

April 12, 2021

Final Investigative Report

Case Name: Allan Powell v Royal Stewart Arms Condominium #6, Inc.

Case Number: 04-21-4997-8

I. Jurisdiction

A complaint was filed with the Pinellas County Office of Human Rights on January 11, 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 Handicap. The most recent act is alleged to have occurred on November 13, 2020, and is continuing. The property is located at: Royal Stewart Arms Condominium #6, 8 Glencoe Pl. , 109, Dunedin, FL 34698. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Chapter 70 of the Pinellas County Code of County Ordinances.

The respondent(s) receive no federal funding.

II. Parties and Aggrieved Persons

A. Complainant(s)

Allan Powell
Royal Stewart Arms Condominium #6
8 Glencoe Pl.
109
Dunedin, FL 34698

Complainant Allegations

Allan Powell (CP) is a disabled male who owns and resides at 8 Glencoe Pl. Unit 109, Dunedin, FL 34698. The Property is governed by Royal Stewart Arms Condominium #6, Inc. (R Association).

On October 16, 2020, CP requested a reasonable accommodation to have a patio installed to assist with his disability. CP submitted his request through his counsel, Blair Kooi, Esq., to (R Association) counsel Stephan Nikoloff, Esq.

Mr. Nikoloff responded to CP's counsel on behalf of (R Association) on October 20, 2020, requesting, on behalf of (R Association), documentation from a medical professional and an explanation of how the patio was medically necessary and how it would alleviate CP's symptoms and assist with his disability.

On October 27, 2020, Mr. Kooi responded to Mr. Nikoloff with documentation and an explanation for the reasonable accommodation request. During the November 13, 2020 Case Management Conference regarding the petition for arbitration that (R Association) had filed with the Florida Department of Business and Professional Regulation on August 13, 2020 against CP and his wife, counsel for R Association stated that it had denied CP's request.

The arbitrator abated the case until December 14, 2020 by which time CP was required to "file proof they have filed a Fair Housing Claim with the appropriate government entity." CP filed his claim with the Florida Commission on Human Relations on December 11, 2020, and the arbitrator, by his order entered on December 15, 2020, abated the case further until February 15, 2021, by which time CP is required to "file a report as to the status of his Fair

Housing Claim case.”

CP Powell believes that the Respondent’s actions constitute a violation of the Fair Housing Laws.

B. Other Aggrieved Persons

C. Respondent(s)

David Garrett
Royal Stewart Arms Condominium #6, Inc.
8 Glencoe Pl.
103
Dunedin, FL 34698

Respondent Defenses

At the time the Powells requested a reasonable accommodation (October 16, 2020), the parties were involved in an arbitration proceeding over the patio and were discussing potential settlement terms and conditions. In a letter from the association attorney dated October 20, 2020, their request was acknowledged and asked for information to support this accommodation request.

Mr. Powell's attorney responded a week later and provided a doctor's report and a letter from another doctor. The report reflected various issues but did not contain any statement that Mr. Powell had a disability as defined by the Fair Housing Act, or that the patio was medically necessary. The report and letter did not provide information to show that having the patio would ameliorate the effects of his disability or was necessary for him to enjoy and use his property.

The Powells have yet to provide any material or opinion from a qualified medical practitioner to support the claim a disability under the Fair Housing Act, or the medical necessity of the patio. They knowingly violated the Declaration by installing the patio without the requisite member approval and only raised the Fair Housing Act many months later and Respondent had been forced to initiate an arbitration proceeding to have the patio removed.

Respondent also states that the area on which the Powells installed the contested patio is a portion of the common elements. Despite this violation, the Respondent has attempted to work with the Powells to reach an agreement to resolve the dispute.

D. Witnesses

III. Case Summary

A. Interviews

Complainant Representative Kooi, Blair
Date of Interview: January 14, 2021
Type of Interview: Email
Interviewer: Genova, Peter J.

CP attorney asked to submit a copy of the Petition for Arbitration filed against his client and a copy of the rule his client was alleged to have violated. CP attorney asked if the Condo board has received the nexus between his client's disability and need for accommodation.

Complainant Powell, Allan
Date of Interview: March 19, 2021
Type of Interview: In-Person
Interviewer: Genova, Peter J.

I viewed the property and met with CP's attorney, who showed me where the patio sits and where the Respondent wants it to be moved (on the side of the house). I viewed that CP uses a cane as a walking aid.

B. Documents

Nature of Document: Photo of Patio Area
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document:
Date Obtained: December 22, 2020

Photo of the back yard area of CP's unit.

Nature of Document: Dr. Note - Orthopedic doctor
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: August 11, 2020
Date Obtained: December 22, 2020

Dr. note from Orthopedic doctor submitted to condo board.

Nature of Document: Dr. Note - Akumin
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: June 29, 2020
Date Obtained: December 22, 2020

Doctor's note that details the CP's many conditions to support that he is disabled within the meaning of the Fair Housing Act. This note was submitted to the Condo board.

