

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION)	
and ALEXIA RAMIREZ)	
Complainants)	
)	
v.)	Docket No. 19-BPR-03062
)	
MANUEL J. DEAMARAL A/K/A MANUEL J. AMARAL)	
AND 39 IRVING STREET REALTY TRUST)	
Respondents)	

For the Complainants: Commission Counsel (Ethan Crawford, Esq. and Naiara Souto, Esq.)

DECISION OF HEARING OFFICER

On October 30, 2019, Complainant Alexia Ramirez (“Ramirez”) filed a complaint of housing discrimination with the Massachusetts Commission Against Discrimination (“Complaint”). The sole issue certified for a public hearing was whether Respondents had discriminated against Ramirez based on her disability when they allegedly refused to provide a reasonable accommodation in violation of M.G.L. c. 151B, § 4(7A).¹ On December 11 and 12, 2023, I conducted a default hearing after Respondents failed to appear despite being duly notified of the hearing.² Ramirez and Dr. Ralph Vettters testified, and there were 10 exhibits. Complainants filed a post-hearing brief. Respondents did not file a post-hearing brief.³

¹ The terms “handicap” and “disability” are used interchangeably and have the same meaning in this decision. The preferred term is “disability” but M.G.L. c. 151B uses the term “handicap.”

² Interpreters in American Sign Language interpreted at the hearing. The official record is the audio recording of the hearing. Respondents were provided an opportunity to file a request seeking to remove default but did not file one.

³ In this decision, *unless stated otherwise*, where testimony is cited, I find such testimony credible and reliable, and where an exhibit is cited, I find such exhibit reliable to the extent cited. Citations to testimony include witness name and day(s) on which the testimony occurred.

I. FINDINGS OF FACT

1. On March 11, 2018, Ramirez and Tanya Montalvo signed a lease with Respondent Manuel DeAmaral (“DeAmaral”), as landlord, by which Ramirez and Montalvo would rent apartment 2L at 39 Irving Street in Everett, Massachusetts (“Apartment 2L”) from April 1, 2018, to March 31, 2019.⁴ The lease stated that the tenants “shall not bring any ... pet into the Premises nor permit any to remain at the Premises without written permission of Landlord, except as permitted by state or federal anti-discrimination laws.” (Exhibit 6) Ramirez and Montalvo moved into Apartment 2L on April 1, 2018.⁵ The tenancy was renewed for a second year ending March 31, 2020. (Ramirez I; Ramirez II)
2. The property at 39 Irving Street had four units. Ramirez and Montalvo resided in Apartment 2L. DeAmaral resided in another unit at 39 Irving Street. (Exhibit 2; Ramirez I; Ramirez II) Based on this, I infer that the four units in 39 Irving Street were residential units.
3. In March 2018, Ramirez told DeAmaral and his wife, Linda DeAmaral (“Mrs. DeAmaral”) (collectively “DeAmarals”) that Ramirez was deaf, or hard of hearing, and believes that she also told the DeAmarals that Montalvo was deaf. Ramirez has congenital deafness which means “deafness from the time of birth without a clear cause.” When wearing hearing aids, Ramirez had limited hearing ability.⁶ For example, she had difficulty determining from which direction a sound was coming. When not wearing hearing aids, she was unable to hear anything. Ramirez did not wear hearing aids when sleeping or showering. (Ramirez I; Vettters II)

⁴ As explained in note 15, when referencing DeAmaral in this decision, I am referring to Manuel J. DeAmaral a/k/a Manuel J. Amaral.

⁵ I do not credit the statement in the Complaint that Ramirez lived at 39 Irving Street since “about October 30, 2017.” (Exhibit 2) Although the Complaint is more contemporaneous, it is contrary to Ramirez’s credible testimony cited in paragraph 1, corroborated by the lease, that she moved into Apartment 2L on April 1, 2018.

