

DATE: October 20, 2022

DETERMINATION

Case Name: Azeen Sarkhosh vs. Hunter's Glen Condominium Association Inc., et al

Case Numbers: HUD 04 – 22 – 2195 – 8; PC – 22 – 050

I. JURISDICTION:

Complainant Azeen Sarkhosh (Cp Sarkhosh) filed a timely fair housing complaint on July 25, 2022. She alleged the Respondents failed to reasonably accommodate her disability and refused to sell a condo in violation of Sections 804(f)(1)(A) and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988. The most recent act of discrimination is alleged to have occurred on May 25, 2022. The Respondents are Hunter's Glen Condominium Association and PHP Management Services, LLC. They do not receive federal funds. All jurisdictional requirements have been met.

II. COMPLAINANT'S ALLEGATIONS:

The Cp Sarkhosh asserts that she is a disabled woman that wanted to purchase the property located at 2045 Hunter's Glen Drive Apt. #525 Dunedin, FL, 34698. The property is owned by Mr. Scott Tsujita and governed by Hunter's Glen Condominium Association Inc. On April 24, 2022, Cp Sarkhosh had an executed contract with a closing date of May 25, 2022. She submitted the homeowner's association application, a copy of the executed contract, a check in the amount of \$150 and a copy of the ESA documentation. Cp Sarkhosh stated that the application form indicated that she would receive either an approval or denial letter within 20 days from receipt of the documents she submitted, giving an estimated response date of May 24, 2022, a day prior to the closing date. Instead, on May 24, 2022, Cp Sarkhosh was advised that the ESA status was still under review, and the Respondents did not know when it would be completed. The following day, Cp Sarkhosh was advised by her broker that the purchase could not be completed, since her application for approval had not been granted. Therefore, the sales contract had to be cancelled in order to minimize her losses. After the contract was cancelled, she received an e-mail stating that she had been approved; however, the ESA was still under review. Cp Sarkhosh states that the denial of a reasonable accommodation for the ESA is a violation of her rights.

III. RESPONDENTS' DEFENSES:

Hunter's Glen Condominium Association, Inc. asserts that the Complainant's allegations fail to establish that the Respondents violated the Act. Additionally, there is no evidence that the Respondents willfully failed or refused to grant a reasonable accommodation, delayed in granting such reasonable accommodation, or otherwise required documentation that does not expressly conform with Florida Statute. However, there is evidence that the Association timely reviewed, considered, and corresponded with the Complainant and the

Association intend to grant the reasonable accommodation in no less than five (5) business days of receipt as set forth in Certificate of Amendment.

PHP Management employs staff to assist not-for-profit homeowner and condominium associations with the financial, maintenance, and administrative duties of operating the corporation. Also, PHP Management is engaged to assist the Board of Directors of Hunter's Glen Condominium Association, Inc. with their financial, maintenance, and ministerial duties and is not involved in making any business decisions, and specifically do not approve or disapprove sales applications nor do they approve or disapprove reasonable accommodation requests.

IV. FINDINGS:

The timeline of events are as follows:

April 24, 2022	Sales contract executed with a closing date of May 25, 2022.
April 28, 2022	Cp Sarkhosh mailed application, sales contract, driver's license and ESA status certificate to Condominium Associates.
May 2, 2022	Cp Sarkhosh's application was date stamped May 2, 2022. The form indicates that she has an ESA/dog that weighs 50 pounds.
May 12, 2022	Ricky Torres of Condominium Associates requested a copy of the Cp Sarkhosh's driver's license. It was emailed within minutes.
May 17, 2022	Mr. Torres asked Cp Sarkhosh for a copy of the sales contract. It was emailed within minutes.
May 20, 2022	Cp Sarkhosh emailed Mr. Torres to follow up on the status of her application.
May 23, 2022	Mr. Torres informed Cp Sarkhosh that her application had not been approved, as the BOD President had Covid the prior week. Additionally, he stated that the dog weighs more than what the governing documents allow, so additional information may be required.
May 23, 2022	On the afternoon of the 23 rd , Cp Sarkhosh spoke to Benjamin Epifanio. He explained that her dog's ESA status was under review with the BOD and their attorney.
May 24, 2022	The Respondent's attorney, Robert Todd notified Cp Sarkhosh that her ESA was still under review.
May 24, 2022	After the conversation with Attorney Todd, Cp Sarkhosh phoned Mr. Epifanio to ask what additional documentation was needed to remedy the situation concerning the ESA. She was advised to furnish a letter explaining why the dog was an ESA along with a medical diagnosis. Shortly after the call ended, Cp Sarkhosh emailed Mr. Benjamin the letter from her therapist explaining the dog's ESA status and her medical needs.
May 25, 2022	Closing Day – No contact from the Respondent.
May 25, 2022	Cp Sarkhosh cancelled the sales contract considering there was no guarantee that she would be approved. She requested a refund due

