

June 25, 2019

Determination

Case Name: Francis Dandrea V. Lakeview of Largo Condominium Association, Inc.

Case Number: 04-19-6988-8

I. Jurisdiction

A complaint was filed with the Pinellas County Office of Human Rights on May 13, 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 18, 2018, and is continuing. The property is located at: Lakeview of Largo Condominium, 14130 Rosemary Lane, 6110, Largo, FL 33774. 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 Ordinances.

The respondent(s) receive no federal funding.

II. Complainant Allegations

Francis Dandrea (CP) is a disabled male who with his wife, Dolores Dandrea (CP wife) who is also disabled, reside at 14130 Rosemary Lane #6110, Largo, FL 33774. The Property is governed by Lakeview of Largo Condominium Association, Inc. (R Association). The property is managed by Frank Fundora (R Fundora), Property Manager who represents Resource Property Management, Inc, (R Management).

In February 2013, CP and CP wife purchased the above-mentioned condominium, unit 6110. When it was purchased, the unit contained a washer and dryer. CP who had previously owned another unit in the complex, before making Florida the couple's permanent home, advised the washer and dryer was a main selling point when the CP purchased the unit.

The CP and (CP wife) admittedly did not read through the condominium documents and relay that they were unaware that washer machines and dryers were prohibited. CP advises that in October 2018, (R Fundora) relayed to him that someone had told him that there was a washer/dryer in CP's unit. CP not knowing it was prohibited advised (R Fundora) that there was in fact a washer/dryer in his unit. CP was then fined a total of \$1000.00 and since he has not paid the fine, (R Association) has suspended CP's rights and privileges to use all common and recreation areas in the complex, where he is an owner until the washer/dryer is removed.

The CP is disabled and (CP wife) is also disabled with debilitating medical conditions. CP has requested a reasonable accommodation for use of the washer/dryer in his unit as neither CP or (CP wife) can physically carry the laundry to the laundry rooms. CP has provided medical documentation from his Veterans Affairs physician and other medical staff to (R Fundora) and (R Management) to facilitate the reasonable accommodation request. The request for reasonable accommodation was denied.

CP who is disabled, is now facing a medical issue where he must provide care for (CP wife) and will face unnecessary hardship because he cannot transport laundry out of his unit.

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

III. Respondent Defenses

On or about October 23, 2018, Complainant admitted to having a washer/dryer in the unit, which violates the clear prohibition against same in Rule VIII. Mr. D'Andrea said nothing then about a disability or medical need for having the washer/dryer in his unit. He did not make an accommodation request to keep it. In a letter dated October 24, 2018, Complainants were instructed to stop using the washer/dryer and to arrange for immediate removal. CP's refused to comply.

In a letter dated January 18, 2019, CP's were notified of their required attendance at a meeting of the Association's Compliance Committee to discuss this rules violation. CP's provided no justification for their continued use of the washer/dryer, and the Committee found CP's in violation of the Rule. They were given 14 days to remove the washer/dryer, after which they were to be fined \$100 per day, up to a maximum total of \$1,000. CPs did not mention any disability or medical need for having a washer/dryer.

On March 14, 2019, CPs were notified that they were being fined for their violation of the Rule and their refusal to comply with the demand to remove the washer/dryer. CPs specifically advised that they would not do so, and they said nothing about a disability or medical need.

On April 19, 2019, CP's submitted an accommodation request to keep the washer/dryer in their unit, stating that their doctors had recommended that they not get rid of it for medical reasons. Dr. Brvenik wrote that Ms. D'Andrea suffered from urinary incontinence, causing frequent accidents, and from polymyalgia rheumatica, making it difficult for the patient to walk down the hall to the community washer and dryer. As such, Dr. Brvenik opined that it would be medically necessary for her to have a washer/dryer in her unit. Dr. Brvenik did not provide any explanation for how either of these conditions sufficiently limit performance of activities of daily living or how it is that the conditions adversely impact her ability to walk down the hall to the community washer and dryer but not her ability to walk around the community, distances significantly further than the community washers and dryers, which she is routinely seen doing.

Dr. Hull advised that Mr. D'Andrea suffers from generalized arthritis, emphysema and intermittent atrial fibrillation. He simply stated that removing the washer/dryer would create a physical hardship and was not recommended. Dr. Hull provided no explanation as to how any of these conditions limited him in his activities of daily living sufficient to constitute a disability. Mr. D'Andrea is also seen walking distances well in excess of the distance from their unit to the community laundry room.

Given the total lack of any logical explanation, detail or clarity from both doctors as to why keeping the washer/dryer in their unit would be medically necessary, and given the Association's personal knowledge of CP's ability to regularly walk distances well in excess of that between their unit and the laundry room, the Association determined that it would be necessary to request additional information both from CPs and their doctors. Before the Association could do that, CPs filed their discrimination complaint, initiating a process involving submission of a claim to a liability insurer for the Association and retention of counsel.

IV. Findings and Conclusions

In order to prevail in a reasonable accommodation complaint based on disability, the following elements must be satisfied: (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 a reasonable accommodation in the rules, policies, practices, or services of

the Respondent; (4) The requested accommodation 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 accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.

