

April 14, 2020

Determination

Case Name: Gregory Blais V. Bayway Isles-Point Brittany Three Corporation, Inc.

Case Number: 04-20-0295-8; PC-20-009

I. Jurisdiction

A complaint was filed on January 17, 2020 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory acts under Section 818 (coercion, Etc.); 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 January 06, 2020. The property is located at: Bayway Isles-Point Brittany Three, 5130 Brittany Dr. S , 806, St. Petersburg, FL 33715. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida and Sections 818, and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The respondent(s) receive no federal funding.

II. Complainant Allegations

Gregory Blais (CP) is a disabled male veteran who resides at 5130 Brittany Dr. S #806, St. Petersburg, FL 33715. The Property is owned by Matthew Blais and Heidi Blais. The property is governed by Bayway Isles-Point Brittany Three Corporation, Inc. (R Association).

CP alleges that for approximately five (5) years, (R Association) has engaged in an ongoing course of conduct that is harassing and discriminatory based on the CP's need to drive a truck, in lieu of a car because of his medical disabilities.

On November 6, 2019, CP received a letter from the attorney representing (R Association) advising that his vehicle does not meet the standards and regulations of (R Association). CP alleges the letter stated, "Item 1 I had a spare tire on the right side rear and didn't match the other tires Rule #8 #2 There was a small dent in left front fender Rule #8 #3 There are items in the bed of my truck Rule #3."

"On 11/23/2019 They had my truck from the visitors parking lot where I had been parking for the past 5 years. Glen Ball, Don Blouin (R Association) witnessed the truck getting towed they had it towed." "They said that since my truck was towed that I was not allowed to park anywhere on Point Brittany Property. The President of Board while out Town told the rest of the Board members That if my truck was seen on the property it is to be towed after my Parents spent money they didn't have to spend and the hardship it has caused my parents and me."

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

III. Respondent Defenses

Rp asserts that the CP had no authority to reside at the property and is no longer residing in the unit. The homeowner, which happens to be the CP's brother, had him evicted. Even if the CP had a valid claim, the Rp would have denied his RA request because he has been seen driving a Focus,

walking over a half a mile to the corner store and climbing a ladder (a pic was included). Each unit has one parking spot and the additional 18 parking spaces are reserved for guests and contractors. Two units have owners/residents with more than one vehicle parked in a guest space. CP and the other unit owner had been grandfathered in and permitted to park in a guest space. Upon fining the CP for violating the rules (truck needing repairs), Rp revoked his grandfathered status and he was no longer permitted to park in the guest space. So, if the CP still resided at the Association he would not be permitted to park in a guest space; however, given that he has been evicted, the question whether CP should be granted some accommodation to park on Rp's property is moot.

IV. Findings and Conclusions

INVESTIGATIVE FINDINGS

- Complainant (CP), Gregory Blais, moved in with his parents in 2014. The condo is owned by his brother, Matthew Blais. (B-5)
- Between 2014 and 2019, the CP was permitted to park his truck in a visitor's spot. During and throughout his tenancy he furnished the Respondent with a number of disability statements so he could continue parking the truck in a visitor's spot. (B-5)
- On November 6, 2019, the CP received a letter from the Association's attorney advising that the truck did not meet the standards and regulations of the Association. It had a spare tire, small dent and there were items in the bed of the truck. (B-1)
- The truck was ultimately towed on November 23, 2019, as a result of the CP not complying with the Associations standards and regulations prior to the deadline. Additionally, the CP lost his privilege of being able to park in the visitor's spot. (B-1)
- After the repairs & alterations were made to the truck, the CP requested another reasonable accommodation (RA) in December 2019, asking that he be permitted to park his truck in a visitor's spot again. He submitted a letter from a VA doctor indicating that he has been a patient since 2015 and due to his physical and mental disability it is clinically recommended that he be able to park near his home. (C-1)
- On December 27, 2019, the Respondent acknowledged receipt of the CP's RA request. However, instead of allowing him to continue to park in a visitor's spot, he was told to use the spot that was assigned to his unit – which had been reserved for his elderly parents' vehicle. (C-1)
- The CP filed a Fair Housing complaint on January 15, 2020, due to the Respondent's denial of permitting him access to park in a visitor's spot. (B-1)
- Following the filing of this complaint, the Association threatened to file suit against Matthew Blais, unless he had the CP evicted. As such, Matthew Blais filed for eviction and the court granted it on February 3, 2020. (C-1)
- As a result of the eviction, the CP was fearful of obtaining his evidence from his parents' home. The Investigator contacted Respondent's attorney on February 28, 2020, to seek permission on his behalf to enter the condo. In response, on March 30, 2020, the Association, through their attorney, indicated that many people are afraid of the CP and that he poses a clear threat to the health and safety of their senior residents. The Association doesn't deny the CP visitation rights to the unit; however, he will not be permitted to reside on the property. (B-5)

ANALYSIS

In order to meet the prima facie elements of a reasonable accommodation claim, the CP must prove:

1. He is disabled within the meaning of the Fair Housing Act;
2. The Respondent knew or should have known of the disability;

3. The accommodation was necessary for equal opportunity to use and enjoy dwelling;
4. The Respondent refused to make the requested accommodation; and
5. The accommodation is not an undue burden on the Respondent.

