

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and JENNIFER MARTIN,

Complainants

Docket No. 17-BPR-00725

v.

BARBARA PEPIN,

Respondent

Appearances: Caitlin Parton, Esq. for Complainant Martin
Hung Tran, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 28, 2017, Complainant Jennifer Martin filed charges of discrimination against her landlord, Respondent Barbara Pepin, based on disability in violation of M.G.L. c. 151B, sections 4(6) and 4(7A).¹ Complainant alleges that she suffers from PTSD and bipolar disorder and sought reasonable accommodations for her conditions but that Respondent refused to engage in an interactive process, failed to grant her the reasonable accommodations sought, and created a hostile environment in and around her apartment.

¹ Complainant also alleges a violation of the Fair Housing Act, 42 U.S.C. secs. 3604(f)(1) & (3). The findings and conclusions in this decision are limited to matters arising under G. L. c. 151B although federal case law construing "cognate" provisions of the Fair Housing Act are deemed relevant. See Andover Housing Authority v. Shkolnik, 443 Mass. 300, 306 (2005) citing New Bedford v. MCAD, 440 Mass. 450, 463 n.26 (2003) and Dahill v. Police Dep't of Boston, 434 Mass. 233, 237-238 (2001) (when interpreting provision of Chapter 151B, federal case law construing cognate provisions of the Fair Housing Act are deemed relevant unless there is a reason to depart therefrom).

Probable cause findings were issued on charges of disability discrimination pertaining to the denial of reasonable accommodations and the creation of a hostile environment. The case was certified to public hearing on August 17, 2018. A prehearing conference was held on November 27, 2018.

A public hearing was scheduled to begin on January 31, 2019 but was postponed at Complainant's request. The public hearing took place on April 29, May 3, and May 6, 2019. The following witnesses testified: Complainant, Eric Martin, Barbara Pepin, Michael Pepin, Dr. Stephanie Machell, and Aldo Binda. Complainant submitted Exhibits 1-11. Respondent submitted Exhibits A-F.

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Jennifer Ann Martin resides at 146 Willow Street Quincy, MA. She is a former member of the Marine Corps from which she received a medical discharge in 1994. Complainant is a service-connected disabled veteran. She has diagnoses of bipolar disorder with associated military sexual trauma and post-traumatic stress disorder (PTSD). Complainant's Exhibit 6; Transcript I at p. 31. She also has bilateral sensorineural hearing loss and a hyper-startle reflex. Complainant's Exhibit 9. Complainant testified that she is currently rated by the Veterans' Administration as being 100% disabled. Novel situations cause her agitation and anxiety. To assuage symptoms of PTSD, Complainant has a trained service dog to help her cope with stress.

2. Respondent Barbara Pepin is the owner of a multiple-dwelling housing complex at 146 Willow Street, Quincy, MA 02170. It consists of four units. Respondent does not live on the property, but she handles matters relating to the building's upkeep. Transcript III at p. 101.
3. Complainant formerly lived in Colorado but moved to Boston in June 2015 to be near her son, Eric Martin.
4. Upon arriving in Boston during the summer of 2015, Complainant sought apartment referrals from the Marine Corps League in Quincy. Transcript I at p. 31. Through the organization, Complainant met realtor Aldo Binda who has an office at Success Realty in Braintree. Transcript I at p. 80. Mr. Binda has found tenants for Respondent's apartments on a number of occasions. Transcript III at p. 102.
5. In June 2015, Mr. Binda showed Complainant several apartments, including 146 Willow Street, apt. #2 in Quincy. Respondent intended to offer the unit for rent commencing on August 1, 2015, after the prior tenant's belongings were cleaned out and the apartment was painted, but Complainant wanted to move in as of July 1st. Transcript III at pp. 13-14, 32-33. Mr. Binda called Respondent to ask if Complainant could move in sooner than planned. Respondent agreed, subject to meeting Complainant. Transcript III at p. 16.
6. On June 24, 2015, Complainant, Mr. Binda, and Respondent met at the apartment to discuss Complainant's rental of the unit. Transcript I at p. 86. Respondent gave Complainant permission to have her service dog live in the apartment. Transcript III at p. 16. Respondent also gave Complainant permission to change the color of the bedroom paint.