May 26, 2022	to the Association not approving or denying her application within the timeframe allowed. Cp Sarkhosh received an email from Mr. Epifanio stating that she was personally approved; however, the ESA was still under review. He also mentioned being aware that she had cancelled the sales contract.
June 1, 2022	Cp Sarkhosh received a letter from Attorney Todd stating that she had been approved, but the dog was under review. He included her approval letter which had been back dated to May 25, 2022, and an animal form that needed to be completed. Neither were provided or requested prior to the email.

V. ANALYSIS:

To prevail in a failure to accommodate claim, the following elements must be met:

1. Cp Sarkhosh is a person with a disability.
2. The Respondent knew or should have known of the disability.
3. Cp Sarkhosh requested an accommodation in the rules, policies, practices or services of the Respondent.
4. The requested accommodation may be necessary to afford Cp Sarkhosh an equal opportunity to use and enjoy the dwelling.
5. The Respondent refused Cp Sarkhosh's request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.

Cp Sarkhosh has a health disorder that substantially limits one or more major life impairment. This was verified by a statement written by her therapist. As such, she meets the definition of a person with a disability as described by the Fair Housing Act. The first element has been met.

On May 2, 2022, the Respondent was put on notice of the disability during the application process. The second element has been met.

Cp Sarkhosh next must prove that she requested an accommodation in the Respondent's rules. The Association's governing documents restrict pets to two animals, each weighing no more than twenty pounds at maturity. During the application process Cp Sarkhosh disclosed having a dog that serves as an ESA. Cp Sarkhosh's ESA is more than twice the limit of the Respondent's weight restriction. The third element has been met.

Turning to the fourth element, Cp Sarkhosh must prove that the accommodation is a necessity in order to enjoy the condo. A portion of the statement written from her therapist reads, this emotional support animal is necessary to provide therapeutic emotional support that alleviates symptoms of my client's impairment, and to enhance my client's ability to function and live independently and fully use and enjoy the dwelling unit you own and/or administer. My client's emotional support animal helps them sleep and deal with their anxiety and pain associated with their disability. The fourth element has been met.

Finally, Cp Sarkhosh must prove that the Respondent delayed approving the ESA, resulting in her having to cancel the contract for purchase of the condo.

In rebuttal the Respondent asserts that the Association has received requests for approval of reasonable accommodations for emotional support animals in the past, and such requests have been granted upon compliance with the provisions of Florida Statute 760.27.

In the instance, the Respondent claims that the Cp Sarkhosh sent to the Association management, a request for a reasonable accommodation related to a non-apparent disability. It was sent via email on May 24, 2022, at 4:07 p.m. to management, and from management Respondent via email on May 24, 2022, at 7:13 p.m. The Respondent provided written response to the request and intent to approve the accommodation no more than five business days after receipt of the documentation set forth in Exhibit B. The Association's intent to approve the requested accommodation is expressly stated, and request for clarification that the animal to be granted the accommodation was the animal referenced in her request, as both the name and weight of the animal were different was directed to Cp Sarkhosh. Cp Sarkhosh not only received and acknowledged receipt of such correspondence intending to grant the accommodation but also provided clarification of both the name and weight discrepancies present in the request and accommodation paperwork.

The chronology and evidence furnished demonstrates that Cp Sarkhosh's application had not been approved within the Respondent's prescribed timeframe of 20 days after receipt of application or within five days following an interview. Remarkably, the application was dated stamped May 2, 2022, which noted "ESA Certified" and included an "USA Service Dogs" registration. In addition, Cp Sarkosh's broker, Beverly Grace communicated with RP Epifanio on May 25, 2022, requesting an update on the Cp's approval as the closing was scheduled for 12:30pm adding that the Cp has provided the requested documentation and "Approving her without her ESD isn't an option."

