

February 23, 2017

**Determination**

**Case Name:** Arthur Basner v. Heritage Village & Inn, LLC

**Case Number:** 04-17-6733-8

I. Jurisdiction

A complaint was filed with the Pinellas County Office of Human Rights on January 12, 2017 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; Otherwise deny or make housing unavailable; 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 November 17, 2016, and is continuing. The property is located at: Heritage Village & Inn, LLC, 12840 Seminole Blvd. #27, Largo, FL 33778. 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.

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

II. Complainant Allegations

Arthur Basner (CP) a disabled male with a service dog who resides at 12840 Seminole Blvd. # 27, Largo, FL 33778. The property is owned by Michael X. Erbe (R) d/b/a Heritage Village & Inn, LLC.

CP states on September 22, 2016 he received verbal approval to move into said unit. CP moved into the unit on September 23, 2016. CP states on September 28, 2016 he was told he would need to move out because he had a dog (service dog). That same day (September 28, 2016) CP submitted a reasonable accommodation request to have his service dog in the unit. CP states he paid his lot rent on October 03, 2016. On October 10, 2016 CP states he was given a 7 day notice to vacate premises. CP states on November 02, 2016 he was told he would be getting evicted when he went to pay his lot rent. On November 17, 2016 CP received an eviction notice.

CP states he is aware of other dogs that reside in the park.

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

III. Respondent Defenses

Heritage Village & Inn's answer, from Michael X. Erbe

Respondent states that Virginia Hill was the owner of Lot 27 until she sold it on 9/23/16. Randy Rainbolt from Legacy Six was approved to purchase her mobile. He has purchased three other mobiles in this park. He purchases mobiles and then leases to own them out.

Mr. Basner completed his application on 9/12/16. Michael Erbe states that he personally interviewed Mr. Basner as he does all applicants. Ms. Basner was asked multiple times if he owned a dog which he denied. Mr. Erbe states that Mr. Basner never mentioned having any disabilities. Ms. Basner informed Mr. Erbe that he was a street vendor at the Clearwater pier.

During Mr. Basner's background check his arrest record was found to be unacceptable to Heritage Village & Inn and he was denied approval. They informed Mr. Rainbolt of this denial on 9/28/16. Despite this denial, Mr. Rainbolt allowed Mr. Basner to move into this mobile home on 9/23/16. Mr. Basner states in his complaint that he was given verbal permission to move in on 9/22. It was not given by Heritage Village & Inn.

On approximately 9/28/16, Mr. Erbe received a phone call from the President of the Home Owners Association, Stan Velk. He lives in Lot 26 and informed Mr. Erbe that there was a large bull dog running throughout the park loose and that he thinks it came from Lot 27.

In addition to Mr. Basner's background check, Mr. Erbe states that he lied to him and falsified his application. Mr. Basner never mentioned to him or put on his application that he has a dog or that he has a disability that requires a service dog. During Mr. Erbe's interview with Mr. Basner, he asked the complainant multiple times if he owned a dog. On 10/11/16, Mr. Basner hand delivered a notice requesting reasonable accommodations to allow a service animal and included paperwork.

Due to never being approved and moving in despite this disapproval, Mr. Erbe states that he retained an attorney and filed an ejection lawsuit. Mr. Rainbolt, the owner of Lot 27, has not paid his lot rent for two months and they have filed an eviction against him.

Mr. Erbe adds that he has one current resident with a service dog and he is in the process of accepting another resident. In those situations, he was informed during the interview and application process.

#### IV. Findings and Conclusions

##### INVESTIGATIVE FINDINGS

Randy Rainbolt met the Complainant, Arthur Basner, when Mr. Basner was working as a street performer at Clearwater Beach. Mr. Rainbolt purchases homes and arranges/finances sales to potential homeowners. Mr. Rainbolt learned that Mr. Basner was living in his van with his dog. He states that he learned that Mr. Basner's dog was his service animal shortly after meeting him. (E-2)

Mr. Rainbolt had done business with Michael Erbe, the owner of Heritage Village & Inn, on two prior occasions. He reached out to Mr. Erbe to find out if any mobile homes were available for purchase. At the time, none were available. However, Mr. Erbe later informed Mr. Rainbolt that Virginia Hill was seeking to move out of state and wanted to sell her home. (D-13, E-2)

The sale of Ms. Hill's home was imminent, and she dropped the title off at the Heritage Village office on or sometime before September 9, 2016. This is documented in text messages between Mr. Erbe and Mr. Rainbolt. On September 9, 2016, Mr. Erbe reminded Mr. Rainbolt that he had to conduct an interview and background check on the new resident. (D-10)