7. Mr. Binda offered to paint the bedroom because Respondent's usual painter was unavailable. Transcript II at p. 51-55; III at pp. 33-34, 110-111. Complainant testified that she was "furious" about his offer, but I do not credit this assertion since Complainant did not object to his painting at the time. Transcript I at pp. 35-37, 89; II at 55-56; III at p. 34-39.
8. According to Mr. Binda, he volunteered to paint the bedroom so that Complainant could move in sooner than August 1, 2015. Transcript III at pp. 34-35. Mr. Binda testified that he did not expect to be paid but that Respondent offered to compensate him. He said that there were no scheduled hours for the painting other than an expectation that he would arrive in the morning. Transcript III at p. 37. I credit that Mr. Binda offered to help paint the bedroom in order to facilitate the rental arrangement and that there were no scheduled hours for the painting.
9. During the parties' June 24, 2015 meeting, Complainant informed Respondent that her son Eric Martin exercised her power of attorney and that Respondent should feel free to contact him about her tenancy. Complainant indicated that she relies on her son to help her manage her life and her finances. The parties signed a tenancy at will agreement on June 24th providing that Complainant would move in on July 1, 2015. Complainant's Exhibit 4. The agreed-upon rent was \$1,300 per month. Id. Complainant's credit score was 530, which Mr. Binda considered low for potential tenants. Transcript III at pp. 26, 29. Respondent decided to rent to Complainant anyway, because Complainant was a veteran. Transcript III at p. 29.
10. Mr. Binda testified that he has never worked as Respondent's property manager. He charged Complainant \$650.00 for finding her the apartment at 146 Willow Street. The

rental fee was due at the signing of the lease on June 24, 2015, but Complainant did not have enough money to pay him on that date. Mr. Binda allowed Complainant to pay his fee in two \$325.00 installments, the first on July 1, 2015 and the second on August 1, 2015. Transcript III at pp. 22-23.

11. On or about July 6, 2015, Complainant and Mr. Binda went shopping together at Home Depot for paint and painting equipment. Mr. Binda does not recall whose vehicle they took but stated that Complainant took her dog along. Transcript III at p. 40. On the way back to the apartment, Mr. Binda showed Complainant places to get coffee, to walk her dog, and other locations. Transcript I at p. 92, III at p. 40. Upon returning to the apartment, Mr. Binda stowed his painting equipment in a common hallway towards the back of the building. Transcript III at p. 41.

12. Complainant and Mr. Binda painted the apartment's bedroom from July 7 to 9, 2015. Complainant testified that she objected to Mr. Binda's painting technique, to his removing his shirt because he was sweating, and to his kissing her on both cheeks. Transcript I at pp. 39-40, 44; II at 41-42. She stated that she was offended by his offering her a chair and/or lamp from his house and some clothes worn by his deceased mother. Transcript I at p. 40. According to Complainant, on the third day of painting Mr. Binda left her premises but then returned and said, "I'm checking things out for tomorrow" and stayed for approximately twenty minutes. Transcript I at pp. 46, 127-129. Complainant testified that she told Mr. Binda that she wanted him "gone" and if he didn't leave, she would call 911. Transcript I at pp. 47, 129. Complainant described the alleged interaction as making her feel fed-up, angry, and a little insecure, but not afraid. Transcript I at pp. 47-49.

13. Mr. Binda credibly denies ever kissing Complainant. Transcript III at pp. 65-66.

Complainant's charge of discrimination, filed with the MCAD on March 28, 2017, consists of a detailed account of what allegedly transpired yet omits any reference to Complainant being kissed by Mr. Binda. Mr. Binda acknowledges that he offered Complainant some clothes belonging to his wife, daughter, and mother and some furniture which Complainant refused although she took a TV and a couch from the prior tenant. Transcript III at pp. 58-65. Mr. Binda testified credibly that when he left Complainant's building on one or more of the days he painted, he took off his shirt but stated that he removed it in the hallway of the apartment complex, not in Complainant's apartment and did so in order to avoid getting paint in his vehicle. Transcript III at pp. 50, 74.

14. Mr. Binda described Complainant as very appreciative of his assistance. He testified credibly that on the second day of painting, Complainant gave him a six-pack of Yuengling beer because he mentioned that he liked it on the previous day. Transcript I at p. 117; III at p. 47. According to Complainant, she gave him the six pack of beer on June 24th when the lease was signed. Transcript II at p. 57. I credit Mr. Binda's recollection over Complainant's.