Nature of Document: Petition for Arbitration document
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: November 16, 2020
Date Obtained: December 22, 2020

The parties were in arbitration with the state's division of condominiums. The document states that the case in that office will be stayed until the CP files a Fair Housing complaint.

Nature of Document: FCHR Intake Form
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: December 11, 2020
Date Obtained: December 22, 2020

Intake form completed by CP and submitted to the Florida Commission on Human Relations. CP claims that he has been denied a reasonable accommodation in the form of permission to build a patio. He states that he learned that his request was denied during an arbitration with the state's division of condominiums.

Nature of Document: Dr. Note - Schneider
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: December 07, 2020
Date Obtained: December 22, 2020

Note from doctor at Neurology office as evidence of CP's disability.

Nature of Document: Photo of Unit 108
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document:
Date Obtained: December 22, 2020

Photo of Unit 108's patio to show that the Condo board has permitted such patios previously.

Nature of Document: Letter from CP attorney to Respondent
Who Provided: CP
How Transmitted to HUD: Mail via FCHR
Date of Document: October 27, 2020
Date Obtained: December 22, 2020

Letter from CP's attorney, in which he request that he be allowed to build a patio behind his unit so that he is able to enjoy the use of his property.

Nature of Document: Corporate Information
Who Provided: OHR
How Transmitted to HUD: Internet
Date of Document: December 28, 2020
Date Obtained: December 28, 2020

Corporation information for Royal Stewart Arms Condo, as found in the state's sunbiz.org website.

Nature of Document: Property Information
Who Provided: OHR
How Transmitted to HUD: Internet
Date of Document: December 28, 2020
Date Obtained: December 28, 2020

Information about the property and property ownership as found on the County's Property Appraiser web page.

Nature of Document: 903 conciliation letters
Who Provided: Attorney
How Transmitted to HUD: Mail
Date of Document: January 06, 2021
Date Obtained: January 08, 2021

Nature of Document: Conciliation Information
Who Provided: OHR
How Transmitted to HUD:
Date of Document: January 11, 2021
Date Obtained: January 11, 2021

The parties are informed of the conciliation process and are invited to participate in it.

Nature of Document: Request for Information
Who Provided: OHR
How Transmitted to HUD:
Date of Document: January 11, 2021
Date Obtained: January 11, 2021

Respondent is asked questions about the reasonable accommodation process and how they've dealt with such requests in the past.

Nature of Document: Notification Letters
Who Provided: OHR
How Transmitted to HUD:
Date of Document: January 11, 2021
Date Obtained: January 11, 2021

Parties notified that a Fair Housing complaint has been filed. The Respondent is asked to provide an answer and is invited to participate in conciliation.

Nature of Document: Notice to Parties
Who Provided: OHR
How Transmitted to HUD:
Date of Document: January 11, 2021
Date Obtained: January 11, 2021

Parties are informed that HUD requires us to complete the investigation within 100 days.

Nature of Document: Email to Attorney Nikoloff
Who Provided: OHR
How Transmitted to HUD:
Date of Document: January 12, 2021
Date Obtained: January 12, 2021

Email to Attorney Stephen Nikoloff to find out if he is representing the Condo board in this matter, as his name appears on the complaint.

Nature of Document: Request for Information
Who Provided: OHR
How Transmitted to HUD: Email
Date of Document: January 14, 2021
Date Obtained: January 14, 2021

CP attorney asked to submit a copy of the Petition for Arbitration filed against his client and a copy of the rule his client was alleged to have violated. CP attorney asked if the Condo board has received the nexus between his client's disability and need for accommodation.

Nature of Document: Legal Memo to Association
Who Provided: CP
How Transmitted to HUD: Email
Date of Document: December 18, 2020
Date Obtained: January 20, 2021

Association attorney provides legal advice as to the patio issue.

Nature of Document: Memo from Board to Members
Who Provided: CP
How Transmitted to HUD: Email
Date of Document:
Date Obtained: January 20, 2021

Memo from the board to its members concerning the CP's patio issue. The board opines that it has received sufficient info to grant a reasonable accommodation, and that the petition for arbitration should be dismissed because the CP provided info to indicate that it might prevail.

Nature of Document: Non-Binding Petition Form
Who Provided: CP
How Transmitted to HUD: Email
Date of Document: August 10, 2020
Date Obtained: January 20, 2021

Respondent filed a petition for non-bonding arbitration, alleging that the CPs failed to obtain approval from 75% of the homeowners before building a patio.

Nature of Document: Complainant response to RFI
Who Provided: CP
How Transmitted to HUD: Email
Date of Document: January 20, 2021
Date Obtained: January 20, 2021

Complainant's attorney provided answers to questions and attached copies of association rules and the petition for arbitration and response. CP asserts that the association isn't enforcing its rules uniformly.