⁶ Ramirez’s description of her hearing limitations when wearing hearing aids was corroborated by the testimony of Dr. Vettters, her primary care physician from 2010 until late 2019 or early 2020. Dr. Vettters described Ramirez’s hearing limitations when wearing hearing aids as follows: she “couldn’t hear me knocking on the door, she couldn’t hear my voice if she wasn’t facing me, she wouldn’t hear a call from a nurse in the hallway.” (Ramirez I; Vettters II)

4. Because of her hearing limitations, Ramirez did not feel safe living in Apartment 2L. At some point in 2018, Ramirez asked the DeAmarals for equipment to assist her and Montalvo with living with hearing limitations in Apartment 2L. Ramirez told them that they could find equipment online and showed them a picture of numerous devices including a bed alarm,⁷ a “light that is a smoke detector, the light that’s a fire alarm” and a “doorbell, which has a special light on it to blink or flash.”⁸ The DeAmarals “hemmed and hawed” and did not provide the equipment. (Ramirez I)⁹
5. On September 26, 2019, a good friend of Ramirez passed away. The friend was deaf and had a dog named “Kelly.” The next day, Ramirez “acquired” Kelly.¹⁰ As of the time that Ramirez acquired Kelly, Kelly was able to alert Ramirez to sounds. Her friend had told Ramirez that Kelly had been taught to alert him to sounds. Ramirez had observed Kelly alerting her friend to sounds. After she acquired Kelly, Ramirez continued Kelly’s training. (Ramirez I; Ramirez II) Kelly’s ability to detect sounds made Ramirez feel safer living in Apartment 2L. (Ramirez II - Kelly is “very good at hearing things ... I can’t. I don’t hear everything totally. So I wanted to feel safe at home with the fire alarm or any other alerts, like someone knocking at the door.”)¹¹
6. On September 26, 2019, Ramirez telephoned DeAmaral during the evening and explained that her friend “had just passed away, and I was taking his service dog.” During that conversation, Ramirez asked DeAmaral for permission for Kelly to live in Apartment 2L. DeAmaral said “I’m sorry to hear

⁷ A bed alarm “is a bed shaker that when there is a certain noise, the bed will shake and wake up the deaf person” and has “lights as well that are visual.” (Ramirez I)

⁸ I infer the equipment that Ramirez showed the DeAmarals was the type of assistive equipment she was seeking.

⁹ Ramirez’s effort to acquire assistive equipment is used for background and context - not as a basis for any liability or remedy. Ramirez did not establish that the Complaint was filed within 300 days of requesting this equipment.

¹⁰ I do not credit the statement in the Complaint that it was on or about October 14, 2019, when Ramirez “acquired a service dog” (Exhibit 2), because that is contrary to the credible testimony by Ramirez regarding when her friend passed away and when she acquired Kelly. (Ramirez II)

¹¹ Dr. Veters wrote a letter in support of Ramirez’s effort to have Kelly live in Apartment 2L. (Exhibit 5) In assessing Kelly’s abilities, I do not rely upon that letter because Dr. Veters never observed Kelly and all the information that he received regarding Kelly was acquired from Ramirez. (Veters II)

about your friend, but if you have a dog, it will violate the terms of the lease because there are no pets allowed by policy.” Later that evening, Ramirez talked with DeAmaral in person and again asked for permission for Kelly to live in Apartment 2L. During that conversation, DeAmaral again expressed sympathy but stated that Ramirez “couldn’t have the service animal, the dog.” (Ramirez II)