15. According to Mr. Binda's credible testimony, Complainant, on the third day of painting, objected to the manner in which he applied paint and ordered him to leave. Transcript III at pp. 68-72. He described Complainant as yelling and behaving in a volatile manner. Transcript I at pp. 128-129; II at 41; III at 72-73. Mr. Binda left but returned to get his keys. Transcript III at p. 73. When he departed the second time, he

left without taking his ladders, his fan, or his drop cloth which he retrieved from

Complainant's son several days later. Transcript I at p. 50; III at p. 73.

16. Complainant testified that on the evening of July 9, 2015 (the third day of painting), she called Respondent to complain about Mr. Binda arriving at different times each morning, leaving paint equipment in her apartment overnight, bringing his dog to the apartment, offering her second-hand furniture, helping himself to beverages in her refrigerator, refusing to use the painting technique she desired, and refusing to leave the apartment on July 9, 2015. Transcript I at p. 119. I do not credit the truth of all these allegations, but I credit that Complainant found Mr. Binda to be intrusive. Complainant expressed the desire to finish the painting on her own and Respondent agreed. Transcript I at p. 120.

17. On July 14, 2015, Complainant had a panic attack in the bathroom as a result of Mr. Binda meeting her son on the back porch of the apartment complex in order to obtain his paint supplies. Transcript II at 109, 129. During the meeting, Complainant was in the bathroom vomiting and crying. Transcript II at 117.

18. While Mr. Binda was with Mr. Martin on July 14th, Respondent knocked on Complainant's front door in order to execute a document reducing Complainant's rent, get a reduced rent check, and inspect the paint job. Transcript II at 58, 61, 129-130; III at p. 126. The rent was originally \$1,300 (a \$100 increase over the prior tenant's rent), but Respondent offered to reduce the rent to \$1,200 within a day or two after the lease was signed in recognition of Complainant's status as a veteran. Transcript II at pp. 57-58; III at p. 125. Complainant's son answered the door when Respondent knocked and said it "wasn't a good time" for a visit. Transcript II at p. 60, 130-132; III at p. 127.

Complainant was too distressed to find her check book in order to write a reduced rent check. The offer of reduced rent was never implemented. Transcript II at 133-134; III at p. 201.

19. In a subsequent telephone conversation between Eric Martin and Respondent, Mr. Martin asked for advance notice of when Respondent was planning to “stop by.” Transcript II at 114. Mr. Martin testified that he was referring to Complainant’s individual apartment and not to the common areas of the apartment complex but his words did not make this meaning clear. Transcript II at 143. According to Mr. Martin, Respondent’s answer consisted of shouting, interrupting, and claiming that she could “stop by,” go to “the property,” or go “inside” whenever she wanted, that the tenancy wasn’t working out, and that Complainant was going to have to find a new place to live. Transcript II at 113-115, 133-137, 140. I credit Mr. Martin’s testimony about the telephone conversation.
20. On July 17, 2015, Eric Martin sent Respondent a cover letter and a request for accommodations on behalf of his mother, asking that Respondent contact him by telephone or text rather than knock on his mother’s apartment door about matters relating to Complainant’s tenancy except in emergencies. Complainant’s Exhibit 1; Transcript I at p. 51. The communication stated that if Mr. Martin failed to respond within twenty-four hours, Respondent should contact Complainant. Complainant’s Exhibit 1. The letter also requested that Respondent remove Mr. Binda as maintenance manager of the building. Id. Respondent did not provide a written response to the July 17, 2015 communication.

