

June 05, 2019

## Determination

**Case Name:** Marie & James Parker v. Villa Del Mar of Clearwater Condominium Association, Inc.

**Case Number:** 04-19-5671-8

### I. Jurisdiction

A complaint was filed with HUD on February 08, 2019 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: 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 Handicap. The most recent act is alleged to have occurred on October 30, 2018, and is continuing. The property is located at: 1860 N. Ft. Harrison Ave., #102, Clearwater, FL 33755. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Sections 804b or f, and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

It is not known if the respondent(s) receive federal funding.

### II. Complainant Allegations

Marie Parker (CP) a disabled female that owns a unit along with her husband James Parker (CP2) located at 1860 N. Ft. Harrison Ave., #102, Clearwater, FL 33755. The property is governed by Villa Del Mar of Clearwater Condominium Association, Inc. (R1). The current President of the HOA is Bob Veurink (R2).

CP states in mid-October she parked in the handicapped space in front of her building using her handicapped sign. CP states when she arrived to her car the next morning she found a typed note on her car from R's. The note informed CP that she was in violation for parking in the space and if she continues to park there, her car will be towed. CP states she due to her disability she needs to park in a different space because it's hard for her to get out of her car in her small garage. CP states she then made a reasonable accommodation to R's requesting permission to be allowed to use the handicapped space, visitor spaces or to park up front. CP states R's denied all requests. CP states R2 reiterated to her that CP would not be able to park in the spaces and if CP's vehicle is found to be parked in one of the restricted/reserved spaces, R's will have her vehicle towed.

CP states during a board meeting on October 30, 2018, CPs stood up to inform the homeowners of their situation and how R's were handling the situation. CPs state they did this in hopes of obtaining a vote from all of the residents that would make R's reconsider the denial of CP reasonable accommodation. CP states R2 stood up and denied her request. R2 then abruptly ended the meeting so that they could have cocktails. CP states several homeowners approached her after the meeting stating they didn't know why the R's were being so hard on them in regards to the reasonable accommodation request. CP states one homeowners provided his phone number to her in the event CP ever needed assistance and he was around to assist her.

CP states she feel she is being discriminated against due to her disability.

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

### III. Respondent Defenses

The respondent stated the CPs have provided no information or documentation to indicate or even suggest that Mrs. Parker needs an additional parking space to ameliorate the effects of her alleged handicap. It is inexplicable that Mrs. Parker cannot simply switch vehicles with her husband or get another, smaller, vehicle. CPs claim is made more absurd by the fact that they subsequently have reached out to other owners in an effort to rent or purchase their garage parking. It is inescapably clear that CPs simply want to be able to park both of their vehicles on property and have manufactured a discrimination claim in a brazen and callous exploitation of the FHA in order to coerce Respondents into acceding to their demands.

#### IV. Findings and Conclusions

##### **A. FINDINGS:**

1. 6/1/2018 Cps move into respondent complex;
2. Mid-Oct. 2018 Cps park in handicapped spot, and told they would be towed;
3. 10/30/2018 Cps requests of the respondent board to park in the handicapped/visitor spot, or to create a new handicap spot as an accommodation, and are denied;

##### **B. LAW & ANALYSIS:**

The cps state they were denied the reasonable accommodation request of an accessible parking space.

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 state they suffer from diabetic neuropathy, diabetic retinopathy and chronic arthritis. In support of this, the cps submitted three letters from different medical providers indicating she had limitations. The cp stated she received her disability parking placard in 2015, "after repeatedly falling from having extremely weak legs from my diabetes. I have been a type 1 diabetic since I was 12 years old (27 years ago). All of my disabilities are a direct result of having diabetes for so long." Thus, it is believed the first element has been met. (B-3)

The cps stated they emailed the property manager Emily Clarke, and requested various reasonable accommodation requests, which were all denied. The cps further spoke at a community wide meeting, and made their requests known to the whole board and residents. The issue of whether requests were made are not denied by the respondent. Thus, the second element has been met.

Regarding whether the accommodation could be necessary to afford her an equal opportunity to use the dwelling, the cp stated that, "the issue is that when I try and park our small 1 car garage, I am not able to fully open my door which makes it difficult for me to get in and out of my vehicle. It is also extremely dark in the garage (even with light) which makes it difficult for me to see and lastly, I am afraid of falling again and not being able to call anyone for help since there is no phone reception in the garages." (B-3)

In her intake form, the cp wrote she had diabetic neuropathy, diabetic retinopathy, psoriatic arthritis, which "limits my walking, because of weak legs. They retinopathy has affected my eyesight, and the psoriatic arthritis has made arms and legs stiff which doesn't allow me to bend my arms and legs fully. I have falls from the neuropathy." (B-1)

In support of their request, the cps submitted three doctor's notes.

