

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
RICHARD M. BLAKE,
Complainant

v.

DOCKET NO. 08-BPR-03481

BRIGHTON GARDENS APARTMENTS, LP,
THE LOMBARDI CORPORATION &
MICHAEL J. LOMBARDI
Respondents

Appearances: Mary H. Adams, Denise McWilliams, Esq. for Complainant

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On December 2, 2008, Complainant, Richard Blake filed a complaint with this Commission alleging that Respondents discriminated against him in housing based on his disability when they refused to allow him to keep an emotional support dog in residence with him at his apartment at Brighton Gardens as an accommodation to his disability. The Investigating Commissioner found probable cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. The matter was certified for hearing on December 16, 2009 and a hearing in this matter was held before the undersigned hearing officer on September 27, 2010.

Respondents did not appear at the public hearing after having received due notice. Respondents had sought a last minute continuance of the proceedings by faxing a motion

to the Commission and opposing counsel on the previous Friday afternoon, September 24, 2010, after 4:00 pm, on account of a conflicting court appearance.¹ That motion was not received by the undersigned Hearing Officer until the morning of the hearing on September 27th, and Complainant's counsel did not receive the notice until later that afternoon.

Complainant, his counsel and his physician appeared for the hearing on September 27th prepared to proceed, argued the unfairness to Complainant of continuing the proceeding, and objected to Respondent's eleventh hour motion to continue which they had not yet received. Respondents did not contact the Commission to ascertain if a ruling had been issued on their motion to continue, and they did not respond to the Commission's attempts to contact them by phone on the morning of September 27, 2010.

The Hearing Officer noted on the record that Respondents had notice of the conflicting court proceeding for several months in advance of the hearing, and therefore had ample opportunity to seek a timely continuance. Given the circumstances, the Hearing Officer entered an Order of Default on the record and conducted a Default Hearing pursuant to the Commission's regulations at 804 CMR 1.21.

Respondents were duly notified of the Default by certified mail sent on September 27, 2010 and were notified simultaneously of their right to petition the Commission for a removal of the default for good cause shown within 10 days. See 804 CMR 1.21 (8)(b) Some 32 days after the Hearing, with no plausible explanation for the delay, Respondents filed a Motion to Remove the default, alleging they had not received due notice of the

¹ The Hearing was scheduled for two days and the Motion also stated that Respondent's witness Louis Lombardi would not be available on September 28, 2010, with no further explanation.

September hearing dates² and asserting a legitimate conflict with a previously scheduled court appearance. The motion was denied by Order of the Hearing Officer dated November 4, 2010. The Order noted that the Motion was untimely, with no logical explanation for the delay, that the Commission had sent proper notice of the Hearing to Respondents by certified mail, received and signed for on March 11, 2010, and that Respondents had notice of a possible conflicting court appearance as early as August 3, 2010, but took no steps to notify the Commission until after 4:00 p.m. on the Friday before the hearing was to commence.

Complainant and his treating physician testified at the default hearing and a number of exhibits were entered into evidence. Complainant submitted a post-hearing brief on November 10, 2010 and Respondents submitted a brief on December 20, 2010. I decline to consider Respondent's brief, since by defaulting they forfeited any right to present evidence or argument in this matter. Having duly considered the record of the proceeding in this matter, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Richard Blake, has resided at 109 Tremont Street, Apt. 315, Brighton Massachusetts, since September 1, 2006. (Ex. C-1; Complainant's testimony)
2. Respondent, Brighton Gardens Apartments, LP owns and operates the building at 109 Tremont Street, Brighton, which consists of apartment residences. (Complaint)
3. Respondent, Lombardi Corporation is a Massachusetts Corporation with offices located at 111 Tremont Street, Brighton, Massachusetts, and is a General Partner of Brighton Gardens Apartments. (Complaint)

² This position is inconsistent with the fact that Respondent's filed a motion to continue the hearing, albeit at the eleventh hour.