21. Mr. Martin had a subsequent phone conversation with Respondent in which she said that she would give “reasonable notice” before entering Complainant’s apartment but did not agree to contact Mr. Martin (in lieu of Complainant) for non-emergency matters, objected to the characterization of Mr. Binda rather than herself as property manager, and did not respond to the specific stipulations requested in Mr. Martin’s letter. Transcript I at p. 54, III at pp. 131-136, 171, 202-203; Exhibit 4, p. 5.
- According to Respondent, she told Eric Martin that his requests for forty-eight (48) and twenty-four (24) hours’ notice were “fine,” but I do not credit this assertion, although I credit that Respondent began to make appointments before entering Complainant’s apartment and thereafter refrained from knocking on Complainant’s door.
22. Complainant sought, but did not receive, the opportunity to engage in an interactive dialogue with Respondent in order to discuss such matters as her dislike of being approached in the apartment building’s common areas. Transcript II at pp. 72-73.
23. According to Respondent, she and her husband go to 146 Willow Street in order to handle maintenance matters and to collect coins from the laundry room. Transcript III at p. 154-158, 165. Respondent testified that they rarely come into contact with Complainant on the property and denied “ambushing” her. Transcript III at p. 154.
24. In early December 2015, Respondent texted Eric Martin to inform him that Complainant’s oil tank was empty, that it needed to be filled ASAP, that she Respondent had ordered 100 gallons of heating oil for Complainant, and that Complainant owed her reimbursement for the 100 gallons of oil plus reimbursement for 80 gallons of oil that was previously put into Complainant’s tank. Respondent’s Exhibit F. Respondent testified that tenants are responsible for purchasing their own

heating oil. Complainant's Exhibit 4. According to Respondent, an oil company executive informed her that Complainant did not have sufficient funds to pay for the heating oil and asked if he could bill her (Respondent) for the oil. Transcript III at pp. 144-145. Respondent agreed and thereafter received reimbursement from Eric Martin. Transcript III at pp. 146, 148-149.

25. According to Respondent, Mr. Martin communicated with her in an argumentative fashion about the heating oil and failed to recognize that she had done a favor for his mother. Transcript III at pp. 147, 150-151. The texts between Respondent and Mr. Martin do not support this assertion. Complainant's Exhibit F. Contrary to Respondent's claim that Mr. Martin behaved unreasonably in communicating about the heating oil, Mr. Martin's texts consist of polite communications, several inquiries about what he could do to help, and a request that Respondent not shout at him on the phone. Id.; Complainant's Exhibit 10. Mr. Martin testified credibly that he talked to Respondent on the phone three times and that in each phone conversation, Respondent yelled at him and that in two of the conversations, Respondent hung up on him. Transcript II at 111-112, 150. I credit Mr. Martin's assertion that he never shouted back at Respondent and that he remained calm. Transcript II at pp.151-153.
26. In or around April 8, 2016, Respondent's husband, Michael Pepin, noticed that Complainant's dining room window was shattered and discussed it with Complainant when he encountered her in the laundry room of the apartment complex. He offered to swap the shattered window with an undamaged window from a vacant unit. The swap took place on or around April 13, 2016 during a pre-scheduled appointment. Transcript III at p. 162. Around the same time, Respondent made arrangements to enter

Complainant's apartment several days later to check on a possible bathroom leak.

Transcript II at p. 75-79.

27. On April 14, 2016, Complainant's then-counsel, Caitlyn Byers of the Disability Law Center, Inc., wrote to Respondent to retract earlier accommodation requests and to ask, instead, that communications from Respondent be sent directly to Complainant rather than her son, to ask that Complainant receive assurance that she would not have to interact with Mr. Binda, to provide Complainant with two hours telephone notice of the need to come to her apartment door at a mutually-agreeable time except in emergencies, and to give Complainant forty-eight (48) hours' notice of the need to enter her apartment. Complainant's Exhibit 2. The letter also contains a request that Complainant and Attorney Byers meet with Respondent and her attorney to discuss accommodation requests. Id. The letter was accompanied by a letter from Complainant's therapist Mary Ann Burke, Ed.D, LMFT.
28. Complainant testified credibly that Respondent never answered the April 14, 2016 letter. Transcript I at pp. 56-57. Respondent acknowledged that she did not answer the letter or meet with Complainant and her attorney. Respondent asserted that she declined to do so because she didn't have a lawyer and because she sought to keep her distance from Complainant. Transcript III at pp. 195. Respondent testified in a contradictory fashion about whether she spoke to Attorney Byers in response to the April 14, 2016 letter. Compare Transcript III at pp. 195-196 with p. 204. I do not credit that Respondent had a telephone conversation with Attorney Byers in response to the letter. Complainant's Exhibit 3.