In order for the first element to be fulfilled, the evidence must show that the Complainant has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as being disabled.

Complainants submitted a note from Mrs. D'Andrea's nurse practitioner, which states that she needs a washer/dryer in unit because of her disabilities. The note cites polymyalgia rheumatica, which causes severe joint pain and weakness. It severely limits her ability to walk, stand, and lift. (D-4)

The note also states that Mrs. D'Andrea has issues with urinary incontinence. (D-4) This negatively impacts a major bodily function; namely, her ability to control her urination.

Based on the information submitted, we conclude that the first element has been met. Based on multiple medical impairments that limit her walking, standing, lifting, and ability to control her urine, Mrs. D'Andrea is disabled within the meaning of Chapter 70 of Pinellas County Code of County Ordinances.

Turning to the second element, it must be shown that the Respondent association knew or reasonable should have known that the Complainant is a person with a disability. In a letter from Complainant Francis D'Andrea, dated April 19, 2019 and received by association manager Frank Fundora on April 22, 2019, Complainants provided doctor notes notifying Respondents that Mr. and Mrs. D'Andrea have physical impairments that may impact one or more major life activities. Specifically, a December 12, 2018 from Mrs. D'Andrea's physician states that she has multiple medical conditions, including urinary incontinence and polymyalgia rheumatica. The note specifically refers to Mrs. D'Andrea's difficulties in walking down the hall to perform laundry duties (E-3)

Based on the foregoing, we conclude that Respondent was aware that Mrs. D'Andrea is a person with a disability. The second element has been met.

The third element has been satisfied as well. The aforementioned letter, dated April 19, 2019, specifically requested a reasonable accommodation to Respondent's rule prohibiting washers and dryers. The Complainants cited a medical reason for this request, meaning that Respondents were fully aware that this was a disabled reasonable accommodation request.

In order for the fourth element to be met, it must be shown that the requested accommodation may be necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling. In the original doctor's note received by association manager Frank Fundora, Dr. Brvenik cites Mrs. D'Andrea's urinary incontinence and the importance of having a washer and dryer nearby. The note also cites Mrs. D'Andrea's polymyalgia rheumatica, which makes it difficult for her to walk down the hall to the washer and dryer units. The note concludes, "It would be medically necessary for her to have washer and dryer in her apartment." Therefore, we conclude that Complainant fulfilled the fourth element has been met. The evidence is sufficient to conclude that the requested accommodation may be necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling.

In addition, Mrs. D'Andrea submitted a note to this office from her nurse practitioner dated June 21, 2019. This note goes into more detail, explaining that polymyalgia rheumatica causes severe joint pain and weakness. It severely limits her ability to walk, stand, and lift. With regard to the urinary incontinence, Mrs. D'Andrea must wash her clothes, towels, and bed linens frequently. The

washer and dryer are necessary for sanitary purposes. The note further explains that due to Mrs. D'Andrea's polymyalgia rheumatica, she is unable to lift and does not have the strength to tote a laundry basket. Nor can she stand for prolonged periods to do laundry. (D-4)

Still, in order to prevail, it must be demonstrated that Respondent refused the Complainant's request or failed to respond to delayed their response to the request.

Within a letter from manager Frank Fundora dated April 24, 2019 (two days after receipt of the Complainants' accommodation request), he writes, "The board has declined your request for an accommodation to maintain the appliances." (E-2)

The fifth and final element has been met. The Respondent refused the Complainants' request.

Respondent proffers a couple of defenses in the Answer to the complaint. In this Answer, Respondent claims that after receipt of the April 19 note, the association determined that it should request additional information from Complainants and their doctors. Before they could do so, the D'Andreas filed this Fair Housing Complaint. (E-1) It is note that this assertion conflicts with the evidence in the file, which contains Mr. Fundora's outright refusal to allow the accommodation. (E-2)

Respondent also questions Mrs. D'Andrea's need for the accommodation, asserting that Mrs. D'Andrea walks to other places within the community (parking lot, clubhouse, bulletin boards) that are a greater distance from her unit than the laundry room. (E-1)

We refer again to the June 21, 2019 note from Mrs. D'Andrea's nurse practitioner, which explains how she has frequent accidents due to her urinary incontinence. This requires her to perform laundry duties frequently. This entails the washing of clothes, towels, and linens. It also refers to Mrs. D'Andrea's limitations in carrying a laundry basket, standing, and walking. However, there is no need to question the legitimacy of Mrs. D'Andrea's need for an accommodation, as this was already discussed in our analysis of the fourth element above. Furthermore, if Respondent was uncertain as to Mrs. D'Andrea's need for accommodation and desired additional documentation, this could have been accomplished by engaging in the interactive process in lieu of a swift denial.

Based on the evidence in the file, we conclude that Respondent refused to accommodation Mrs. D'Andrea's disability in violation of Chapter 70 of the Pinellas County Code of County Ordinances.

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:

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

Jeff O. Lill CAUSE 6/26/2018