

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & SUSAN H. SHARKEY,  
Complainants

v.

DOCKET NO. 04-BPH-03059

IPSWICH HOUSING AUTHORITY  
& JULIE MARTINEAU,  
Respondents

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Appearances:

Caitlin A. Sheehan, Commission Counsel

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about November 12, 2004, Complainant Susan Sharkey filed a complaint with this Commission charging Respondents Ipswich Housing Authority and Julie Martineau with discrimination in housing on the basis of handicap, in violation of M.G.L.c.151B§4(7a). The Investigating Commissioner issued a probable cause determination. A public hearing was held before me on April 20, 2007. Respondents did not appear to defend at the hearing, and a default was entered against them. The hearing proceeded as a default hearing, pursuant to 804 CMR 1.21(8). Respondents were duly notified of the default and failed to seek removal of the default or to otherwise respond. After considering the entire record of the proceedings, I make the following findings of fact, conclusions of law, and order.

## II. FINDINGS OF FACT

1. Complainant Susan Sharkey has been a tenant of the Ipswich Housing Authority for approximately 21 years. For the past three years, she has resided at 20B Agawam Village, Ipswich, Massachusetts, a complex containing approximately 40 units. Complainant resides in a three-room, handicapped accessible apartment in a 12-unit building. Agawam Village's management office is located in a building separate from the apartment building where Complainant resides, about five minute from Complainant's building.

2. Respondent Julie Martineau has been the Director of the Ipswich Housing Authority for approximately three years. The contact person for tenants with maintenance requests is Joann Sikora.

3. Complainant has multiple physical impairments that substantially restrict her ability to perform a variety of functions. She is unable to walk and uses a motorized wheelchair for ambulation. Complainant suffers from restrictive lung disease requiring the use of an oxygen tank to help her breathe. She cannot raise her arms above a certain height and she has had a urostomy. In addition Complainant has epilepsy and osteoporosis. I find that Complainant is disabled within the meaning of M.G.L.c.151B

4. Complainant testified that she is physically unable to enter the management office unassisted, because the weakness in her arms prohibits her from opening the door and she cannot knock loudly enough to alert anyone inside that she wants to enter. Complainant testified that, until five months ago when a buzzer was finally installed at that location, she would have to wait at the door until someone came along to let her in. Complainant testified that over a three-year period, she repeatedly requested to Sikora

and Julie Martineau that Respondents install a buzzer; however, nothing was done until five months ago, when Respondents finally installed a buzzer. I credit this testimony.

5. Agawam Village had two laundry facilities for the use of tenants. One facility is located within the same building that contains the management office. Complainant can only access this facility during office hours by going through the management office; at other times, she cannot access this room because of her inability to gain access to the building on her own.

6. The other laundry facility is located in a building containing a community room where tenants socialize, a kitchen and a green house. Complainant is unable to gain access to either the building or the laundry facility in this building because she cannot physically open the door. Complainant testified, however, that she would not socialize with other tenants, even if she could access this building because they “turn their backs on her.”

7. Complainant testified that since 2001, she has had a homemaker, through the Massachusetts Rehabilitation Commission, who does her laundry, shopping and cleaning on a weekly basis, and performs other tasks that Complainant is unable to perform herself. Complainant also has a home health aide who assists her with bathing and dressing. At the time of the public hearing, however, Complainant was temporarily without assistance for her laundry, as she was awaiting the assignment of a new homemaker. Complainant testified that she runs out of clean clothes by the end of the week, and would like to be able to do the laundry herself. However, later in her testimony she contradicted this assertion, stating that she had been unable to do her own

laundry since 2001 and was currently unable to do her own laundry, even with a washer that was handicapped accessible, because of her inability to lift her arms.

8. Complainant testified that the door handles in her apartment are positioned and shaped in such a way as to repeatedly catch on her motorized chair, causing severe damage, including tearing the upholstery and damaging the legs and seat. Complainant testified that, because of the awkwardly placed door handles catching on her motorized chair; she has fallen out of her chair on multiple occasions, and on occasion has required hospital treatment. On one occasion she suffered a hematoma and two black eyes from one of these falls from her motorized chair. I credit her testimony.