29. Several months later on June 28, 2016, Respondent did have a telephone conversation with Complainant's attorney. Complainant's Exhibit 3. In that conversation, Respondent refused to meet in order to discuss the accommodations sought by Complainant.
30. On August 29, 2016, Complainant's attorney sent a third list of accommodation requests which reiterated previously-stated requests that someone other than Mr. Binda communicate with Complainant and enter her apartment when necessary, that Complainant receive forty-eight (48) hours' notice prior to her apartment being entered, and that Complainant receive at least two (2) hours' notice prior to Respondent or her agents coming to Complainant's door. Complainant's Exhibit 3. The letter deleted the request that Mr. Binda be removed as maintenance manager. Id. Attorney Byers stated in her August 29, 2016 letter that she was retracting the request that Mr. Binda be removed as maintenance manager of 146 Willow Street as long as he refrained from dealing with Complainant. Id. Attorney Byers expressed the hope that deleting the request that Mr. Binda be removed as maintenance manager would encourage Respondent to meet with Complainant and engage in an interactive process about Complainant's accommodation requests. Id.
31. Respondent did not answer the August 29, 2016 letter. Transcript I at p. 58.
- Respondent testified that she was "nervous" about meeting with Complainant and her attorney. Transcript III at pp. 180, 199.
32. According to Complainant, the lack of a response from Respondent made her feel insignificant, angry, and disrespected. Transcript I at pp. 58-59. Complainant testified that not knowing whether her landlord was going to grant her requested

accommodations was “really frustrating,” caused her to lose more than twenty (20) pounds, resulted in her needing to see a GI doctor, and prevented her from pursuing her hobbies. Transcript I at pp. 60-61. According to Complainant, the agitation and anxiety she experienced caused her nausea and headaches. Transcript I at pp. 61, 68-69.

33. According to Mr. Martin, the worsening of his mother’s PTSD symptoms negatively impacted her ability to be maternal and emotionally supportive towards him. Transcript II at pp. 117, 123-124. He said that stress relating to Complainant’s apartment situation caused her to avoid crowds and social interactions; impeded her from leaving her house, exercising, cooking and baking; and caused her to disregard plans they made together. Transcript II at 117-122. Mr. Martin described his mother prior to July 2015 as healthy, fulfilled, and engaged, but said that after dealing with Respondent and Mr. Binda, she lacked energy for activities and pursuits. Transcript II at pp. 122, 124. Mr. Martin testified that his relationship with his mother became strained after her negative interactions with Mr. Binda and Respondent. Transcript II at p. 116. Mr. Martin described his mother as losing considerable weight and being frailer than she was previously. Transcript II at p. 126.

34. Dr. Stephanie Machell is a clinical psychologist who deals with psychological trauma including medically-induced trauma, PTSD, and disassociation. Transcript II at p. 3. She has taught courses in childhood trauma and sexual abuse, and developmental psychology, and has presented a range of workshops. Transcript II at p. 4. Dr. Machell has an independent practice specializing in trauma-based conditions, depression,

bipolar, anxiety/trauma, substance abuse, and PTSD. Transcript II at pp. 5-6. She has worked with veterans and studied military culture. Transcript II at p. 6.

35. Dr. Machell met with Complainant on one occasion in 2018, had two telephonic conversations with her, read documentary material about Complainant, and consulted with Complainant's VA psychiatrist. Transcript II at pp. 8-9. Dr. Machell evaluated but did not treat Complainant. Transcript II at pp. 7-8. For the purposes of testifying about Complainant's psychological condition, Dr. Machell is deemed to be an expert in this proceeding.

36. Dr. Machell offered her expert opinion that if a person with Complainant's psychological diagnoses experienced the circumstances described in her testimony, that individual would sustain significant impairment of her functioning due to a violation of her boundaries. Transcript II at pp. 16-19. Dr. Machell testified that Complainant's psychological state has deteriorated, her manic episodes have increased, and her anxiety has become more exaggerated. Transcript II at pp. 24-25. Dr. Machell testified that Complainant's requested accommodations were designed to help Complainant feel in control of her environment. Transcript II at pp. 29-31.

37. Respondent testified credibly that notwithstanding her refusal to meet with Complainant and her attorney to discuss accommodations, she makes appointments prior to visiting Complainant's apartment and refrains from knocking on her door. Transcript Day 3 at pp. 189-190. Complainant's son acknowledged at the public hearing that after asking for accommodations on behalf of his mother, he could not recall any instance in which his mother complained about her apartment being entered without prior notice, about Respondent knocking on Complainant's door for

unannounced visits, or about having any interactions with Mr. Binda. Transcript II at pp. 169-171.