SUPPORTING INFORMATION:

Here, the CP furnished a statement from Dr. Smeed that indicates that he has been a patient since April 18, 2015. Dr. Smeed writes, "Due to his physical and mental disability it is clinically recommended for him to be able to park his vehicle near his home. Walking long distance can lead to an exacerbation of his underlying conditions. Please consider my clinical opinion in granting him privileges to park his vehicle within reasonable walking distance to his home considering his disability." (C-1) The first element of the prima facie case has been met.

The R acknowledges receipt of the CP's request for a reasonable accommodation. (C-1) The second element has been met.

Turning to the third element, the CP must prove that the accommodation was necessary in order to use/enjoy the dwelling. The doctor's statement verifies the need of parking his vehicle "within reasonable walking distance." (C-1) The third element has been established.

The R denied the CP use of a visitor's parking space. (C-1) The fourth element has been met.

Lastly, the CP must prove that the accommodation was not an undue burden. Upon review of the doctor's statement furnished to the Association on Mr. Blais's behalf, the Investigator is of the opinion that the R had sufficient documentation that verifies the nature of the CP's disability as well as the need for a parking spot closer to his residence. (C-1)

On February 13, 2020, the R submitted their Position Statement. They furnished three reasons for denying the CP's RA request. First, Matthew Blais filed a lawsuit for eviction on January 19, 2020. Secondly, the R stated that, "Even if CP had a valid claim, which he did not, Respondent would have denied it based on the fact that, although CP claims he is disabled and cannot drive anything but a truck, CP has been seen driving a Ford Focus, walking over ½ mile to the corner store and has been photographed standing on a ladder to climb on top of his truck. Lastly, the Association has rules. Specifically, CP was warned regarding the condition of his truck (needing repairs) as violating the rules, and when he refused to comply, CP was fined. Each unit has one assigned parking space, and there are 18 additional parking spaces specially reserved for guests and contractors; unit owners are prohibited from parking in the guest spaces. Two units have owners/residents with more than one vehicle and the second vehicle parking in a guest space. CP was one of the two residents who parked in a guest space. Upon fining CP for violating the rules, however, Respondent revoked CP's grandfathered status and he no longer was permitted to park in the guest space. So, if CP still resided at the Association, he would not be permitted to park in a guest space." (D-1)

Over a month after receiving the Position Statement, the Respondent also indicated that the Charging Party posed a threat to the health and safety of other residents, who are seniors. (B-5) There was no written statements and/or police reports to furnished to corroborate this assertion.

A requested accommodation is necessary when there is an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. Asking for an assigned parking spot is a reasonable accommodation based on the statement furnished by the CP's physician, especially in light of the fact that the CP asked to be able to park in the disabled space that he had previously been allowed to park in, in light of his unit also being occupied by his elderly parents. Therefore, the Respondent should have made an exception to their rules/standards in order to accommodate Mr. Blais' disability instead of having his truck towed and ultimately revoking his parking privileges.

In this case, the accommodation did not impose an undue financial and administrative burden on the housing provider nor did it fundamentally alter the nature of the provider's operations. Additionally, in light of the imminent eviction, it would have been feasible for the Respondent to grant the RA considering the CP would have vacated the dwelling within weeks of allowing him to park in a visitor's spot anyhow.

Finally, the Respondent had no intention in engaging in the interactive process with the Charging Party. In an email dated January 6, 2020, attorney for the Respondent, Ann Hathorn writes, "Federal law does not provide rights to unit owners to provide "reasonable accommodations" to residents who are disabled." (C-1; Exhibit A) This statement further supports the Charging Party's assertion that he was discriminated against and further supports the Agency's recommendation that a violation of the Fair Housing Act has occurred.

The fourth and final element has been met.

The complaint includes an 818 assertion; however, there were no allegations or evidence in support of that discovered during the investigation. As such, there is no indication of coercion, harassment, etc.

A Cause Finding is being recommended on the basis of a failure to reasonably accommodate.

C. CONCLUSIONS:

Therefore, based on the available evidence, we conclude that there is Cause to believe that the Respondent may have violated Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida on the Complainant's allegations.

CAUSE

Determination


Jeffrey Lorick,
Compliance Manager

Date 5-5-2020

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