

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MELINDA E. CLARK and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,

Complainants

v.

Docket No. 11 NPH 03146

NEW BEDFORD HOUSING AUTHORITY,

Respondent

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Appearances: Douglas W. McCormac, Esq. for Complainant Clark

Paul J. Santos, Esq., for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On November 22, 2011, Melinda Clark (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that the Respondent New Bedford Housing Authority discriminated against her on the basis of disability when it informed her that she could not keep her pet snake in her apartment as a comfort animal.

The Investigating Commissioner issued a probable cause finding on April 6, 2012 and certified the case for public hearing on December 11, 2012. A public hearing was held on March 18, 2013. Complainant testified on her own behalf as did Dr. Murtuza Vali. The following individuals testified on behalf of Respondent: Bruce W. Duarte and Samuel K Ackah.

The parties submitted fifty-seven (57) joint exhibits. Complainant submitted seven (7) additional exhibits and Respondent submitted two (2) additional exhibits.

To the extent the proposed findings are not in accord with or irrelevant to my findings, they are rejected. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant Melinda Clark (“Complainant”) is a tenant of the New Bedford Housing Authority. She resides at 160 Hathaway Road in New Bedford, MA in federally-assisted public housing.
2. Respondent New Bedford Housing Authority (“Respondent”) is a public housing authority with offices at 134 South Second Street, New Bedford, MA. It owns and operates the property where Complainant resides. Respondent’s Senior Property Manager Bruce Duarte has worked for the New Bedford Housing Authority for twenty years. He described the housing complex as a three-hundred unit development and the building where Complainant resides as a four unit structure housing children as well as adults. He testified that Respondent’s pet policy excludes snakes primarily because of concerns that they carry salmonella. He testified that the type of snake owned by Complainant – a ball python -- raps itself around the neck of its prey and could potentially harm other residents and/or result in the Housing Authority being sued by other residents. Duarte asserted that Complainant’s pet snake eats dead rats and that the presence of rats on the

- property, whether dead or alive, undermines his efforts to keep the development in a sanitary condition.
3. The lease which Complainant entered into with Respondent provides that “the Resident agrees to keep no animals ...except as provided for in the New Bedford Housing Authority Pet Policy.” The New Bedford Housing Authority Pet Policy allows only for certain pre-approved “common household pets.” It excludes snakes and reptiles “who pose a significant risk of salmonella.”
  4. Complainant’s ball python pet snake is four and a half feet long. She testified at various times that she has had the snake for seven or ten years. Complainant keeps her snake in a glass enclosure in her federally-assisted public housing apartment.
  5. In or around late 2009, Respondent learned that Complainant was keeping the snake in violation of the Housing Authority’s pet policy as set forth in her lease agreement. Respondent informed Complainant that she had to remove the snake from her apartment. Joint Exhibit 22.
  6. Rules for pet ownership in HUD-assisted public housing permit residents to keep animals that provide reasonable accommodations in the form of assistance, service, and/or support to persons with disabilities. Joint Exhibit 5. If such animals pose a direct threat to the health or safety of other residents, however, they need not be permitted. Id.
  7. In January of 2010, Complainant participated in a conference with New Bedford Housing Authority personnel at which Respondent’s pet policy was discussed. Joint Exhibit 23. Complainant would neither acknowledge nor deny the

- continued presence of her pet snake on Housing Authority property. Bruce Duarte informed Complainant that the Housing Authority would move forward with eviction proceedings.
8. On May 13, 2010, Respondent issued Complainant a Notice to Quit For Cause in which she was informed that her tenancy at 160 Hathaway Road was terminated as of July 1, 2010. Joint Exhibit 24.
  9. On July 19, 2010, the Southeast Division Housing Court Department issued Complainant a Summary Process (Eviction) Summons and Complainant instructing her that a hearing would be held on July 30, 2010. Joint Exhibit 25.
  10. On July 30, 2010, Complainant signed a Summary Process Agreement For Judgment. Joint Exhibit 26. Complainant agreed to: 1) remove her pet snake from her apartment on or before August 2, 2010; 2) permit unannounced inspections of her apartment; and 3) pay court costs. Id.
  11. Complainant testified that her daughter, Samantha Francis, removed the snake from her apartment shortly after July 30, 2010. Francis did not tell her mother prior to removing the snake. Francis took the snake and its container to the home of Complainant's mother.
  12. At 6:05 p.m. on the evening of August 2, 2010, Complainant was taken by ambulance to St. Luke's Hospital after ingesting six Flexaril. Complainant's Exhibit 5 & 6. In a hospital assessment related to the August 2, 2010 episode, Complainant is recorded as saying that she ingested the pills as a way of getting back at her family for making her feel unloved, not respected, unappreciated, and unwanted as well as due to the removal of her pet snake. Complainant's Exhibit 6

at p. 1.