III. CONCLUSIONS OF LAW

A. Failure to Accommodate

General laws chapter 151B, sec. 4(6) makes it is unlawful for “the owner . . . of . . . multiple dwelling . . . housing accommodations . . . to discriminate against any person . . . because [of a] handicap.” According to the definitional section of Chapter 151B, the term “multiple dwelling” means a dwelling which is rented out as the residence of three or more families living independently of each other. G.L. c. 151B, section 1(11). “Family” is defined as a person occupying a dwelling and maintaining a household either alone or with not more than four boarders, roomers or lodgers. Id. Under G.L. c. 151B, sec. 4(7A), discrimination on the basis of handicap includes the “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.” A reasonable accommodation is one that does not impose “undue hardship.” See Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap – Chapter 151B, 20 MDLR Appendix (1998) (“MCAD Handicap Guidelines”) at pp. 6-8.

In order to set forth a prima facie case of housing discrimination on the basis of handicap, Complainant must show that he/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 has refused to make the requested

accommodation. See Andover Housing Authority v. Shkolnik, 430 Mass. 300, (2005); Kacavich v. Halcyon Condo. Trust, 30 MDLR 109 (2008); Buckley v. Wolfinger, 18 MDLR 158 (1996).

There is no doubt that Complainant suffers from a handicap of which Respondent was aware. Complainant received a medical discharge from the Marines in 1994. She is a 100% disabled veteran with diagnoses of bipolar disorder and post-traumatic stress disorder (PTSD), bilateral sensorineural hearing loss, and a “hyper-startle reflex.” These conditions satisfy the requirement of disability status.

Insofar as Respondent’s knowledge of Complainant’s disability is concerned, the evidence establishes that at their first meeting, Complainant informed Respondent that her son, Eric Martin, exercised a power of attorney over her affairs. Complainant sought and received permission to have a service animal in her apartment. Thereafter, on July 17, 2015, Mr. Martin sent Respondent a “Request for Reasonable Accommodation” on behalf of his mother, describing Complainant as having a disability that substantially limited one or more of her major life activities and requesting that Respondent contact him by telephone or text rather than knocking on Complainant’s apartment door except for emergencies or in cases where Mr. Martin failed to respond within twenty-four hours. This accommodation request was followed by correspondence dated April 14, 2016 from the Disability Law Center, Inc., addressing notice issues and seeking a meeting involving the parties and their attorneys. A third accommodation request, dated August 29, 2016, reiterates previously-stated requests. Individually or as a group, these circumstances and communications establish that Respondent was aware of Complainant’s handicap(s).

Turning to whether Complainant's requested accommodations were reasonably necessary to afford Complainant an equal opportunity to use and enjoy her premises, it is noteworthy that the requested accommodations were supported by documentation of Complainant's disabilities, their impact on her life, and the measures necessary to deal with her issues. Eric Martin supported his original request on behalf of his mother with a letter from Department of Veterans Affairs Social Worker Janelle Weyer. The social worker's letter misstates Respondent's home address, but I nevertheless conclude that Respondent received it because it was attached to Mr. Martin's correspondence. The second request for accommodations contains an exhaustive analysis of Complainant's conditions, describes the impact of those conditions on her ability to function, and supports its analysis with a letter from Mary Ann Burke, Ed.D, LMFT.

The aforementioned paperwork establishes that the requested accommodations were reasonably necessary to afford Complainant an equal opportunity to use and enjoy her apartment and that there were no costs or undue hardship associated with granting them. Complainant's health care providers and mental health expert assert, without dispute, that advance notice of non-emergency visits to Complainant's apartment would be an effective tool in the management of Complainant's PTSD symptoms and an effective deterrent to unanticipated interactions which would exacerbate Complainant's PTSD.