4. Respondent, Michael J. Lombardi is the President of the Lombardi Corporation. (Complaint; Ex. C-10)

5. Louis M. Lombardi is the Vice-President of the Lombardi Corporation, and has primary responsibility for property management at Brighton Gardens Apartments. (Complaint; Ex. C-1; C-9)

6. Complainant has been diagnosed with and treated for HIV/AIDS for approximately 21 years. During this time he has suffered from multiple opportunistic infections, takes various medications, and has been hospitalized numerous times. He also suffers from depression and anxiety, and is prone to social isolation as a result of his physical and mental disabilities. (Testimony of Complainant; Dr. Laura Kogelman) Complainant is unemployed and he has been deemed disabled by the Social Security Administration. His source of income is Social Security Disability. (Testimony of Complainant; Ex. C-2; C-3)

7. On August 21, 2006, Complainant entered into a lease for rental of the premises at 109 Tremont Street, Apt. 315, Brighton, MA. The lease was executed by Complainant and Louis Lombardi. The lease contained no provision regarding tenants having pets. The lease contained an Attachment C, which stated that the tenant would be charged for any damage to the apartment beyond reasonable wear and tear, with a list of the costs to be charged for services such as cleaning and carpet shampooing and deodorizing. (Ex. C-1)

8. Complainant stated that in the Spring of 2008, he was grief stricken after the deaths of his mother and sister in 2007. Prompted by his viewing of a documentary about

dogs as companions, he initiated a discussion with his physician, Dr. Laura Kogelman about whether having a companion dog might assist him. Dr. Kogelman recommended Complainant adopt a dog to help alleviate his depression and anxiety. Prior to taking any further action, Complainant sought permission from Louis Lombardi to have a dog reside with him in his unit at Brighton Gardens. Louis Lombardi verbally granted permission for Complainant to have a dog, and in response to Complainant's inquiry, stated that Complainant did not need to make a formal written request. Having secured permission to have a pet in residence with him at Brighton Gardens, Complainant approached the New Hampshire SPCA ("NHSPCA"). The NHSCPA contacted Louis Lombardi by phone to ensure that Complainant had permission to have a pet in residence, and obtained his consent to the adoption. The NHSCPA's adoption form has a section "For Office Use Only" with a line for Landlord approval. In that section of Complainant's form the word "OK" is written. Complainant was present when the NHSPCA's adoption counselor contacted Louis Lombardi by phone and received the Landlord approval. (Testimony of Complainant, Ex. C-5)

9. On May 23, 2008, Complainant adopted a dog from the NHSPCA. The dog is a boxer mix named Kayla, and she has resided with Complainant since that date. (Testimony of Complainant; Ex. C-4) Complainant stated that prior to adopting his dog, he was paralyzed by grief, felt isolated, sad and lonely and didn't want to get out of bed. Since adopting Kayla, his life has turned around. He now has a routine, goes for several daily walks with Kayla, takes her to the dog park and converses with other dog owners. He has had no complaints from other tenants about noise, aggression or other disturbances and many tenants know Kayla by name. According to Complainant his dog

is well-liked by other tenants and some have even offered to sit for her. Complainant testified that he is careful to ensure that his dog does not relieve herself on the premises and does not bark so as to disturb other tenants. . (Testimony of Complainant) I credit Complainant's testimony in its entirety.

10. On July 23, 2008, Respondents distributed a notice to all tenants of Brighton Gardens informing them that the no-pet policy of the tenants' leases would be enforced as of October 1, 2008, and that any prior verbal or written authorizations issued by management were rescinded as of October 1, 2008. The notice, which was signed by Michael J. Lombardi as President of the Lombardi Corporation, also stated that there would be no deviations from the no-pet policy and no waivers would be granted. (Ex. C-6) Complainant stated that when he received the notice he went to the Brighton Gardens Office to ask Louis Lombardi what it was about and Louis Lombardi refused to talk to him and referred him to Michael Lombardi. Complainant spoke to Michael Lombardi who informed him no pets would be allowed and Complainant then contacted the AIDS Action Committee.

11. On September 17, 2008, Complainant's attorney at the time, Melissa Champagne of the AIDS Action Committee, wrote to Michael Lombardi advising him that there were no provisions regarding pets in Complainant's lease and that Louis Lombardi had approved the adoption of Complainant's dog. The letter also stated that she had advised Complainant he was within his legal rights to keep the dog, and noted specifically that Complainant needed his dog for medical reasons. Attorney Champagne offered to provide documentation of Complainant's medical needs. (Ex. C-7).

