

April 08, 2019

**Determination**

**Case Name:** Bergy, Patrick v Catholic Charities, et al

**Case Number:** 04-19-5727-8; PC-19-013



I. Jurisdiction

A complaint was filed on February 12, 2019 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory advertising, statements and notices; Discriminatory terms, conditions, privileges, or services and facilities; and Failure to make reasonable accommodation. It is alleged that the respondent(s)'s acts were based on Familial Status; and Handicap. The most recent act is alleged to have occurred on November 16, 2018, and is continuing. The property is located at: Pinellas Hope II, 5726 126th Avenue N., Clearwater, FL 33760. 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 804c, 804b or f, and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The respondent(s) receive federal funding.

II. Complainant Allegations

Patrick Bergy (CP) is a disabled veteran, male, who resides at 5726 126th Avenue N, Apt. B1, Clearwater, FL 33760.

CP resides at 5726 126th Avenue N, Apt. B1, Clearwater, FL 33760, which he rents from R1 Catholic Charities. The subject property is managed by R2, Barbara (L/N/U).

CP alleges he moved into the subject property, commonly referred to as Pinellas Hope II, in or around April of 2018.

CP alleges he is a person with a disability which substantially limits his major life activity of walking/ambulation, and standing. He also is a combat veteran with PTSD, which substantially limits major life activities such as eating, sleeping, and socialization. R1 and R2 are aware of CP's disabilities, and how they substantially limit one or more of CP's major life activities.

The common areas and walkways to Pinellas Hope II are inaccessible to persons with disabilities, and present mobility issues to CP (as well as many of the other, seniors who live there, many of whom are veterans and/or persons with disabilities).

R1 and R2 are aware of the accessibility issues faced by CP and others, but have made no effort to provide accessible paths, walkways, or routes.

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CP also is the father of three (3) minor children, aggrieved parties 1, 2 and 3 (AG1, AG2, and AG3).

CP would like to host his children in his residence, which in turn helps him socialize, sleep and eat, and to fully enjoy his housing opportunity.

R1 and R2 have promulgated a rule which prohibits the presence of minor children over night.

This rule precludes CP from benefiting from over-night visits from his minor children, and in turn impacts his disability.

On or about November 16, 2018, CP was provided a note by R2 which indicated she and R1 will be requiring CP to sign his lease renewal which includes the provision prohibiting minor children from staying as over-night guests.

### III. Respondent Defenses

The Respondent denies it engaged in any discriminatory or otherwise unlawful conduct towards Claimant and that the Claimant receives the same treatment as other similarly situated residents.

As to the familial status issue, respondent states that the Claimant never put his children on the lease, nor did he ask for the lease to be amended. Respondent further states that if the Claimant did request to amend his lease, they would be subjected to the Fair Housing Laws and used the Federal Register Part IV HUD Fair Housing Standards on Occupancy as their defense. Respondent states that Claimant's unit is 247 sq. ft. and therefore too small to accommodate adding his children on the lease. Respondent states that because Claimant cannot add the children to the lease, they can visit as guest, and as such, must abide by the rules which Claimant agreed to.

As to the disability/mobility issue, respondent states that they have obtained all necessary permits and complied with government regulations and code, including accessibility prior to their Certificate of Occupancy being issued. Respondent states that however, they are in the process of improving their facility including the addition of sidewalks.

### IV. Findings and Conclusions

#### **Familial Status:**

The CP alleged he was subjected to discrimination due to familial status, and denied a reasonable accommodation for his mobility disability.

As to familial status discrimination:

Sec. 804b and c. [42 U.S.C. 3617] (b) 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 therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or

national origin, or an intention to make any such preference, limitation, or discrimination.

CP states that he requested to move into a larger unit so that his daughter could live with him for the summer and his other children could visit overnight. CP states that he was denied because the Respondent has a rule that children are not permitted to stay overnight. (C-1)

**Respondent response:**

Respondent states that CP knew of and signed the rules when he signed his lease. (D-1)

Respondent states that CP did not list his children on the lease and at no time did he request to amend his lease to add his children.

Respondent states that even if CP did request to add his children on to his lease, CP lives in a unit that 247 sq. ft. and according to the Federal Register Part IV HUD Fair Housing Standards on Occupancy, the unit is too small to allow for such a request. (D-1)

Respondent adds that the CP's "children may visit as guests, and as such, must abide by the rules which Complainant agreed to follow at the time he accepted occupancy." (D-1)

Respondent states that CP was not eligible for a one (1) bedroom apartment at their facility.

Respondent states that the one (1) bedroom apartment CP was requesting was in a different program and had strict eligibility guidelines. (D-1)

Respondent states CP did make 2 requests, one for his children to stay overnight to visit which was denied due to the rule in the lease and occupancy limits; second was for his daughter to stay the summer with him which was also denied for the same reasons. (D-3)

Said rule reads: "29. GUESTS: You are responsible for your guests' conduct and no unauthorized guest(s) may stay overnight (after midnight is considered overnight). Guests must have prior written consent form the Case Manager or Housing Manager, and guests can only stay for no more than two (2) consecutive days or ten (10) total days annually. Minors under 18 years old must be supervised at all times, and are not permitted to stay overnight. You agree to advise the Front Desk if you are expecting guests; you agree it is much easier for those at the Front Desk and your guest if notice is given beforehand." (D-1) (C-1)

Respondent that the individuals in management when the rule was developed are no longer there. "From their review and interviews, the reasoning was based upon a belief that having minors stay overnight would create a risk that management could not address." (D-5)

**Analysis:**

The explanation given by the Respondent as to why minors under the age of 18 years of age does not justify the rule and therefore it is found that the CP was subjected to disparate treatment due to his familial status.

On the allegation of disparate treatment due to familial status, the CP prevails.

**Disability/ Reasonable Accommodation:**

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.

The CP alleged that due to his physical disability, he was unable to steadily walk on the rocks that were spread throughout the only pathway into and out of the apartment facilities. (C-1)

Although CP was able to submit some medical records, CP was not able to produce corroboration that he is disabled with a nexus between his disability and the request for a reasonable accommodation. Upon a final request for this documentation on March 27, 2019, CP replied that he was unable to obtain the required documentation at this time and to proceed with the investigation "ADA" issues. (C-4)

Therefore there is not sufficient evidence that the CP is disabled and in need of a reasonable accommodation. This element fails.

**Respondent defense:**

Respondent states that they procured all necessary permits and complied with government regulations and codes, including accessibility. All such approvals were given, and the Certificate of Occupancy was issued.

Respondent further states that they are in the process of improving their facility which includes accessible sidewalks, they are awaiting permits.

**Analysis:**

Because the CP could not submit evidence of his disability and a nexus for the requested reasonable accommodation, the CP cannot prevail on this allegation.

**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 of Familial status and there is No Cause on the allegation of denial of a reasonable accommodation due to CP's disability.

V. 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:

*Jeffery D. Lorick*

CAUSE 4/8/18

Jeffery Lorick, Human Rights/Compliance Manager