In regard to the final element of a prima facie case – whether the requested accommodations were granted – the evidence establishes that Respondent refused to respond in writing to Complainant's communications, refused to meet with Complainant and her attorney, and refused to commit to providing specific amounts of advance notice prior to entering Complainant's apartment for non-emergency matters. Respondent asserts

that she consented in her deeds, if not by her words, but such an assertion rings hollow in light of the landlord's refusal to engage in meaningful communications with Complainant or her representatives. Respondent's stonewalling exacerbated the anxiety which forms a core part of Complainant's condition. Mr. Martin testified persuasively that his mother sought clarity as to whether her accommodation requests would be honored and an opportunity to discuss areas of disagreement between the parties. Instead, Complainant received neither an affirmative or negative response to her requests and no chance to have a "back and forth." Transcript II at p.168-169. Respondent may have given verbal assurance that she would provide what she deemed to be "reasonable" notice before entering Complainant's apartment, but in the absence of an agreement as to what "reasonable notice" meant, such a representation was wholly inadequate.

Respondent's refusal to communicate with Complainant precluded an interactive dialogue from taking place about Complainant's requested accommodations. The requirement to engage in an interactive dialogue applies no less in a housing context than it does in an employer/employee relationship. See HUD v. Astralis Condo Ass'n, 620 F.3d 62 (1st Cir. 2010) (FHA obliges a landlord to engage in an interactive process to resolve reasonable accommodation requests); see also Andover Housing Authority v. Shkolnik, 443 Mass. 300, 308 (2005) (SJC characterizes interactive dialogue as the "optimal way" to explore alleged handicaps and potential accommodations despite lack of explicit accommodation language in the Fair Housing Act and related regulations). While an interactive process may be waived if all conceivable accommodations are demonstrably futile or unduly burdensome, a landlord cannot decline to discuss potential accommodations based on a unilateral determination that such a conversation is unnecessary. See generally

Savage v. Massachusetts Rehabilitation Commission, 38 MDLR 105 (2016) *citing* MBTA v. MCAD, 450 Mass. 327, 342 (2008) (interactive process must be undertaken unless employer can conclusively demonstrate that all conceivable accommodations would impose an undue hardship).

Once a prima facie case is established, the burden shifts to Respondent at the second stage of proof to articulate a legitimate reason for its action supported by credible evidence. See Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116-117 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000); Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973). Respondent's defense at stage two is premised on the assertion that her conduct adhered to the accommodations requested by Complainant even though she declined to meet with Complainant and her legal counsel to discuss the requested accommodations and refused to sign a document committing her to provide them. The record supports Respondent's assertion that after July 2015, neither she nor her husband knocked on Complainant's door, visited Complainant's apartment in non-emergency situations without an appointment and forty-eight (48) hours' notice, or required that Respondent interact with Mr. Binda.

Since the record contains a potentially-legitimate response to the request for accommodations, the burden shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is insufficient and/or a pretext for continuing discrimination. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001); Wynn and Wynn, P.C. v. MCAD, 431 Mass. 655, 666 (2000).

I conclude that Complainant fulfills her stage three burden by establishing that

Respondent refused to engage in an interactive process concerning Complainant's requests for privacy and refused to commit to measures reasonably sought by Complainant to assuage her PTSD symptoms. Contrast Shkolnik, 443 Mass. at 309-312 (landlord found not to discriminate based on its making "every effort" to engage in an interactive process and accommodate tenant). I arrive at this conclusion despite the fact that Complainant made some demands that were patently unreasonable such as seeking Mr. Binda's removal from a property manager position he did not occupy, seeking his banishment from the common areas of the apartment building so he could not perform his job as real estate agent, objecting to the way that he applied paint, objecting to his offer of clothing and furniture, and objecting to the removal of his paint-soaked shirt in the back hallway of the apartment. Such unreasonable demands likely fostered resentment on the part of Respondent who acceded to Complainant's wish to move in a month early, agreed to allow a service animal live in the apartment, and offered to reduce Complainant's rent. Nonetheless, Respondent's reaction -- to stonewall Complainant's request for an interactive process -- was contrary to law. See Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 650 (2004) (lack of response to request for an accommodation constitutes a failure to meet obligations under Chapter 151B); Russell v. Cooley Dickenson Hospital, Inc., 437 Mass. 443, 457 (2002) (request for an accommodation triggers obligation to participate in an interactive process); Mazeikis v. Northwest Airlines, 22 MDLR 63, 68-69 (2000) (noting importance of interactive process insofar as it is designed to identify parameters of disability and potential adjustments to overcome limitations). Respondent was willing to be helpful on her own terms but refused to address Complainant's documented medical and psychological needs through communication and negotiation.