Arthur Basner met with Mr. Erbe on September 12, 2016. Both parties acknowledge that this meeting took place. It is also undisputed that Mr. Basner did not bring his dog into the office. He asserts that he knew that the owner didn't want dogs. (C-11, D-13)

What took place during the September 12, 2016 is disputed. Mr. Erbe asserts that he went through the application and discussed the rules. He pointed to the rules which state that no dogs, cats, or kids are allowed. Mr. Erbe asserts that Mr. Basner did not disclose that he had a dog. (D-13)

Mr. Basner, on the other hand, asserts that he did not answer any question untruthfully. He states that he was asked if he had any pets. Mr. Basner explains that he is aware that a service animal is not a pet, so he did not lie if he told Mr. Erbe that he didn't have a pet. (C-11)

What happened thereafter is also in dispute. Mr. Basner asserts that he called Mr. Erbe a few days later (after September 12) to inquire upon the status of his application, and that he was told that he could plan on moving in. (C-11) Mr. Erbe, conversely, asserts that he never gave Mr. Basner verbal approval to move in. (D-13)

Mr. Erbe left for a trip to New Jersey on September 22. (D-15) He asserts that money was exchanged in the Heritage Village office on September 23, and then his phone started blowing up. Mr. Erbe asserts that Stan Velk, the President of the homeowners' association, called to ask him if he knew that someone was moving into Virginia Hill's home. Mr. Erbe said that Mr. Velk also asked him if he knew that the new resident had a dog. Mr. Erbe said he was unaware of that. In Mr. Erbe's answer to the complaint, he asserts that Mr. Velk told him that there was a large bulldog running around and he thinks that it came from Mr. Basner's unit. (D-13)

Stan Velk cannot recall the time frame (he initially thought that Mr. Basner may have moved in at the end of November), but he recalls meeting Mr. Basner as he was moving in. According to Mr. Velk, he approached Mr. Basner, introduced himself as the association president, and offered him a copy of the prospectus. Mr. Basner was asked by Mr. Velk if he had a dog, and he said he has a service animal. Mr. Velk told Mr. Basner that he would have to take it up with the owner (E-4) Note-Mr. Velk asserts that, as association president, he does not have any input in the approval or rejection of applicants. (E-4)

Mr. Basner also states that he told Mr. Velk that he has a service animal (C-12)

The chain of events that follow are also in dispute. Mr. Velk states that shortly after Mr. Erbe returned from being away (Flight information reveals that Mr. Erbe returned from New Jersey on September 27. (D-15)) He told Mr. Erbe that Arthur Basner claims that his dog is a service animal. Mr. Velk states that this conversation took place within a week after Mr. Basner moved in. According to Mr. Velk, Michael Erbe said that he would "look into it". (E-4)

Mr. Erbe recalls the telephonic conversation that he had with Mr. Velk on September 23, but when asked if Mr. Velk told him that Arthur Basner claimed to have a service animal, he replied, "That I don't know." (D-13)

There is yet another piece of disputed information. Mr. Basner asserts that on September 28, 2016, Michael Erbe knocked on his door and asked if he had a dog. Mr. Basner told him yes, but tried to explain that it is a service animal. According to Mr. Basner, he showed Mr. Erbe a certificate describing Ellie Mae as a service dog. (C-11, C-4) The date on this certificate is September 6, 2016. (C-4) Mr. Basner asserts that, when he presented this certificate to Mr. Erbe, he was told that it's not worth the paper that it's printed on, and anyone can print it off the Internet. (C-12)

Mr. Erbe flatly denies visiting Mr. Basner at his home (D-13).

Turning back to the approval process, in a text message dated September 22, Mr. Rainbolt asked Mr. Erbe if Art was approved. Mr. Erbe did not respond until September 28, when he texted "No he isn't / he lied to me in my office and he has a dog / Art isn't approved." (D-10)

In a letter dated September 30, 2016, Mr. Erbe informed Randy Rainbolt that "Heritage Village & Inn will have to deny Arthur Basner from renting Unit 27 due to his background check. Heritage Village & Inn is an adult community, no kids no pets." (D-2)

When asked to produce a copy of the background check, Mr. Erbe provided a copy of an Arthur Basner arrest from August 8, 2015 for Lodging In Vehicle. This arrest report was printed on October 5, 2016. (D-14)

In a letter dated October 6, 2016, attorney Barbara M. Brown, Esq., sent a letter to Mr. Basner

concerning his unauthorized occupancy of a residential unit. It states that his application was denied on September 30, 2016 for providing false information on his application. Despite this denial, Mr. Basner proceeded to move in and has occupied it continuously since the receipt of his denial.