9. Complainant testified that she has repeatedly complained to Respondents about the need for door handles that do not damage or catch on her motorized chair. She alleges that, despite her repeated complaints to Respondents, as well as state inspectors, about the door handles, nothing has been done to correct the situation. I credit her testimony.

10. Complainant also testified that she has had problems gaining entry to her apartment during the winter months because of Respondents' failure to adequately plow the area around her apartment. She testified that on one occasion, she waited outside her apartment for 55 minutes, until a stranger shoveled the snow. On another occasion, a different stranger shoveled the snow after she had waited outside her apartment for an hour. Complainant testified that on these occasions, she informed Joanne Sikora and Julie Martineau about her inability to access her apartment because of snow, and they did nothing. She testified that on these occasions she feared she would get frostbite after waiting outside in the snow for such a long period of time. I credit her testimony.

11. Complainant testified that this past winter she had problems with ice on her ramp that caused the wheels of her wheelchair to spin when she tried to go down the ramp. She stated that she and her driver had difficulty getting in and out of a van because of the ice. She stated that she called Joann Sikora and Julie Martineau to request a maintenance worker to chop up the ice and they did not comply with her request after two weeks. I credit her testimony.

12. Complainant described her attempts to gain access to Respondent's common areas as "pure frustration." Complainant testified that she frequently discussed these matters with her family members and friends. She testified that she is getting tired, that she wants to move, and she feels as though she is in prison. I credit her testimony

13. Complainant stated that a physician prescribed the pain medications percocet and OxyContin, which she has taken for the past five years. Complainant testified that a social worker comes to her house once a week and that a psychiatrist, Dr. Paul Fallon, prescribed the medication effexor six or seven years ago. I credit her testimony.

### III. CONCLUSIONS OF LAW

#### A. INDIVIDUAL LIABILITY

Complainant has named Julie Martineau as an individual Respondent in this matter. In order for an individual to be held liable for a violation of M.G.L. c. 151 B, there must be some showing of his or her intent to discriminate, through an action or inaction in deliberate disregard of the Complainant's rights. Woodason v. Norton School Committee, 25 MDLR 62, 64 (2003), 24 MDLR 21, 26 (2002). The evidence in this record does not establish the requisite "intent to discriminate" required in order to find

Julie Martineau individually liable for unlawful discrimination. The evidence in this matter was that although Complainant called Martineau to complain about her situation, all tenant requests for repairs at Agawam Village went to Joann Sikora, a secretary. Therefore I conclude that there is insufficient evidence that Martineau acted with deliberate disregard for Complainant's rights and that a finding of individual responsibility is not warranted. The matter is dismissed as against Martineau, individually.

## II. HOUSING DISCRIMINATION

M. G. L.c. 151B § 4(7) prohibits discrimination in the terms, conditions and privileges of housing accommodations because of handicap. G.L. c. 151B§4(7A) states that discrimination on the basis of handicap includes (1) a refusal to make, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such person if such modification is necessary to afford such person full enjoyment of such premises. In the case of publicly assisted housing or contiguously located housing consisting of ten or more units, reasonable modifications must be at the expense of the owner or other person having rights of ownership. G.L. c.151B§4(7A).

In order to establish a prima facie case of handicap discrimination in housing, Complainant must demonstrate that (1) she suffers from a handicap as defined by the statute; (2) that Respondents knew of Complainant's handicap or could be reasonably expected to know of it; (3) that the accommodation sought may be reasonably necessary to afford Complainant an equal opportunity to use and enjoy the premises; and (4) that Respondent has refused to make the requested accommodation. Buckley v. Wolfinger, 18 MDLR 158 (1996). When Respondent fails to rebut Complainant's claims at public

hearing, as in the case of a default, Complainant need only establish a prima facie case of housing discrimination in order to prevail. See, e.g. Mohamed et al v. Leone, 25 MDLR 110(2003); Gardner v. Pianka, 28 MDLR 189(2006). Associates v. Penfield, 564 N.E. 2d 1003, 1005 (1991).