7. On or about October 24, 2019, Ramirez again asked DeAmaral for permission for Kelly to live in Apartment 2L. Ramirez went to DeAmaral’s unit and brought paperwork, including a letter written by Dr. Veters, and information regarding the Americans with Disabilities Act (“ADA”). DeAmaral appeared frustrated, was making “weird faces,” said Ramirez was mumbling and said that he did not believe what she was saying. Ramirez attempted to show DeAmaral the paperwork, but he did not want to see it. (Ramirez II) DeAmaral told Ramirez that he would think about letting her keep Kelly at Apartment 2L and would speak with his lawyer. (Exhibit 2) I refer to this interaction as the “October 24 Meeting.”¹²
8. On or about October 28, 2019, Ramirez and her mother met with DeAmaral. Ramirez’s mother tried to explain the situation to DeAmaral so that he would allow Kelly to live with Ramirez in Apartment 2L. DeAmaral said that he did not believe what Ramirez’s mother said. DeAmaral also said that Ramirez “was continuing to bother him” over the issue. Ramirez attempted to show DeAmaral the supporting paperwork but he would not read it. When Ramirez’s mother tried to show him the paperwork, DeAmaral “brushed her off.” DeAmaral stated that Kelly could stay with Ramirez’s mother *at her mother’s home* during the day and at Apartment 2L at night. DeAmaral indicated that Kelly could live in Apartment 2L full-time in exchange for an additional rental payment of \$100-\$150 per month which Ramirez refused. (Ramirez II) I refer to this interaction as the “October 28 Meeting.”¹³

¹² I do not find inconsistent the statement in the Complaint that, on or about October 24, 2019, Ramirez had a “*second* conversation” with DeAmaral about Kelly, (Exhibit 2), as that was the *second* date on which such a conversation occurred, because the prior two conversations had occurred in a single evening, September 26, 2019.

¹³ Considering Ramirez’s detailed, credible testimony regarding what occurred during the October 24 Meeting and the October 28 Meeting, I do not credit the statement in the Complaint that it was during the October 24 Meeting

9. After four attempts to obtain DeAmaral's permission for Kelly to live in Apartment 2L, Ramirez "gave up" and within a few days, filed the Complaint. (Ramirez II)
10. There was a period during which Kelly was not living full-time in Apartment 2L because of DeAmaral's refusal to grant such permission. On about five dates, from the end of September 2019 to October 2019, both Ramirez and Kelly stayed at Ramirez's mother's home. From the end of September 2019 to the beginning of November 2019, there were approximately 15 other dates on which Ramirez left Kelly at her mother's home during the day, and Kelly was returned to Apartment 2L at night. (Ramirez II; Exhibit 2) Kelly started living in Apartment 2L full-time in approximately mid-November 2019. It is unclear whether DeAmaral was aware of that. (Ramirez II)
11. DeAmaral's refusal to allow Kelly to live full-time in Apartment 2L, without requiring Ramirez to pay additional rent, had a significant adverse impact on Ramirez. Ramirez felt "like I had lost my rights to have a service dog" and that saddened her. Ramirez felt unsafe at home. The discussions with DeAmaral on September 26, 2019, caused Ramirez to be upset, disappointed, emotional and overwhelmed. The October 24 Meeting discouraged Ramirez and made her feel helpless. The October 28 Meeting caused her to feel "[m]ore frustrated. Very upset." Staying with Kelly at her mother's home on five dates created instability in Ramirez's life, as it required her to go back and forth between her mother's home and her apartment. Ramirez talked to her best friend, her mother and Montalvo for emotional support. The conversations with her best friend occurred "through 2020," and those with her mother and Montalvo, continued to the time of the hearing. As of the time of the hearing, Ramirez continued to have negative feelings about DeAmaral's refusal. Ramirez had two or three visits with a therapist in late 2020. The therapy addressed topics including DeAmaral's refusal. For an undefined period, Ramirez went "through depression." (Ramirez II) Based on the findings in this paragraph, I infer that DeAmaral's refusal was a reason for Ramirez's depression.

that DeAmaral mentioned payment of additional rent in exchange for Kelly living full-time in Apartment 2L. (Exhibit 2)