A 7-Day Notice to Vacate was dated October 7, 2016 and served to Mr. Basner on October 10, 2016. It explains that this action is taken because Mr. Basner is not authorized to occupy the unit as his rental application was denied on September 30 for providing false information. (C-7)

Mr. Erbe further asserts that he was not informed of Mr. Basner's reasonable accommodation request until October 11, 2016, when his office employee, Sandy Menold, signed it as received (D-11) Mr. Menold explains that he signs everything in on the dates that they are received, but he cannot recall Mr. Basner dropping off this document. (E-3) It is noted that the date of the letter is September 28, 2016. In the letter, Mr. Basner writes that he is requesting "reasonable special accommodations to allow me to have my service animal at my residence 12840 Seminole Blvd. Lot 27. Largo FL 33778. My service animal assists me with a disability. Your cooperation and understanding of this matter would be greatly appreciated." (D-11)

An Ejection/Tenant Eviction lawsuit was filed by Heritage Village against Mr. Basker on November 3, 2016. (C-7)

Mr. Basner acquired the title of the mobile home on December 15, 2016. (D-8)

Additionally, resident Candi Mintz states that she moved into Heritage Village in June 2015. Ms. Mintz states that she informed Mr. Erbe that she has a service animal and disclosed the animal on the application (E-1). Mr. Erbe provided a copy of Ms. Mintz's application, which confirms this (D-6). Ms. Mintz states that Mr. Erbe hasn't given her any problems because she has a service animal (E-1).

#### ELEMENTS OF PROOF

Mr. Basner alleges that on September 22, 2016, he received verbal approval to move into a mobile home on Respondent's property. He also alleges that he was told to move out on September 28 because he has a dog. Mr. Basner asserts that he submitted a reasonable accommodation request to have his service dog in the unit. He alleges that he paid his lot rent on October 3, 2016, and that he was served with a 7-day notice to vacate on October 10. When he went to pay rent on November 2, 2016, he was told that he would be evicted. The court is currently considering Respondent's ejection action.

The main issue, and the issue from which all other issues sprout, is the reasonable accommodation issue. In order for Mr. Basner to prevail in a reasonable accommodation complaint, the following *prima facie* elements must be met: (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; (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; and (6) Respondent's refusal made housing unavailable to the Complainant.

Mr. Basner has profound hearing loss in his right ear and moderate hearing loss in his left ear. He states that he had an on-the-job injury in 1985. A hearing test was conducted by Sound Advice Hearing Solutions on February 14, 2017, and included the comment, "Client has a mild to moderate loss on L+ and non responsive on R+." (C-11, C-12, C-14) We conclude that Mr. Basner is a person with a disability as defined by Chapter 70 of the Pinellas County Code because he is

substantially limited in his ability to hear.

Turning to the second *prima facie* element, it must be established that the Respondent knew or reasonably should have known that the Complainant is a person with a disability. There is sufficient evidence to conclude that Michael Erbe knew that Mr. Basner was making a reasonable accommodation request. It is disputed; however, when he became aware of this request. It is undisputed that Mr. Basner did not bring his dog to the interview with Mr. Erbe on September 12 (C-11, D-13). Then there is a dispute as to whether Mr. Erbe visited Mr. Basner's on September 28, 2016. According to Mr. Basner, he showed Mr. Erbe a printed service dog certificate when he came to his home. (C-11) Mr. Erbe flatly denies visiting Mr. Basner at his home. (D-13) Stan Velk, the association president, was interviewed because he lives next door to Mr. Basner and purportedly called Michael Erbe when Mr. Basner was moving in. During this phone call, Mr. Velk informed Mr. Erbe that the new resident has a dog, but did not inform him at the time that it was a service animal. (E-4) Although Mr. Velk cannot remember the date of the conversation, he recalls telling Mr. Erbe that Arthur Basner told him he had a service animal. Mr. Velk recalls that this conversation took place in his presence shortly after Mr. Erbe returned from being out of town. Mr. Velk was called a second time and asked approximately how long *after* Mr. Basner's move-in did the conversation took place. He said it was within a week after Mr. Basner's move-in. (E-4) Mr. Erbe returned on September 27, 2016 (D-15), so it could have been anytime on that date or within a few days thereafter.