13. Complainant maintains that she did not have a mental health disability prior to the removal of her snake on or about August 2, 2010, but the record contains credible evidence of longstanding mental health problems.
14. On August 8, 2010, Complainant filed a complaint with the MCAD charging that Respondent had discriminated against her based on her religious creed (Wicca) by denying her the religious accommodation of keeping a snake. Joint Exhibit 27. Complainant did not raise the issue of disability discrimination in the 2010 complaint. Id. The complaint was dismissed by the MCAD on August 18, 2010 for failure to state a claim. Joint Exhibit 28.
15. On August 26, 2010, Complainant began treating with psychiatrist Dr. Murtuza Vali. She also began weekly psychotherapy sessions with therapist Melissa Costa.
16. On or about September 29, 2010, Complainant sought permission to bring her snake back to her apartment as a reasonable accommodation to a disability which Dr. Vali described as “Major Depressive Disorder, severe and psychotic features and Anxiety Disorder.” Complainant’s Exhibit 1 (“To Whom It May Concern”). Dr. Vali stated that Complainant’s condition was exacerbated by the recent loss of her pet snake and that Complainant is “possibly at risk of experiencing de-compensation (severe increase in symptoms which may result in hospital admission) due to this loss.” Id. Dr. Vali notes that pets are “considered to be of therapeutic value and are greatly encouraged in the process of treatment for those who are willing.” Id.

17. The letter was provided to the New Bedford Housing Authority's Compliance Coordinator Samuel Ackah. Ackah gave Complainant a medical certification form and requested more information from Dr. Vali about how the snake contributes to Complainant's full use and enjoyment of her housing unit. Joint Exhibit 19. The form was returned to Ackah on or around November 10, 2010 along with a second letter from Dr. Vali dated November 17, 2010. Complainant's Exhibits 2 & 3. In his second letter, Dr. Vali references Complainant's increased symptoms due to the anticipated loss of her pet snake and asserts that the snake "represents a new beginning as they shed their skin and this symbolizes a fresh start toward the future and a need to move forward. To her this is very therapeutic and an aid to progress in her treatment regimen." Complainant's Exhibit 2. The medical certification form states that Complainant has a long-term or permanent physical or mental impairment which interferes with interacting with others, concentrating, and working. Complainant's Exhibit 3. It states that the removal of the snake may worsen Complainant's anxiety and that allowing Complainant to retain her snake as a pet would "alleviate her anxiety." Id.

18. Compliance Coordinator Samuel Ackah testified that he responded to Complainant's request to keep her snake in her Housing Authority apartment by contacting her to discuss the issue, sending her a form to fill out, researching service animals, and making multiple calls to Dr. Vali for whom he left messages on November 23, 2010 and on December of 2010. Dr. Vali testified that he "probably" waited to return Ackah's calls until he received permission from

Complainant to speak to Ackah.

19. Dr. Vali returned Ackah's calls in early January of 2011, at a time when Complainant was present in his office. Dr. Vali and Ackah discussed Dr. Vali's letters, his medical certification, and his opinion that the snake would alleviate Complainant's anxiety. Dr. Vali testified at the public hearing that he does not recall the details of what he said to Ackah. According to Ackah and his contemporaneous written record, Dr. Vali stated that it would be "speculative" to comment on the benefits of a pet snake and focused instead on the detriment of removing Complainant's snake from her apartment. Joint Exhibit 21.
20. On January 21, 2011, Ackah formally denied Complainant's request for a reasonable accommodation. Ackah based his decision on the lack of evidence that the snake's presence was beneficial in reducing the effects of Complainant's disability. Ackah did not consider the distress which Complainant might experience in having to give up the snake. Joint Exhibit 20.
21. In February of 2011, Complainant brought the snake back to her apartment without the knowledge of the New Bedford Housing Authority and in violation of the Southeast Housing Court Agreement. Joint Exhibit 26. According to 2/7/11 treatment notes of therapist Melissa Costa, MSW, "since he [the snake] has been back, she [Complainant] is able to concentrate and the voices and noises have stopped." Complainant's Exhibit 7. Subsequently, however, Complainant entered inpatient emergency treatment by Child & Family Services, Inc. on 3/11/11 after sending her daughter emails referring to killing herself. Respondent's Exhibit 2. Assessment notes from her admission contain