The first note from MD Wanger of Pinellas County Primary Care, with an evaluation date of

3/15/2019, stated that cp Marie Parker had several conditions that leave her legs and feet numb. The note indicated she had "diabetes mellitus due to diabetic nephropathy, and type 2 diabetes mellitus with diabetic autonomic (poly) neuropathy". The note stated, "Marie was evaluated in the office today 3/15/2019 for her medical condition the [sic] require her to park in the handicap locations. It is our recommendation that the patient not walk far or on rough pavement or pathways as pt. is unsteady on her feet and needs stable ground to keep her footing." (B-3)

The second note, undated, from Dr. Alfred White of Retina Vitreous Associates of Florida, stated that the cp was diagnosed with diabetic retinopathy which "severely affects her vision. This diagnosis does cause a decreased vision in left eye along with sensitivity to light. Patient will require full time parking outside due to vision. Patient will not be able to park in covered garage." (B-3)

The third note, dated 3/26/2019 and unsigned, from MD David Gray of Arthritis & Rheumatism Associates PL, stated the cp had been evaluated that day and had chronic arthritis, "which makes prolonged walking difficult. She should be able to park close to her condo building for medical reasons." (B-3)

Thus, initially, it would appear the cp has established a documented nexus between the lack of vision and parking, and possibly ambulation needs and parking. This is discussed below.

Regarding the 4th element, it is undisputed by the parties that the accommodation request was denied by the respondents.

Respondent answer:

The respondent stated, the "simple fact is that Mrs. Parker had sustained an injury to her leg and obtained a handicap placard for her vehicle. She subsequently recovered from the injury and now ambulates without assistance (though she, apparently, still uses the handicap placard). More importantly, nothing about Mrs. Parker's temporary condition in any way qualified her as "disabled" or "handicapped" for purposes of the FHA."

"The respondent further stated, "Per the condominium documents, resident parking in Respondents' association is in assigned garages; owners must park in their garages and no vehicles are permitted to be parked in driveways. In addition, there are eight parking spaces reserved exclusively for guests. All prospective buyers are required to have an interview with the board before they close and move in. During this interview process, parking specifically is discussed at length, and the owners sign an agreement that covers the basic rules and regulations. In its May 16, 2018 approval letter regarding CPs purchase of their unit, the Association specifically advised CPs of the parking restrictions, wherein it was stated that CPs' unit has a one-car garage only and that second cars must be parked off site, where there is additional parking across the street from the association property. CPs signed the letter on May 21, 2018, expressly acknowledging and accepting these restrictions."

"The eight reserved guest parking spaces are designated as follows: two spaces are reserved for service vehicles M-F 8:00AM-5:00PM, after which they revert back to guest spots. The remaining six spots are reserved for guests with one of the six reserved for handicap guests. These spaces are strictly for guest use and no owners may use them, as there is often a shortage of spots for guests."

"After Mrs. Parker was given notice of violating the parking restrictions by parking in the handicap spot, she spoke with management, who reminded her of the rule and asked her not to park in the handicap visitor parking space. Mrs. Parker said that she was concerned about parking her vehicle in the garage and needed to wait for her husband to come home and park it for her and it was sometimes not until the next morning that he would move it. Management relayed Mrs. Parker's concern to the Board, which denied her request to park in the handicap space. Mrs. Parker

then was advised that it is not acceptable for her to park in the handicap space, and that it was not fair to the other handicap guests that come to the property for her to continually have exclusive use of the one handicap parking space in the front. She also was advised that it was a decision for Board to make, not the owners, as it is the Board that is responsible for enforcing the condominium Declaration and restrictions.”