Then on, On June 1, 2022, Attorney Todd was still requesting additional information about the ESA and questioning its name and weight. The fourth and final element has been met.

Considering the above, it is concluded that Cp Sarkhosh has been denied her accommodation request.

In a refusal to sell case, in which Cp Sarkhosh applied for and was denied the dwelling, all four elements must be met:

1. Cp Sarkhosh is a member of a protected class.
2. Cp Sarkhosh applied for and was qualified to purchase the dwelling.
3. Cp Sarkhosh's application was not approved.
4. Additional evidence exists indicating discriminatory intent, such as suspicious timing, procedural irregularities, the house unexpectedly being taken off the market, or questionable statements by non-decision makers.

Cp Sarkhosh has a health disorder that substantially limits one or more major life impairment. This was verified by a statement written by her therapist. As such, she meets the definition of a person with a disability as described by the Fair Housing Act. The first element has been met.

Cp Sarkhosh was in contract to purchase the condo and met the qualifications to purchase the dwelling. The second element has been met.

Cp Sarkhosh's application was not approved in a timely fashion; thus, resulting in the loss of the purchase of a condo. According to Cp Sarkosh the sales contract had to be cancelled in order to minimize her losses. According to an email provided, Cp Sarkosh's broker and the title company on May 25, 2022, stating, "I spoke with an attorney on the Realtor Hotline earlier and was told that because she had no approval 5 days before closing she was entitled to cancel and get a full refund of her EMD. It's very unfortunate as she really wanted the place but I was told this morning that it could be up to an additional 20 days for a determination on the ESA and that they could still say no. I was also told that the HOA President doesn't like the idea of the dog at all and looking to fight it with their attorney. It would cost Azeen \$250 for a 7 day extension, no idea after that and just too risky to pay for possibly and more than probably nothing. As I explained to Rick, she's out of a place to live, appraisal, home inspection, fees, etc but most importantly, she's out of an attractive interest rate. I can't see them getting better in the near future." The third element has been met.

Turning to the final element, Cp Sarkhosh must establish that the Respondent(s) was motivated by a discriminatory intent. In this instance, the evidence must demonstrate suspicious and/or questionable timing. Here, on May 26th Mr. Epifanio notified Cp Sarkhosh that she was personally approved but not the ESA. Additionally, on June 1st Attorney Todd was still seeking "to cure any ambiguities" with the requested accommodation. Though he furnished Cp Sarkhosh with a Certificate of Approval backdated to May 25, 2022, the Respondent was still seeking proof of compliance requirements for licensing and vaccination records, resulting in Cp Sarkhosh's application not being approved within 20 days. The final element has been met.

The investigation revealed that Respondent PHP Management is engaged to assist the Board of Directors with their financial, maintenance, and ministerial duties. PHP is not involved in making any business decisions, and specifically do not approve or disapprove sales applications nor do they approve or disapprove reasonable accommodation requests for Hunter's Glen Condominium, Inc., its Board of Directors, or its members. In the matter of Azeen Sarkhosh, PHP Management was not involved or made any decision as it relates to the complaint. They had no role in the decision process on behalf of the Association, or were they asked by the Association to participate in such decisions, as all of these decisions are outside the scope of their authority. Therefore, PHP Management did not discriminatorily refuse to approve a sale; refuse to make a reasonable accommodation; or demonstrate discriminatory behavior with regard to a person with a disability.

VI. CONCLUSION:

In conclusion, based on the foregoing, the PCOHR concludes there is “Reasonable Cause” that Hunter’s Glen Condominium Association has violated Sections 804(f)(1)(A) and 804(f) (3)(B). However, there is “No Reasonable Cause” to believe that PHP Management engaged in a discriminatory act, as they had no decision-making authority related to Cp Sarkhosh’s housing transaction.

VII. 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 inappropriate 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 cost 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 requests 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 PCOHR:

Betina Baron
Betina Baron, Compliance Manager
Pinellas County Office of Human Rights

10/24/22
Date