- accusations by Complainant that family members were barricading her in her room and taking away her psych meds. Id.
22. The New Bedford Housing Authority apartment building in which Complainant resides also houses in other rental units a four year old boy and an eleven year old girl.
23. Complainant testified that she never takes her snake out of its locked glass container but she also testified contradictorily that she takes the snake out of its container for baths, for exercise, for freedom, for shedding, to feed it, and to permit it to play in the grass in front of a nearby bowling alley. Complainant feeds dead rats to the snake. According to Complainant, the snake “tightens the back of [my] neck with his body and it teaches me to relax.”
24. Complainant testified that she researched the risk of salmonella from snakes and learned that it is associated with female egg-laying snakes and mating males, not male snakes such as hers who are not mated.
25. On or about October 6, 2011, Complainant met with Respondent’s managers Rose Frias and Bruce Duarte. At the meeting Complainant disclosed that she again had the snake in her apartment. Joint Exhibit 32. Respondent’s managers denied Complainant’s request that she be permitted to keep her snake in her apartment. Respondent served Complainant with a series of eviction notices beginning on October 14, 2011 to terminate her lease. Joint Exhibits 1 & 2. 35-38. The November 1, 2011 notice stated that her tenancy was terminated as of December 1, 2011 due to violation of the New Bedford Housing Authority’s pet policy and her refusal to pay sales and service fees. It notified Complainant that she had a



- right to a grievance hearing. Joint Exhibit 37.
26. On November 21, 2011, Complainant filed a complaint with the MCAD charging that Respondent had discriminated against her in denying the reasonable accommodation of keeping her pet snake in her apartment as an emotional support animal. Joint Exhibit 9.
27. On December 7, 2011, Respondent's grievance panel voted to approve Respondent's decision to proceed with Complainant's eviction for "issues involving illegal pet and failure to pay service fees." Joint Exhibits 33 & 34.
28. On December 20, 2011, Southwestern Division Housing Court of Plymouth/Bristol Superior Court served Complainant served with a Summary Process (Eviction) Summons. Joint Exhibit 39. Complainant responded *pro se* on January 6, 2012. Subsequently, through South Coastal Counties Legal Services, Inc., Complainant made multiple requests for a reasonable accommodation permitting her to be allowed to keep her snake in her apartment to "counteract anxiety." Joint Exhibits 40-42. The Housing Court eviction proceeding was continued to May 24, 2013. During the interim, Respondent took no action to evict Complainant.
29. On February 10, 2012, Dr. Vali drafted a "To Whom It May Concern Letter" stating that Complainant's mental health has improved, in part, due to being allowed pet therapy and that the loss of her pet would cause a "more than probable de-compensation." Complainant's Exhibit 4.
30. At the MCAD public hearing, Dr. Vali acknowledged that Complainant has had psychiatric episodes during periods when the snake has been in her custody.

31. On May 7, 2013, the Massachusetts Department of Transitional Assistance issued a decision on Complainant's appeal of the denial of her requested EAEDC benefits. It concluded that Complainant did not meet requirements to be considered "vocationally disabled" under medical listings for affective disorders (106 CMR 320.210 (L)(4); anxiety disorders (106 CMR 320.210 (L)(8); and/or personality disorders (106 CMR 320.210 (L) (6). The Department's conclusion rendered Complainant ineligible for EAEDC pursuant to the EAEDC regulatory scheme.

## II. CONCLUSIONS OF LAW

Massachusetts General Laws c.151B §§ 4(6) and (7A) prohibit discrimination in housing on the basis of disability, including the refusal to rent to a person because of his/her handicap and the refusal to make reasonable accommodations necessary to afford the person equal opportunity to use and enjoy a dwelling. Complainant alleges that Respondent refused to make a reasonable accommodation when it informed Complainant that she could not keep her pet snake in her apartment.

In order to establish a prima facie case of housing discrimination on the basis of handicap, the complainant must demonstrate that she (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. See Kacavich v. Halcyon Condominium Trust, 30 MDLR 109 (2008).