Nature of Document: CP answer to Petition for Arbitration
Who Provided: CP
How Transmitted to HUD: Email
Date of Document: September 16, 2020
Date Obtained: January 20, 2021

CP asserts that the association isn't enforcing its rules equally. There are others who have built patios without 75% approval of homeowners. CP also asserts that it has requested to be keep the patio as a reasonable accommodation for a disability.

Nature of Document: Respondent Attorney Contact
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: January 20, 2021
Date Obtained: January 20, 2021

Attorney Scott Jackman notified our office that it represents the Respondent association in this case and requests an extension to submit an answer.

Nature of Document: Rules and Regulations
Who Provided: Respondent
How Transmitted to HUD: Email

Date of Document: February 28, 1989
Date Obtained: February 08, 2021

Rules and regulations, which relate to the common areas and alterations.

Nature of Document: Declaration of Condo Ownership
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: February 13, 1974
Date Obtained: February 08, 2021

Declaration of Condo Ownership

Nature of Document: Request for Medical Information
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: October 20, 2020
Date Obtained: February 08, 2021

Respondent asked for medical documentation to justify the need for a porch as a reasonable accommodation.

Nature of Document: Respondent Answer
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: February 08, 2021
Date Obtained: February 08, 2021

At the time the Powells requested a reasonable accommodation (October 16, 2020), the parties were involved in an arbitration proceeding over the patio and were discussing potential settlement terms and conditions. In a letter from the association attorney dated October 20, 2020, their request was acknowledged and asked for information to support this accommodation request.

Mr. Powell's attorney responded a week later and provided a doctor's report and a letter from another doctor. The report reflected various issues but did not contain any statement that Mr. Powell had a disability as defined by the Fair Housing Act, or that the patio was medically necessary. The report and letter did not provide information to show that having the patio would ameliorate the effects of his disability or was necessary for him to enjoy and use his property.

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Respondent also states that the area on which the Powells installed the contested patio is a portion of the common elements. Despite this violation, the Respondent has attempted to work with the Powells to reach an agreement to resolve the dispute.

Nature of Document: CP proposal
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: October 16, 2020
Date Obtained: February 08, 2021

CP's offer to resolve the patio dispute, and claim that the porch is medically necessary because of his disability.

Nature of Document: Request for Rebuttal
Who Provided: OHR
How Transmitted to HUD: Email
Date of Document: February 09, 2021
Date Obtained: February 09, 2021

CP's attorney afforded an opportunity to submit a rebuttal - due 2/19/2021.

Nature of Document: Amended Answer
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: February 12, 2021
Date Obtained: February 12, 2021

Amended answer submitted by Respondent

Nature of Document: Rebuttal
Who Provided: CP
How Transmitted to HUD: Email
Date of Document: February 22, 2021
Date Obtained: February 22, 2021

CP's attorney provided collection of communications that he had with the R's attorney to show that he justified the need for the reasonable accommodation. CP's attorney provided additional doctor's notes that hadn't been provided at the time of the case filing. The notes explained that CP needs to walk on flat surfaces to minimize the risk of falling.

Nature of Document: Request for Response to Rebuttal
Who Provided: OHR
How Transmitted to HUD: Email
Date of Document: February 26, 2021
Date Obtained: February 26, 2021

Respondent provided with a copy of CP's rebuttal and asked to respond.

Nature of Document: R reply to CP rebuttal
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: March 02, 2021
Date Obtained: March 06, 2021

R acknowledges that CP is disabled, but maintains that the patio was built without prior approval in violation of the rules. R states that it has attempted to work with CP to relocate the patio to a different site with sidewalk access to no success.

Nature of Document: Email from R attorney
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: March 15, 2021
Date Obtained: March 15, 2021

Email with R attorney, who explained why the matter may not settle.

Nature of Document: Notes from Onsite Visit
Who Provided: OHR
How Transmitted to HUD: Written notes and observation
Date of Document: March 19, 2021
Date Obtained: March 19, 2021

Observations of the CP's patio in relation to other residents' patios

Nature of Document: Documents received at onsite
Who Provided: CP
How Transmitted to HUD: In person
Date of Document: March 19, 2021
Date Obtained: March 19, 2021

Miscellaneous documents, arguments, doctor info, rules, and CP attorney talking points.

Nature of Document: Request for answer to prima facie elements
Who Provided: OHR
How Transmitted to HUD: Email
Date of Document: March 22, 2021
Date Obtained: March 22, 2021

Evidence was summarized in conjunction with the prima facie elements. Respondent was asked to submit a reply.

Nature of Document: Respondent reply to prima facie elements
Who Provided: Respondent
How Transmitted to HUD: Email
Date of Document: March 23, 2021
Date Obtained: March 23, 2021

Respondent attorney asserts that CP has not established the prima facie elements.

Nature of Document: CP interested in conciliation
Who Provided: CP
How Transmitted to HUD:
Date of Document: January 06, 2021
Date Obtained:

CP interested in conciliation as a means to resolve issue.

C. Interrogatories

Jeffery Lorick, Human Rights/E. E. O. Officer

Jeff Lorick
abuse Finding 4-26-21