“Notwithstanding this, CPs nevertheless made their unexpected speech at the annual board meeting, expressing concern that Mrs. Parker had difficulty parking in her assigned garage **because she has a large SUV. Two owners subsequently offered to park Mrs. Parker’s vehicle in her garage for her, anytime. Another owner offered to rent their two-car garage to CPs.**” (C-1)

“CPs have provided no information or documentation to indicate or even suggest that Mrs. Parker needs an additional parking space to ameliorate the effects of her alleged handicap. It is inexplicable that Mrs. Parker cannot simply switch vehicles with her husband or get another, smaller, vehicle. CPs claim is made more absurd by the fact that they subsequently have reached out to other owners in an effort to rent or purchase their garage parking. It is inescapably clear that CPs simply want to be able to park both of their vehicles on property and have manufactured a discrimination claim in a brazen and callous exploitation of the FHA in order to coerce Respondents into acceding to their demands.” (C-1)

In support of their position, the respondent cited various parking rules set forth by their Declaration for Condominium.

3.4(b), Limited common elements, stated, “Each unit located on the first floor will be assigned one (1) parking space. All other units will be assigned two parking spaces on the ground floor of the building in which the unit is located, ...as limited common elements appurtenant to the units to which said spaces are assigned.” (C-1)

3.5(b)(1), stated in relevant part, that “there will be a total of 6 visitor parking spaces, in addition to 44 first floor limited common area parking spaces.” (C-1)

At 15.15, it stated “The project includes 50 total parking space. Forty-four (44) of those are designated as limited common elements on the condominium plan, and are reserved for the exclusive use of the owners of the units to which they are assigned. The remaining 6 spaces shall be reserved for guests.” (C-1)

At 17.4 of their rules, it stated “Ground Floor parking spaces. No ground floor parking space shall be assigned or transferred by the owner of the unit to which it is appurtenant to any other person or entity.”[1] (C-1)

Analysis and conclusion:

Overall, the cp asked for the following: 1. If she could park either in the handicapped spot, 2. Park in the visitor spot, 3. To temporarily leave her car in the visitor spot until her husband could move it, 4. To create an additional handicap space, 5. And/or to allow the residents vote on the matter instead of the board.

However, all of the requests were admittedly denied.

Regarding the need for the accommodation, it appeared there were various reasons specified by the cps.

On the face of the complaint, the cp wrote, “CP states that due to her disability she needs to park in a different space because it’s hard for her to get out of her care in her small garage.”

In her rebuttal, the cps wrote, **I am not able to fully open my door which makes it difficult for me to get in and out of my vehicle. It is also extremely dark in the garage (even with a light) which makes it difficult for me to see and lastly, I am afraid of falling again and not being able to call anyone for help since there is no phone reception in the garages.**" (B-3)

While on-site on 5/1/2019, cp Mr. Parker indicated the cp normally did not use a walker, and needed the accommodation because she was unsteady on her feet, and was prone to falling down. He confirmed the disability requiring the disability was her diabetic neuropathy. (B-5)

During the investigation, the cp submitted various doctor's notes relevant to the reasons specified in her rebuttal.

The first note from MD Wanger of Pinellas County Primary Care, with an evaluation date of 3/15/2019, stated that cp Marie Parker had several conditions that leave her legs and feet numb. The note indicated her medical condition required her to park in the handicap locations. It is our recommendation that the patient not walk **far** or on **rough pavement** or pathways as pt. is unsteady on her feet and needs stable ground to keep her footing." (Bold added by Investigator).

The second doctor's note, from Dr. Alfred White of Retina Vitreous Associates of Florida, stated that the cp was diagnosed with diabetic retinopathy which "severely affects her vision...", writing that "Patient will **require full time parking outside** due to vision. Patient will not be able to park in covered garage." (B-3)

The third note, from MD David Gray of Arthritis & Rheumatism Associates PL, stated the cp had chronic arthritis, "which makes **prolonged** walking difficult. She should be able to park close to her condo building for medical reasons." (B-3)

First off, it was originally understood the cp needed more space within her one car garage due to the use of a walker. However, the walker was only used temporarily due to broken bones in the cp's foot, reportedly due to falls stemming from her disabled weak legs.

In her rebuttal, the cps wrote, that since we moved in in June of last year, I have broken my foot twice and had a massive infection in my foot, causing me to have an operation to remove the tissue in my foot, down to the bone. As a result, I spent over 2 months in a wheel chair and another month in a walker, in addition to currently being in a foot brace and walker from yet another foot fracture." (B-3)

The cp stated she had received her handicap placard back in 2015 after repeatedly falling from having extremely weak legs from my diabetes.