12. The pandemic and the loss of her friend negatively affected Ramirez. (Ramirez II)
13. In February 2020, DeAmaral issued Ramirez and Montalvo a letter stating that they had to vacate Apartment 2L by April 1, 2020. On April 1, 2020, Ramirez and Montalvo moved out of Apartment 2L and into another apartment. The security deposit for Apartment 2L of \$1,385, of which Ramirez paid approximately half, was not returned. (Exhibit 6 at p. 1; Exhibit 9; Ramirez II)
14. When Ramirez and Montalvo moved into Apartment 2L on April 1, 2018, the DeAmarals owned the property at 39 Irving Street. (Ramirez I) On November 19, 2018, the 39 Irving Street Realty Trust (“Trust”) was created, and the DeAmarals became its trustees. As trustees, they were authorized on behalf of the Trust to acquire “the land, structures and improvements” at 39 Irving Street for ten dollars. (Exhibit 4)¹⁴ By a deed recorded on December 28, 2018, the DeAmarals, as tenants by the entirety, transferred for ten dollars the property at 39 Irving Street to the DeAmarals, as trustees of the Trust. (Exhibit 3)¹⁵ As DeAmaral was involved in the management of 39 Irving Street in the fall of 2019 (as evidenced by his discussions with Ramirez regarding Kelly) and in 2020 (as evidenced by his sending the notice to vacate letter), I infer that during the period in which DeAmaral refused Ramirez’s requests for Kelly to live in Apartment 2L, the Trust existed and the DeAmarals remained its trustees.

II. LEGAL CONCLUSIONS

A. DEAMARAL’S REFUSAL TO MAKE REASONABLE ACCOMMODATIONS

M.G.L. c. 151B, § 4(7A)(2) states that for purposes of c. 151B, § 4(6), disability discrimination includes “a refusal to make reasonable accommodations in rules, policies ... when such accommodations

¹⁴ This information is based on a “Trustees Certificate Under G.L. Chapter 184 Section 35” dated November 19, 2018. (Exhibit 4) The instrument creating the Trust was not offered into evidence.

¹⁵ In referencing the grantors, the deed stated, “Manuel J. Amaral (a/k/a Manuel J. DeAmaral) and Linda M. Amaral (a/k/a Linda M. DeAmaral) as husband and wife, tenants by the entirety.” (Parenthesis in original text) (Exhibit 3) To ensure that the correct name is being used, I *sua sponte* replace “Manuel DeAmaral” with “Manuel J. DeAmaral a/k/a Manuel J. Amaral”, as the individual respondent in this case.

may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.”¹⁶ To prevail on a lack of reasonable accommodations claim under these provisions, Ramirez must prove four elements: she had a disability; DeAmaral was aware of her disability or could have reasonably been aware of it; she sought an accommodation that was reasonably necessary to afford her an equal opportunity to use and enjoy Apartment 2L; and DeAmaral refused to make an accommodation. Melinda E. Clark and Massachusetts Commission Against Discrimination v. New Bedford Housing Authority, 41 MDLR 13, 13 (2019); Joshua Fortin, Nicole Evangelista and Massachusetts Commission Against Discrimination v. Marty Green Properties, LLC, Martin Green, and Hang Ngo A/K/A Ngo Hang, 44 MDLR 47, 55 (2022)

As to the first two elements, Ramirez had a disability of which DeAmaral was aware. Disability includes “a physical or mental impairment which substantially limits one or more major life activities of a person.” M.G.L. c. 151B, § 1(17) Hearing is a major life activity. c. 151B, § 1(20) Ramirez has been deaf or hard of hearing for virtually her entire life and thus, had a disability. DeAmaral was aware that Ramirez had a disability because in March 2018, she told him that she was deaf or hard of hearing.

As to the third element, Ramirez requested from DeAmaral an accommodation which was reasonably necessary to afford her an equal opportunity to use and enjoy Apartment 2L. Ramirez requested accommodation by seeking to be excepted from the no-pets policy in the lease. The accommodation was necessary as it enhanced Ramirez’s quality of life by ameliorating her disability’s effects.¹⁷ Ramirez felt unsafe living in Apartment 2L, because she feared that she would not hear auditory warnings, and sounds indicating others were nearby. By alerting her to noises, Kelly enhanced Ramirez’s quality of life by

¹⁶ Section § 4(6)’s coverage includes a “multiple dwelling” which is “a dwelling which is usually occupied for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other.” M.G.L. c. 151B, § 1(11) Because 39 Irving Street had four residential units, it is a multiple dwelling, and therefore, falls within the scope of c. 151B, § 4(6).