The certificate describing Ellie Mae as a service animal was dated September 6, 2016 (C-4) and his written reasonable accommodation request was dated September 28, 2016 (C-3). However, Mr. Erbe asserts that his office did not receive the accommodation request until October 11, 2016 (D-11).

Based on the foregoing, we can conclude that Mr. Erbe should have known that Mr. Basner is a person with a disability sometime between September 28 and October 11, 2016. At the very latest, Mr. Erbe's office received his reasonable accommodation request on October 11. Therefore, the second element of the case has been satisfied.

In order for the third *prima facie* element to be established, it must be shown that the Complainant requested a reasonable accommodation to the rules, policies, practices, or services of the Respondent. Heritage Village has a pet rule (#11) which states that "(N)o pet of any kind will be permitted in the park. Feeding stray animals is not permitted. "Seeing eye" dogs for the blind or visually impaired are not subject to this restriction." (D-7) Additionally, on the application, it reads "NO dogs No cats / No Kids" (C-9, D-3) Mr. Basner submitted a reasonable accommodation request as early as September 28 or as late as October 11, 2016. It is addressed to Mike of Heritage Village, and Mr. Basner states that he is requesting reasonable special accommodations to allow him to have his service animal at his residence. Mr. Basner asserts that his service animal assists him with his disability. (C-3, D-11) Thus, we conclude that the third *prima facie* element has also been met.

The evidence must also show that the requested accommodation may be necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling. It is noted that Mr. Basner was homeless and living in his van prior to purchasing the mobile home in Heritage Village. He states that he doesn't possess any doctor's notes linking his disability to the need for a service animal. (D-11, D-12). Mr. Basner stated that he had to borrow money from his mother to take the hearing test on February 14, 2017. Nevertheless, he was given an opportunity to articulate how his dog is necessary for him to use and enjoy the dwelling. (C-13) In response, Mr. Basner provided a list of services that his dog provides on a daily basis. At home, his dog alerts him when someone is at the door, alerts him to alarms such as smoke detectors, alarm clocks, and oven timers. The dog alerts him to sounds outside that may pose a threat. Outside, Mr. Basner states that his dog will not respond to common street noises. It alerts him to the approach of people or cars that may pose a threat or hazard. The dog protects him from people who may cause bodily harm, lets him know

what direction alarming sounds are coming from, and gives him security that allows him to function in everyday life. Furthermore, Mr. Basner states that Ellie Mae saved his life. She woke him up one night when he was sleeping in his van. Mr. Basner was under severe effects of carbon monoxide poisoning and she licked his face to wake him up. (C-12, C-13)

Although the above information was provided by Mr. Basner and not a medical provider, we conclude that he effectively articulated how his dog is necessary to afford him an equal opportunity to use and enjoy the dwelling. The fourth *prima facie* element has been met.

It must next be shown that the Respondent refused the Complainant's request to make such accommodation or failed to respond. Based on the evidence collected, there is no information to suggest that Mr. Erbe seriously considered Mr. Basner's reasonable accommodation request or engaged in any sort of interactive process. Mr. Erbe asserts that he did not receive the reasonable accommodation request until October 11 and he had already denied Mr. Basner's application in a text message on September 28 and in a letter on September 30. This defense will be discussed later in the report when we consider Mr. Erbe's purported legitimate, non-discriminatory reasons for his actions (or in this case, his non-response to the reasonable accommodation request). Mr. Basner asserts that when he attempted to show Mr. Erbe his service animal certificate, Mr. Erbe responded by saying it's not worth the paper that it's printed on and that anyone can print that from the Internet. (C-12) Even if Mr. Erbe denies having such a conversation with Mr. Basner, there is no evidence that he took any action in furtherance of addressing his request of October 11. Therefore, the fifth *prima facie* element has been satisfied.

Turning to the sixth and final *prima facie* element, it must be shown that Respondent's refusal made housing unavailable to the Complainant. We conclude that, by refusing to consider Mr. Basner's reasonable accommodation, his application was effectively denied. Therefore, the sixth element has been met.