Had Respondent answered the letters sent on behalf of Complainant and/or agreed to discuss housing matters with Complainant and her legal representative, the differences between the parties could have been addressed and resolved. Most of the accommodations sought by Complainant appear to have been agreeable to Respondent such as communicating with Complainant's son in regard to non-emergency matters, refraining from knocking on Complainant's door, and providing forty-eight hours advance notice for non-emergency repairs. It was Respondent's refusal to discuss and to agree to these requests, rather than the substance of the requests, that caused friction between the parties. Given Complainant's severe anxiety and need for a secure personal space, Respondent's refusal to engage in an interactive dialogue with Complainant not only caused matters to fester, it violated Respondent's legal responsibility as a landlord under Chapter 151B.

There is no showing by Respondent that the requested accommodations would have created undue hardship. To the contrary, Respondent testified at the public hearing that she was not averse to complying with Complainant's requests. Nevertheless, Respondent refused to reply in writing to communications from Complainant's representatives, declined to meet with Complainant, suggested that the tenancy wasn't working out, and stated that Complainant was going to have to find a new place to live. These responses undermined the security which Complainant needed for her emotional and physical well-being and deprived Complainant of peace of mind about her living situation. The safe-haven which Complainant sought in her domicile became an anxiety-laden environment. Under such circumstances, Respondent's failure to engage in an interactive process constituted disability discrimination.

B. Harassment/Hostile Environment

Complainant invokes the aforementioned facts to assert that Respondent subjected her to a harassment/hostile environment on account of her disability. The elements of such a claim derive from sexual harassment cases but have been extended to other protected classes. See Savage v. Massachusetts Rehabilitation Commission, 38 MDLR 105 (2016) citing Beldo v. UMass Boston, 20 MDLR 105, 111 (1998); Connors v. Luther and Luther Enterprises, 32 MDLR 71, 77 (2010).

In order to establish a prima facie cause of action for harassment/hostile environment, Complainant must prove by credible evidence that: 1) she is a handicapped individual; 2) she was the target of speech or conduct based on her disability; 3) the speech or conduct was sufficiently severe or pervasive to create an abusive environment; and 4) Respondent knew or should have known of the harassment and failed to take prompt remedial action. Id.

Having determined that the allegations of misconduct on the part of Mr. Binda are lacking in credibility, the claim of harassment rests chiefly on evidence that Respondent declined to provide written assurance that she would comply with specific notice requests, refused to engage in an interactive dialogue, and stated that Complainant should find a new place to live. The evidence supports these matters but also establishes that Respondent, after July 17, 2015, began to make appointments prior to entering Complainant's apartment, refrained from knocking on Complainant's door, took no steps to evict Complainant, offered Complainant reduced rent, and covered the costs of Complainant's heating oil. The sum total of these circumstances fails to establish a hostile environment cause of action.

C. Emotional Distress Damages

Complainant testified credibly that Respondent's refusal to engage in an interactive process and commit to notice requests made her feel insignificant, angry, and disrespected.

She lost more than twenty (20) pounds, had to see a GI doctor, experienced headaches, was afflicted with agitation and anxiety, became nauseous, and stopped engaging in her hobbies. Complainant's son, Eric Martin, testified credibly that his mother's PTSD symptoms worsened after July 2015 and that her worsening symptoms have negatively impacted their relationship. Mr. Martin describes his mother prior to July 2015 as a healthy, fulfilled, and engaged individual who was able to move from Colorado to Boston, to camp along the way, and to run marathons. He contrasts this picture with a portrait of his mother after July 2015 as frail, secluded, and lacking the energy to pursue her normal activities.

The record establishes that Complainant's psychological and physical states deteriorated after the events at issue. Complainant's manic episodes increased and her anxiety became more exaggerated. Based on the foregoing, I conclude that Complainant is entitled to \$10,000 in emotional distress damages.

IV. ORDER


Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondents are subject to the following orders:

- (1) As injunctive relief, Respondents are directed to cease and desist from engaging in acts of disability discrimination.
- (2) Respondent is liable to pay Complainant \$10,000 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

- (3) Respondent is ordered to attend an MCAD-sponsored training pertaining to disability discrimination within ninety (90) days of this order and shall provide documentation of her attendance.

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 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 24th day of September, 2019.



Betty E. Waxman, Esq.,
Hearing Officer