12. Michael Lombardi responded to this communication by letter dated October 7, 2008, in which he enclosed a supplemental lease section not included in the lease given to Complainant upon the commencement of his tenancy. This section, heretofore never seen by Complainant, contained a provision outlawing pets. (Ex. C-10) In this letter, Michael Lombardi also denied that the Lombardi Corporation had approved the adoption of Complainant's dog. Lombardi's letter also stated that Complainant's medical needs were irrelevant and that Complainant would face eviction if he kept the dog. (Ex. C-10)

13. On October 16, 2008, Attorney Champagne sent a second letter to Michael Lombardi informing him that Dr. Kogelman had prescribed a support animal for Complainant to alleviate his physical and mental disabilities. She also noted that Complainant was disabled and that pursuant to both state and federal fair housing laws, Respondents were required to provide a reasonable accommodation to Complainant in its rules or policies to afford him equal opportunity to use a dwelling. Champagne's letter demanded in part, that Respondents grant Complainant a reasonable accommodation to its newly stated no-pet policy, and indicated that medical documentation in support of the request for reasonable accommodation would be forthcoming to Mr. Lombardi. (Ex. C-8)

14. On October 17, 2008, Dr. Kogelman submitted a letter of medical necessity addressed to Michael Lombardi, stating that Complainant was disabled due to physical and mental illness and that she had prescribed an emotional support animal to assist him in coping with his disability. She stated that the dog's companionship was vital to Complainant's health, and removing the dog would pose a great risk to Complainant's emotional health. (Ex. C-12)

15. Subsequent to receiving Attorney Champagne's letter requesting a reasonable accommodation and Dr. Kogelman's letter of medical necessity, Michael Lombardi sent a letter to Attorney Champagne dated November 13, 2008, in which he once again refused to even consider Complainant's request to keep his dog as an accommodation to his disability. His letter further stated that Complainant's medical needs were irrelevant to the enforcement of the no-pet policy, and that there would be no exceptions to that policy. (Ex. C-11) Having exhausted all attempts to resolve his request for an accommodation to his disability, on December 2, 2008, Complainant filed a complaint with this Commission.

16. Complainant testified that not only has he received no complaints from other tenants about his dog, he has also never received a complaint from Brighton Gardens Apartments, Louis Lombardi or Michael Lombardi. He testified that his dog is well-behaved and not destructive or loud.

17. According to Complainant, other tenants continue to keep pets in their apartments, despite the July 23, 2008 notice stating that a no-pet provision in tenants' leases would be enforced as of October 1, 2008. As evidence of this, on September 9, 2010, almost one year later, Respondent's distributed a notice directing tenants not to flush certain items down the toilet, including kitty litter and pet excretions. (Ex. C-9) Complainant's dog continues to live with him at Brighton Gardens, but he has been threatened with eviction several times. Complainant testified that he wants to continue living at Brighton Gardens, but that being threatened with having to give up his pet or face eviction has been "a nightmare." He stated that he worries a lot about having to move because he is physically and financially unable to do so. I find that Complainant

has suffered significant on-going emotional distress as a result of his battles to retain his dog and being faced with threats of eviction.

18. Dr. Laura Kogelman is a primary care physician and an AIDS specialist at Tufts New England Medical Center. She has been treating Complainant for AIDS/HIV for ten years and stated that he takes a variety of medications for AIDS which he has had for about 21 years. Dr. Kogelman testified that she has recommended support animals for other patients, in particular AIDS patients, because such animals help lift a patient's mood and improve their health both mentally and physically. She testified that prior to adopting his dog, in part because of living with AIDS, Complainant suffered from depression and anxiety, isolated himself, and withdrew from almost all social interaction. However, Complainant's depression improved significantly after acquiring his dog and he became more reliable about adhering to his medication regimen and attending medical appointments. According to Dr. Kogelman, he also stopped isolating himself socially, is more physically active and is in better health as a result of having a support animal. She also observed that Complainant's stress level increased immediately once he began receiving letters from Respondents informing him he had to give up his dog. He began smoking more and was frequently anxious. According to Dr. Kogelman, if Complainant had to give up his dog, it would have a significant detrimental impact to his health. In her opinion Complainant would return to being socially isolated and have less ability to follow his medical regimen and take his medications. I found Dr. Kogelman to be a credible witness. I credit her assessment of Complainant's mental and physical health and of the probable adverse consequences to his emotional and physical health were he to be forced to give up his support animal.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c.151B §§ 4(6) and (7A) prohibit discrimination in housing on the basis of disability. The prohibitions of § 4(7A) include “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling,” and “discrimination against or a refusal to rent to a person because of such person’s need for reasonable modification or accommodation.” In this case, Complainant alleges that Respondent refused to make a reasonable accommodation, an exception to its purported no-pet policy, which accommodation alleviates Complainant’s depression, anxiety, and isolation and allows him to live in a healthy and independent mode wherein he follows his medical regimen.

