

April 12, 2021

Determination

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. 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.

III. 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.

IV. Findings and Conclusions

In the present case, the Complainant (Mr. Powell) installed a patio with pavers at the rear entrance of his unit with no prior approval by the association. As a result, the Association filed a Petition for Arbitration with the state's Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes. After a case management conference, the case was abated so Mr. Powell could file a Fair Housing complaint and this office could complete its investigation.

After the installation of the patio, Mr. Powell asserted that the patio is necessary as a reasonable modification for his disability. The prima facie elements for a reasonable modification case under Chapter 70 of the Pinellas County Code are as follows: (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; and (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.

As to the first prima facie element, Dr. Schneider provided a December 7, 2020 note that states, "Mr. Powell is a patient in my neurology clinic. He has a diagnosis of extensive degenerative disease of the spine and moderate polyneuropathy. These have been progressing and refractory to numerous medications. This affects his ability to ambulate, sit erect, and balance." In a note of February 17, 2021, Dr. Spiegel cites extensive degenerative disease of the spine and moderate polyneuropathy. He also states, "Mr. Powell is, and always will be, substantially limited in his ability to ambulate, which of course, is a major life activity." A note from Dr. Tuccio, dated February 19, 2021, states, "His current impairments include bilateral lower extremity weakness, limited range of motion of his lumbar spine, thoracic spine, decreased joint proprioception in both knees and ankles." (D-7, D-14)

Based on the information above, we conclude that Mr. Powell is substantially limited in his ability to walk. Mr. Powell uses a cane or walker. He is disabled within the meaning of Chapter 70 of the Pinellas County Code. The first element has been met.

Turning to the second element, it must be shown that Respondent knew or should have known that Mr. Powell is disabled. In an October 27, 2020 letter from Mr. Powell's attorney to the association attorney, he described Mr. Powell's impairment and limitations. Additional, and more specific, doctor's information was provided to Respondent during the course of this investigation.

We conclude that the second prima facie element has also been satisfied. Respondent was aware of Mr. Powell's disability.

In order for the third element to be met, the evidence must demonstrate that Mr. Powell requested permission to modify his dwelling or common areas.

Although the patio pavers were installed prior to the modification request, Mr. Powell did request that his modification be considered as a reasonable modification because of his disability. This occurred in a letter of October 27, 2020 and has continued up to and including the current date. Therefore, we conclude that the third prima facie element has also been met.

As to the fourth element, it must be shown that the requested modification may be necessary to afford Mr. Powell an equal opportunity to use and enjoy his property.

Mr. Powell provided the following information to demonstrate that the patio may be necessary to afford him an equal opportunity to use and enjoy the dwelling:

Attorney Kooi explains that in Mr. Powell's case, the patio, which provides him a stable and even surface upon which to place and utilize his recliner, which does alleviate his symptoms, and enjoy the outdoors without having to walk across a grassy area, is like a handrail in, or a ramp leading to, a disabled person's residence. All three provide a feature of safety for a person, like Mr. Powell, who has difficulty ambulating and an increased risk of falling (Mr. Powell had, in fact, fallen in May 2020, as set forth in a letter from Dr. Davidson). Neither a handrail nor a ramp will treat the symptoms of one with such a disability; it provides the disabled person with the means to lower his or her risk of falling. (D-14)

In Dr. Spiegel's note of February 17, 2021, he states that Mr. Powell "is, and always will be, significantly more vulnerable to falling while ambulating on surfaces other than hard, even surfaces, such as on grassy areas, which results in a significant risk to his overall safety." Dr. Tuccio explained in his February 19, 2021 note that "(t)hese impairments limit his ability to ambulate safely on uneven terrain, and limits his ability to find resting positions of comfort when not ambulating." (D-14)

We conclude that the fourth prima facie element has been satisfied. Mr. Powell has articulated the nexus between his disability and the requested modification.

Turning to the fifth and final prima facie element, it must be shown that Respondent refused the modification or delayed it such that it amounts to a denial.

Mr. Powell filed the present complaint after Respondent's attorney stated in a case management conference of November 13, 2020 that it had denied his request. Furthermore, the patio has not yet been approved as of the present date. Respondent asserts that Mr. Powell has not established the need for the patio as a disability modification.

We conclude that the prima facie elements have been fulfilled. Absent an undue burden, Mr. Powell's patio should be approved as a reasonable modification for his disability. Respondent has not articulated an undue burden.

We determine that there is Reasonable Cause that a violation of Chapter 70 has occurred.

V. Additional Information

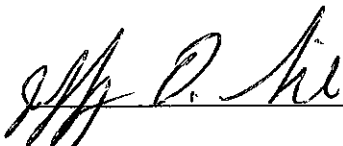
Notwithstanding this determination by the Pinellas County Office of Human Rights, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing 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 Lorick, Human Rights/E. E. O. Officer

CAUSE FINDING 4-26-21
Determination Date



Director