denial dated August 19, 2021, Respondent states, "The opinion of your treating health care provider must be on the letterhead and should contain, at minimum, the following information:

- That you have been determined disabled from any federal, state or local government agency and/or receipt of disability benefits or services from any federal, state or local government agency; and
- Information identifying the particular assistance or therapeutic emotional support provided by the specific animal from a health care practitioner, as defined in s455.001." (C-6)

Under HUD's guidance there is no requirement that statements must be on letterhead, although all

CP's statements were on their respective letterheads, that a person requesting a reasonable accommodation be determined disabled by any federal, state or local agency, or that the information provided comes from a health care practitioner as defined in s455.001.

The minimum requirements set by Respondent are overreaching when asking CP to provide additional documentation in their denial letter dated August 19, 2021. Based on the actual denial and the overreaching of requested additional information, making it unlikely CP would be able to provide requested information in the future, the fourth element is met.

Respondent has not made any claim that approving CP's request for an ESA would be an undue hardship. Therefore, element five is met.

Respondent understandably denied CP based upon the initial statements provided by Dr. Howard, CP's primary medical doctor. The statement dated October 15, 2020 was insufficient. At this time Respondent requested additional information. Respondent gave CP the options of providing additional information, "directly from your medical provider on their letterhead" or CP could have Respondents approved accommodation animal application form completed. On May 27, 2021 Respondent sent a request to Dr. Howard for additional information regarding CP's accommodation request and included an ESA application form. On May 27, 2021, Dr. Howard's office faxed Respondent their cover letter with, "Pt NOT disabled" written on it and signed by Dr. Howard. June 1, 2021 Respondent sent a letter to CP denying her the reasonable accommodation request for her ESA due to Dr. Howard's May 27, 2021 statements. (D-1)

On June 2, 2021 Dr. Howard followed up with a statement reading, "Lina Lindberg is not considered disabled according to the definition by the Federal and Florida Fair Housing Laws. Lina has been referred to a Psychologist for further evaluation." Although Dr. Howard gave the opinion that CP was not disabled in this statement, she goes on to state CP is referred to a Psychologist for further evaluation. (D-1) This put Respondent on notice that additional information by be forthcoming.

HUD's guidance dated January 28, 2020 states in part, #6 Disability Determination, *Note that under DOJ's regulations implementing the ADA Amendments Act of 2008, which HUD considers instructive when determining whether a person has a disability under the FHA, some types of impairments will, in virtually all cases, be found to impose a substantial limitation on a major life activity resulting in a determination of a disability. Examples include deafness, blindness, intellectual disabilities, partially or completely missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, muscular dystrophy, multiple sclerosis, Human Immunodeficiency Virus (HIV) infection, major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia. This does not mean that other conditions are not disabilities. It simply means that in virtually all cases these conditions will be covered as disabilities. While housing providers will be unable to observe or identify some of these impairments, individuals with disabilities sometimes voluntarily provide more details about their disability than the housing provider actually needs to make decisions on accommodation requests. When this information is provided, housing providers should consider it.*

Under, Information Confirming Disability-Related Need for an Assistance Animal...

- Reasonably supporting information often consists of information from a licensed health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse – general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.
- A relationship or connection between the disability and the need for the assistance animal must be provided. This is particularly the case where the disability is non-

- *observable, and/or the animal provides therapeutic emotional support.*
- *For non-observable disabilities and animals that provide therapeutic emotional support, a housing provider may ask for information that is consistent with that identified in the Guidance on Documenting an Individual's Need for Assistance Animals in Housing (*see Questions 6 and 7) in order to conduct an individualized assessment of whether it must provide the accommodation under the Fair Housing Act. The lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation.*

Based on Dr. Howard's statement dated August 13, 2021, it states CP has major depression and that CP would benefit from having an ESA. In her "opinion that an emotional support pet is medically necessary to Mrs. Lindberg's health and wellbeing." Giving Respondent a diagnosis and that the ESA is medically necessary should have put Respondent on notice that CP possibly has a disability and states the need of the ESA.

CP followed through on the referral to a Psychologist and sought treatment from Ms. Sanderbeck. Ms. Sanderbeck provided additional documentation as to CP's condition. Although Ms. Sanderbeck did not use the term disabled in her statements, Ms. Sanderbeck's statements dated August 16, 2021, "*Lina Lindberg (DOB 5/7/1973) is a current patient of mine and has been diagnosed with a psychiatric disorder that is listed in the DSM-5. It is my recommendation that Lina have an Emotional Support Animal (Canine) to assist her with her psychiatric disorder and to ameliorate the symptoms of the disorder. The canine will provide therapeutic emotional support for anxiety by sitting with Lina during times of increased anxiety as well as providing comfort by sitting on Lina's lap or allowing Lina to hold her during anxiety provoking activities and/or places.*", provide sufficient information as to CP's disability and disability related need for an ESA.

Although CP submitted the August 16, 2021 statements to Respondent, Respondent again denied CP her ESA request. However, with this denial, Respondent overreached by requesting additional information as explained above.

CP has demonstrated continued efforts to provide sufficient information to Respondent to approve the requested ESA. Respondent was aware of CP's continuing efforts. Understanding Respondent's original denial based upon the information received from CP's medical provider, Dr. Howard, once CP was referred to a Psychologist and received sufficient documentation, Respondent should have reevaluated CP's request given the new information. Respondent continued to deny CP and requested additional overreaching documentation in an attempt to continue to deny CP her ESA.

Based on CP providing sufficient information to Respondent and Respondent's continued denial and overreaching request for additional information, there is sufficient information to recommend a cause finding to believe her case has been established.

C. CONCLUSIONS:

Therefore, based on the available evidence, we conclude that there is Cause to believe that the Respondent may have violated Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida on the Complainant's allegations.

V. Additional Information

Notwithstanding this determination by 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:



Determination

Betina Baron, Compliance Manager

Date 9/30/21