In order to establish a prima facie case of housing discrimination on the basis of handicap, the complainant must demonstrate that he (1) suffers from a handicap; (2) Respondent was aware of the handicap or could reasonably have been aware of it; (3) the accommodation sought is reasonably necessary to afford complainant an equal opportunity to use and enjoy the premises; and (4) Respondent refused to make the accommodation. Kacavich v. Halcyon Condominium Trust, 30 MDLR 109(2008)

Complainant has established that he is disabled within the meaning of the law. He suffers from HIV/AIDS and has been treated and taken medication for illnesses associated with this condition for many years. Complainant’s treating physician for ten years testified that in addition to the physical illnesses caused by AIDS/HIV, he is also

disabled as a result of depression and anxiety. Complainant takes a regimen of drugs and has regular medical appointments.

Furthermore, Complainant has been deemed disabled by the Social Security Administration and is unable to work. An individual who receives federal disability benefits, a result of the Social Security Administration's determination that the recipient is unable to work, is deemed disabled under federal and state disability law. See Boston Housing Authority v. Bridgewaters, 452 Mass. 833, 844 (2009) (Joint statement issued by HUD and US DOJ in 2004 entitled 'Reasonable Accommodations Under Fair Housing Act' states that "persons who meet the definition of disability for purposes of receivingSocial Security Disability Insurance...benefits in most cases meet the definition of disability under the Fair Housing Act.")

Complainant has also established that Respondents were aware of his disability. Respondents were formally made aware of his disability in October of 2008 when Attorney Champagne wrote to Michael Lombardi, the President of Lombardi Corporation, informing him that Complainant "is handicapped under the Fair Housing Act in that he has a physical or mental impairment that substantially limits one or more life activities," and requesting that Complainant be allowed to keep his support animal as a reasonable accommodation to his disabilities. In October of 2008, Dr. Kogelman wrote to Michael Lombardi detailing Complainant's disabilities and discussing why an emotional support animal was a medical necessity for him. She stated that because of Complainant's physical and mental illness, he isolated himself, aggravating his depression, and she prescribed a support animal "in order to help alleviate these difficulties, and to enhance his ability to live independently and healthily and to fully use

and enjoy the dwelling.” Even before these letters were sent, Respondents would have been aware of the fact that Complainant’s sole source of income was Social Security Disability, as he would more than likely have had to disclose this to them prior to entering into his lease.

Complainant has also established that keeping his emotional support dog is a reasonable accommodation necessary to afford him an equal opportunity to use and enjoy the premises. Establishing that an accommodation is necessary “requires at a minimum, a showing that the desired accommodation will affirmatively enhance a disabled tenant’s quality of life by ameliorating the effects of the disability.” Bronk v. Ineichen, 54 F.3d 425, 429 (7th Cir. 1995) Complainant submitted credible evidence that his dog was necessary to assist him to live on his own and function independently given his physical problems related to HIV/AIDS and his escalating depression, anxiety, and isolation after the loss of his mother and sister. Both Complainant and Dr. Kogelman testified credibly that having a dog has substantially improved Complainant’s physical and mental health and significantly alleviated his social isolation by forcing him to interact with the outside world. Caring for his dog also alleviates Complainant’s stress and depression and improves his physical health by encouraging him to exercise, smoke less, and adhere to his medication regimen. The evidence also supports a finding that requiring Complainant to give up his dog would seriously jeopardize his emotional and physical well-being.

The determination of whether a requested accommodation is reasonable is resolved on a case-by-case basis, and a number of courts have found that accommodations involving an exception to a no-pet policy are reasonable and within the purview of the anti-discrimination laws. See Andover Housing Authority v. Shkolnik,

442 Mass. 300, 307 (2005). Whittier Terrace Associates, *supra.* at. 1021

(psychologically handicapped woman entitled to a narrow exception to her landlord's no-pet rule); Majors, *supra.* at 458 (a limited exception to a no-pet rule for the person whose handicap requires the companionship of a dog fall within the kind of reasonable accommodation required by law); Frechtman v. Olive Executive Townhomes Homeowner's Association, 2007 U.S. Dist. LEXIS 81125, at *8 (Dist. C. Cal. 2007) (homeowner's association ordered to make exception to no-pet policy for plaintiff's emotional support dog)

The accommodation Complainant sought would not have imposed an undue hardship or burden on Respondents. “ A ‘reasonable accommodation’ is one which would not impose an undue hardship or burden on the entity making the accommodation.” Peabody Properties, Inc. v. Sherman, 418 Mass. 603, 608 (1994) (interpreting language in 42 U.S.C. s. 3604 which is identical to the language in G.L. c. 151B s. 4(7A); *citing* Majors v. Housing Authority of DeKalb, 652 F.2d 454, 457 (5th Cir. 1981). Determining whether an accommodation is reasonable involves balancing the overall costs and benefits of the proposed accommodation. See Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, 1021(1989) As stated above, the benefits to Complainant were clear. However, there is no evidence in the record to suggest that there were any costs or undue hardships to Respondent associated with allowing Complainant to keep his dog. Complainant testified credibly that he received authorization from Louis Lombardi to have a pet and that he was meticulous about cleaning up after his dog and preventing her from causing any disturbances. He has never received any complaints about his dog from other tenants or from management.