Complainant has established an un rebutted prima facie case of handicap discrimination in housing. Complainant's testimony evidences that she suffers from multiple impairments that substantially impair her major life activities. Complainant is unable to walk and can ambulate only with the assistance of a motorized chair. She is greatly restricted in the use of her arms and she requires the assistance of an oxygen tank in order to breathe. Respondent Ipswich Housing Authority was aware of Complainant's handicaps, according to her testimony because she resides in housing specifically designated for handicapped individuals. She is required to present to Respondent medical evidence of her handicap in order to reside there. Complainant sought minor modifications of her apartment unit as well as in the common areas of the housing complex where she resides, in order to access the complex's office, and to move about her apartment without injuring herself or damaging her motorized chair; and to insure that she has safe passage to and from her apartment in the winter months. Respondent was aware of Complainant's handicap and, according to Complainant, ignored her requests to change her door handles. This caused her numerous injuries and damaged her motorized chair. Respondent Ipswich Housing Authority also failed for over two years to install a buzzer in the building containing its office, despite Complainant's numerous requests, thereby restricting her access to the office. However, with respect to the laundry rooms, Complainant testified that she has been unable to do her own laundry for

many years and has had a homemaker who performs this task. Thus she had no need to enter the laundry room without the assistance of her homemaker and would therefore not need an accommodation in order to enter the laundry areas.

The un rebutted evidence suggests that Respondent failed to timely shovel and de-ice the entrance to Complainant's apartment, requiring her on two occasions to wait out in the cold for assistance with plowing and on one occasion failing for two weeks to remove ice from her ramp, which cause difficulty in her exiting the apartment and entering and exiting her van.

Respondent denied Complainant the accommodations she sought and failed to make minor modifications to the existing premises that would have allowed her to fully enjoy the benefits of her housing. As a result, Complainant sustained numerous injuries to herself and damage to her motorized chair. Since Respondent defaulted at the public hearing and did not present evidence regarding the reasonableness or expense of the accommodations Complainant sought, I conclude that Complainant has established an un rebutted prima facie case of handicap discrimination in housing. Accordingly, Respondent's refusal to accommodate Complainant's requests constituted a violation of G.L. 151B§4(7) & (7A).

#### IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to order remedies that will effectuate the purposes of the statute. G.L. 151B§5. These remedies include damages for emotional distress.

Based upon the Complainant's testimony, I conclude that she suffered emotional distress as a result of Respondent's refusal to accommodate her handicap. As a result

of her motorized chair getting caught on her door handles, Complainant fell out of her chair numerous times and suffered injuries. Furthermore the fabric of her chair was torn on several occasions, requiring her to repair it. Complainant further testified that she was unable to access Respondent's office for over two years because of Respondent's failure to install a buzzer at the door to a building containing its offices. Complainant testified that Respondent's failure to act on her requests made her feel frustrated, tired, like she was in prison and like she wanted to move.

In light of the above I find that Complainant is entitled to an award of \$10,000 to compensate her for the emotional distress she suffered as a result of Respondent's actions.

#### V. ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

- (1) The complaint in this matter is dismissed against the individually named Respondent Julie Martineau.
- (2) Respondent Ipswich Housing Authority shall cease and desist from engaging in any handicap discrimination in violation of G.L. c. 151B.
- (3) Respondent Ipswich Housing Authority shall pay to the Complainant, Susan H. Sharkey, the sum of \$10,000 in damages for emotional distress, with interest thereon at the rate of 12% per annum from the date of filing of the complaint until such date as this obligation is reduced to a court judgment and post-judgment interest begins to accrue.

(4) Within 30 days of receipt of this order, Ipswich Housing Authority shall remove and/or replace the door handles in Complainant's unit with door handles that are designed so as to not catch on Complainant's motorized chair. Respondent shall consult with Complainant in this process to determine what design is appropriate.

(5) Ipswich Housing Authority shall insure that the entry and ramp to Complainant's unit is free of snow and ice so as to ensure that she has safe passage and access to and from her apartment and ramp.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this decision may file an appeal to the Full Commission by submitting a Notice of Appeal to the Clerk of the Commission within ten days of receipt of this decision and a Petition for Review setting forth the grounds for the appeal within 30 days of receipt of this decision.

So Ordered this 2nd day of August, 2007.

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JUDITH E. KAPLAN,  
Hearing Officer