Mr. Erbe, however, provided an answer to the allegations that calls Mr. Basner's allegations and timeline into question. According to Mr. Erbe, the application had not been approved. He also asserts that he did not give Mr. Basner verbal permission to move into the home. (D-1, D-13)

From Mr. Erbe's perspective, this case is all about truthfulness. He states that he interviews people, he looks at whether someone is being up-front with him. In this case, Mr. Erbe asserts that he went through the application with Mr. Basner. He discussed all portions of the application, including the part which says 'no dogs, no cats, no kids'. Mr. Erbe asserts that Mr. Basner did not disclose his disability or his service dog. (D-1, D-13). The best indication of Mr. Erbe's intent lies in his text message to Randy Rainbolt on September 28, 2016, in response to the question of Mr. Basner's approval. In the text message, he states, "No he isn't / he lied to me in my office and he has a dog / Art isn't approved." (D-10)

Two days after the aforementioned text message, Mr. Erbe sent a letter to Randy Rainbolt stating that Mr. Basner was denied due to his background check (D-2). The evidence demonstrates that Mr. Basner did disclose an arrest on his application (D-3). Mr. Erbe was asked to provide further information about the background check that was conducted on Mr. Basner, and he provided an arrest report that appeared to have been printed on October 5, 2016 (D-12, D-14). This was printed six days after the denial letter of September 30, and Mr. Basner was arrested for Lodging in Vehicle (the evidence already demonstrates that he was homeless and living in his van). Mr. Erbe was asked to articulate his standards of approval as they related to criminal records. He replied that there is a gray area. He looks at recent issues over the last couple of years - last five years. Mr. Erbe proceeded to give an example of a 72 year old applicant who may have had something at the age of 17 or 19. When asked if he had any written policies, Mr. Erbe acknowledged that he does not. (D-13). Therefore, we have sincere doubts that Mr. Basner's background was not the real reason for denial. (E-2)

In support of his position that Mr. Basner's denial was unrelated to his disability, he provided evidence that another applicant had disclosed her service animal on the application and was approved. (D-1, D-6). Ms. Candi Mintz was interviewed, and she confirmed that she moved in during June 2015 and that she has had no problems with Mr. Erbe because of her service animal. This is compelling evidence that weighs in the Respondent's favor.

If we break the case down to its bare essence, Mr. Erbe was upset when he learned that Arthur Basner has a dog. He articulated that displeasure in a text message directed to Randy Rainbolt on September 28 (D-10). However, the timing of that text message is peculiar. Mr. Erbe states that Stan Velk called him to inform him of the presence of the dog on September 23, while he was in New Jersey. (D-13) It makes sense that Mr. Erbe would not conduct any official business until returning on September 27. When we look closely at Mr. Basner's allegations (and Mr. Velk's witness statement) during that time frame in the end of September, we can reasonably conclude that the following took place:

September 27 - Mr. Erbe returns from New Jersey.

Shortly thereafter (date unknown, but probably in late September), Mr. Velk asserts that he informed Mr. Erbe that Arthur Basner told him he had a service animal. According to Mr. Velk, Mr. Erbe said he would look into it.

September 28 - Mr. Basner asserts that Mr. Erbe spoke to him about the dog, and that he informed him that it was a service animal. He asserts that he showed Mr. Erbe the service animal certificate that day (dated September 6). The file also contains a reasonable accommodation request dated September 28 (which Mr. Erbe claims to have not received until October 11).

September 30 - Denial letter is sent to Mr. Rainbolt, citing untruthfulness and background.

October 5 - Arrest report is printed.

This is a difficult case, with both sides presenting compelling arguments. On the Respondent's side, his anger at Mr. Basner's lack of forthrightness during the interview process is not to be minimized. Additionally, there is evidence that another applicant with a service animal was approved prior to Mr. Basner's application.

But on the Complainant's side, he asserts that he was *not* untruthful and answered honestly when asked if he had a pet. Mr. Basner asserts (correctly) that a service animal is not a pet, and that he only answered the questions that were posed to him.

Even if we conclude that Mr. Basner was deceptive during the interview, there is sufficient evidence that he disclosed his dog's status as a service animal in a timely manner. He moved in on September 23, and the dog's status as a service animal was presented to Mr. Erbe sometime in the end of September (E-4).

Mr. Erbe made no attempt to engage in an interactive process to determine whether Ellie Mae was necessary for Mr. Basner to use and enjoy his property. Instead, he commenced ejection proceedings against Mr. Basner. This effectively made housing unavailable to Mr. Basner.

Mr. Erbe's assertion that Mr. Basner's background was a factor is tenuous. Mr. Erbe only produced an arrest record (no conviction) for Lodging in Vehicle, and this record was printed after he announced that Mr. Basner's application was denied.

Based on the evidence collected, we conclude that Mr. Basner was denied a reasonable accommodation for his disability in violation of Chapter 70 of the Pinellas County Code, which

effectively made housing unavailable.

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

*Reasonable Cause*  
*Paul Valenti, Director, PCOHR*  
*2/24/17*