Moreover, the lease Complainant executed did not contain a no-pet provision and it is apparent from Respondents' communications with the tenants of Brighton Gardens that a number of tenants had been authorized to have pets and continued to have pets in residence in 2009, even after the purported no-pet policy was to be enforced. There is no evidence in the record to suggest that Complainant's dog was causing any problems, disturbances or damage to the property at Brighton Gardens or that her continued residence there would create an undue hardship or burden for Respondents in any manner.

Finally, Respondents explicitly refused to consider Complainant's request for accommodation, an exception to the purported no-pet policy, even after being advised of the medical reasons supporting the accommodation from his attorney and his treating physician. Michael Lombardi wrote to Complainant's attorney that Complainant's medical requirements were "irrelevant" to Brighton Garden's decision to enforce its no-pet policy and he refused to make any exception to the policy. When presented with a reasonable accommodation request, landlords are encouraged to engage in an interactive process in which both sides discuss the request and consider alternative solutions.

Andover Housing Authority, supra. at 308. In this case, Respondents made no attempt to engage in an interactive process with Complainant.

Given all of the above, I conclude that Respondents are liable for discrimination against Complainant based on his handicap in violation of G.L. c. 151B §§ 4(6) and 4(7A).

IV. REMEDY

The Commission is authorized to award damages to aggrieved parties for any injury they suffered that is causally-connected to the act of discrimination, including damages for emotional distress. G.L. c. 151B s. 5; Stonehill College v. MCAD, 441 Mass. 549,576 (2004) I credited the testimony of both Complainant and his physician that Respondents' intransigence with respect to his request for a reasonable accommodation and their threats of eviction caused Complainant enormous anxiety and worry. He stated that he fears having to give up his dog or move, something he cannot afford to do either financially or physically. It was apparent that Complainant has established a loving and beneficial relationship with his support animal and that having to separate from his dog would be enormously painful to him and would jeopardize his physical and emotional health. He testified compellingly that having a dog has turned his life around and that Respondents' threats of eviction have been a "nightmare," for him, causing him to suffer from a nervous stomach, and constant worry. Complainant's physician, Dr. Kogelman confirmed that Complainant's stress level increased immediately once he received letters from Respondents informing him he had to give up his dog. He began smoking more and was frequently more anxious. I conclude that Complainant's fear and anxiety over having to give up his support animal or face eviction from his home, coupled with Respondents explicit refusal to even consider a reasonable accommodation to his disability have caused him significant emotional distress, and that he is entitled to compensation in the amount of \$25,000.

In addition, I conclude that this matter is appropriate for the imposition of a civil penalty against Respondents pursuant to M.G.L. c. 151B s. 5, in the amount of \$5000,

given their utter intransigence in refusing to discuss or consider granting Complainant a reasonable accommodation.

V. ORDER

Based upon the foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M.G.L. c. 151B §5, it is hereby ordered that:

1. Respondents cease and desist from taking any action against Complainant on account of his need for a support animal to reside with him in his apartment at Brighton Gardens as a reasonable accommodation to his disability.
2. Respondents immediately grant Complainant, as an exception to any no pet policy it may maintain and enforce, a reasonable accommodation to his disability and allow him to keep his emotional support animal in residence at his apartment at Brighton Gardens.
3. Respondents establish and implement a policy and procedure for administering requests for reasonable accommodations from disabled tenants which shall include the criteria for reviewing said complaints, the medical or other documentation required and protocols for meeting with tenants to discuss and consider the request. Said policy shall be submitted to the Commission for its review and approval.

4. Respondents shall pay to Complainant, Richard Blake, the sum of \$25,000 in damages for emotional distress suffered as a direct result of Respondents conduct.
5. Respondents shall pay to the Commonwealth of Massachusetts a civil penalty in the amount of \$5,000.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten (10) days of receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 28th day of March, 2011.

Eugenia M. Guastaferr
Hearing Officer