For the purposes of the analysis set forth below I accept the proposition that Complainant is disabled within the meaning of the law, notwithstanding Complainant's

previous attempt to keep her snake as a reasonable accommodation for her religious practices. The existence of a disability is premised on Dr. Vali's description of Complainant as having a "Major Depressive Disorder, severe and psychotic features and Anxiety Disorder." Dr. Vali communicated this diagnosis to Respondent in correspondence dated September 29, 2010 which accompanied Complainant's request for permission to keep her snake in her apartment as a reasonable accommodation to her disability. Subsequently, Dr. Vali filled out a medical certification form stating that Complainant has a long-term or permanent physical or mental impairment which interferes with interacting with others, concentrating and working. These assertions put Respondent on notice that Complainant was diagnosed with a psychiatric disability.

What Complainant fails to establish, however, is that keeping a four and one-half foot long ball python snake constitutes a reasonable accommodation for her psychiatric disability.<sup>1</sup> While Complainant and Dr. Vali both testified at the public hearing that the pet snake has substantially improved Complainant's mental health and that the loss of the snake would seriously jeopardize her emotional well-being, those claims must be balanced against the impact of the snake on the entire New Bedford Housing Authority community. The determination of whether a requested accommodation is reasonable is resolved on a case-by-case basis. See Andover Housing Authority v. Shkolnik, 442 Mass. 300, 307 (2005); Whittier Terrace Associates v. Hampshire, 26 Mass. App. Ct. 1020, 1021(1989) (psychologically handicapped woman entitled to a narrow exception to her landlord's no-pet rule); Blake v. Brighton Gardens Apartments, 33 MDLR 48, 51

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<sup>1</sup> Pursuant to the Americans with Disabilities Act definition of a service animal in regard to federally-subsidized housing, an animal must be "individually trained to do work or perform ... tasks for the benefit of an individual with a disability." See 28 CFR sec. 36.104. Such a standard does not control the outcome under G.L. ch. 151B, but it is noteworthy that Complainant has failed to cite any work or task performed by the snake which benefits her disability.

(2011) (allowing exception to no-pet rule where small dog provided companionship and support to HIV-infected tenant).

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. See Andover Housing Authority, supra at 308. Respondent fulfilled its responsibility to engage with Complainant in an interactive process by soliciting written and verbal input from Complainant's treating psychiatrist. Housing Authority's Compliance Coordinator Samuel Ackah provided Complainant with a medical certification form in order to elicit information from Dr. Vali. The form was returned along with a second letter from Dr. Vali which, for the most part, focuses on Complainant's religious views (Wiccan) rather than a medical diagnosis. For example, Dr. Vali asserts that the snake "represents a new beginning" by shedding its skin and "symbolizes a fresh start toward the future and a need to move forward."<sup>2</sup> More to the point is Dr. Vali's certification that Complainant has an impairment which interferes with interacting with others, concentrating, and working and his concern that the removal of the snake could worsen Complainant's anxiety. According to Housing Coordinator Ackah, however, Dr. Vali told him in a phone conversation that it would be "speculative" to comment about the benefits of a pet snake. I credit Ackah's description of their telephone conversation.

The reasonable accommodation process requires that Dr. Vali's description of Complainant's disability and the role of her pet snake in ameliorating her situation be

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<sup>2</sup> Such claims paraphrase Complainant's statements in an earlier MCAD complaint alleging religious discrimination. See Joint Exhibit 27. The prior complaint, although not fatal to Complainant's current attempt to characterize the snake as an emotional support for her psychiatric disability, does little to advance the validity of a disability discrimination cause of action.

evaluated in conjunction with its impact on the Housing Authority and fellow tenants. 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). At the public hearing, Respondent expressed concerns that snakes carry salmonella, can get ticks and mites, could get loose and harm other residents, especially small children, and could frighten other residents who might be phobic about or fearful of snakes. Complainant acknowledged that she removes her snake from its glass case in order to bathe it, feed it, play with it, exercise it, and allow it to shed.

While Complainant made the bald assertion at public hearing that male snakes do not carry salmonella, she presented no credible, authenticated evidence supporting this assertion nor did she present proof that her snake is, in fact, male. The fact that Complainant feeds her snake dead rats gives rise to reasonable health concerns such as the possibility that the snake could contract salmonella, ticks and mites from the rodents that the snake consumes. These matters establish that, on balance, it would have been an undue hardship to grant the requested accommodation of permitting Complainant to keep her pet snake in her Housing Authority apartment.

Based on the foregoing, I conclude that Respondents are not liable for discrimination against Complainant based on her handicap in violation of G.L. c. 151B §§ 4(6) and 4(7A).

### III. ORDER

For the reasons set forth in this decision, the Complaint is hereby dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by

this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 28th day of June, 2013.

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Betty E. Waxman, Esq.,  
Hearing Officer