Regarding why the cp needed the door to open fully, she replied, "The reason why I have to fully open my door to get in and out of my vehicle is because of my severe neuropathy from my diabetes coupled with my leg stiffness from my arthritis. I use the walker because I have extreme muscle loss and weakness in my legs. I also use it full time, when I am ordered to by my orthopedic surgeon because of random broken bones in my feet. I met with my surgeon on 5/14/19 who informed me to be prepared for my bone breaks to become more significant gradually because of my severe neuropathy in my feet and legs. He also prepared me that in time, I may also require a wheel chair on a more consistent basis which is all caused by my disability. My falls are also caused from my disability. Having a wall nearby doesn't help me at all with my stability. A wall only gets in the way, preventing me from being able to open my car door completely. I need to be able to open my car door completely, so that I can utilize my open door to support me while I extend my legs and stand up with support. I need enough space to be able to open my car door fully and then close the door once I am securely standing up along with being able to use my walker or wheelchair, when ordered to. A normal handicapped space is big enough." (B-6)

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The cp stated that "Regarding the lighting in my garage, because of my eye site, an additional light wouldn't help. The struggle is going from sunshine outside to a darker space in the garage. It takes time for my eyes to adjust properly to different lighting which has proven to be a bit of a struggle for me." (B-6)

Regarding the issue of the need for increased lighting, the cp wrote, "When I fell in the garage area, my phone didn't work for me to call my husband to come help lift me up. I was forced to crawl to the entry to my building." (B-6)

Regarding how frequently she fell or needed her walker, the cp wrote, "You ask how frequent my falls are. Well, sometimes I can go a few weeks without falling and other times I may fall twice in one day." (B-6)

Regarding the unstable surface, the cp wrote, "you reference how the garage pavement appears to be stable and not rough. If you walk in our garage area in certain places, there are a few dips in the pavement, which are just enough to make me fall. I have extreme drop foot in my feet which hinders me from being able to lift my feet up while I walk." (B-6)

Regarding the difference in distance, the cp stated, "the distance from the guest spaces to my unit, appear to be about the same as the distance from my garage to my unit, just a different/safer path. Lastly, you ask me how far I can walk. This answer is different every day. Some days I am able to walk 200 feet without falling, and then there are days when I stumble or fall after only a few steps. Some days my legs just give out on me, other days I trip on my own feet, and then there are days when i get out of breath in 10 feet." (B-6)

Regarding how long she would be using a walker, the cp wrote, "I use the walker sometimes and a cane at others. My disability is a life long disability so I will have these medical problems for the rest of my life." (B-6)

Regarding alternative options suggested by the respondent, the cps stated they did attempt to reach out to others, but did not have success in getting people to rent them their garage and/or to have them park their car. The cps stated both their cars were not leased, had owned them for 3 years, and were roughly the same width. The cps stated that the car used in the garage currently, the Lexus SUV, was actually narrower than the SUV Mercedes.

Overall, it would appear to be a reasonable accommodation to allow the cp to park in the guest spots when using her walker or cane, as this is demonstrably more difficult with the limited space. See photos at D-2. As stated by the cp, her disability is life long, and that she used "the walker sometimes and a cane at others." (B-6) During an on-site, the width of the garage opening was measured to be 94.5 inches wide (7.87 ft). The width of the SUV Lexus was 68 inches (5.6 ft), giving a remaining space of 26.5 inches (2.2 ft). This would be less than a normal accessible path of 36" as a possible standard, even without a walker.

Regarding the use of a guest space when not using a walker or cane, her assertion of not needing a nearby wall or nearby door space would appear to be counterintuitive. However, it is clear the cp is limited due to various disabilities. As she is the she is the person who has lived with the physical disabilities for an extended period of time, much discretion and deference is given to the cp as the person who would know best about their limitations.

As such, it would appear to be a reasonable accommodation, within the daily understanding of the cp, to be able to judge when, and if, she were able to park in her garage parking.

**C. CONCLUSIONS:**

Therefore, based on the available evidence, we conclude that there is CAUSE to believe that the Respondent may have violated Title VIII of the Civil Rights Act of 1968, and Chapter 70 of the Pinellas County Code respectively on the Complainant's allegations.

[1] From these rules, it is unclear how the respondent could add the generic handicapped space.

**V. Additional Information**

Notwithstanding this determination by HUD, 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:

Paul V. Valenti, Human Rights/E. E. O. Officer

*Jeff D. Hill* D.O.A. CAUSE

JUL-1-2019