¹⁷ Richard M. Blake and Massachusetts Commission Against Discrimination v. Brighton Gardens Apartments, LP, The Lombardi Corporation and Michael J. Lombardi, 33 MDLR 48, 51 (2011); Fortin, 44 MDLR at 56

mitigating the adverse effects of her disability. Lastly, the accommodation was reasonable.¹⁸ The benefits to Ramirez of Kelly living in Apartment 2L have been demonstrated, whereas there is no evidence that permitting Kelly to live in Apartment 2L would impose a cost or burden upon DeAmaral.¹⁹

As to the final element, DeAmaral refused to provide reasonable accommodation. Despite four opportunities, he never gave Ramirez permission for Kelly to live full-time in Apartment 2L without a condition attached.²⁰ Allowing Kelly to remain in Apartment 2L, but only at night, was not accommodation because that would have been a patently ineffective solution to Ramirez's plight. Bartering Kelly's presence in exchange for increased rental payments was an affront to fair housing laws - not an accommodation.²¹ Further, DeAmaral failed to meaningfully engage in an interactive dialogue regarding Ramirez's requests.²² In September 2019, DeAmaral utilized non-negotiable language stating

¹⁸ Accommodation is reasonable if it would not impose an undue hardship or burden on the entity making it which requires one to balance the overall costs and benefits of the proposed accommodation. Fortin, 44 MDLR at 56

¹⁹ See also Massachusetts Commission Against Discrimination, Joshua Fortin, and Nicole Evangelista v. Martin Green, Marty Green Properties LLC, and Hang Ngo a/k/a Ngo Hang, 2024 WL 3287860 (May 16, 2024), in which the Full Commission clarified the law under M.G.L. c. 151B with respect to reasonable housing accommodations and animals by adopting as an umbrella term "assistance animal," which it defined as follows:

The [Fair Housing Act] is analogous to M.G.L. c. 151B, and [Fair Housing Act] guidance from [the U.S. Department of Housing and Urban Development] uses the term "assistance animal" to encompass everything from "service animal" as defined in the ADA (i.e., a trained dog), to "support" animals, which are "trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities." [Citation omitted] Thus, both "service animals" and "emotional support animals" are "assistance animals", but "assistance animal" covers more than just those two categories.... It is meaningful to clarify that in the housing context, animals who assist persons with disabilities despite a lack of training must be accommodated absent undue hardship.... (parenthesis in original text) (brackets added)

Id. at *4 Kelly easily qualified as an assistance animal. Kelly was trained to alert persons to sounds, alerted Ramirez to sounds and made Ramirez feel safer living in Apartment 2L with her disability.

²⁰ In making this conclusion, I recognize that Kelly was living in Apartment 2L full-time starting in approximately mid-November 2019. However, it is unclear whether DeAmaral was aware of that, and the evidence shows that DeAmaral repeatedly refused to give unconditional permission to have Kelly live full-time in Apartment 2L.

²¹ M.G.L. c. 151B, § 4(7A) ("... there shall not be established or imposed a rent or other charge for such handicap-accessible housing which is higher than the rent or other charge for comparable nonaccessible housing....")

²² Interactive dialogue is integral to addressing a request for accommodation as it "preclud[es] a landlord or property manager from declining to discuss potential accommodations based on a unilateral determination that such a conversation is unnecessary." Fortin, 44 MDLR at 56 (citation omitted)

that Kelly living in Apartment 2L would violate the terms of the lease. In the October 24 Meeting, DeAmaral appeared frustrated, made “weird faces,” said Ramirez was “mumbling” and did not want to see the supporting paperwork.²³ In the October 28 Meeting, DeAmaral told Ramirez and her mother that Ramirez was continuing to bother him about the issue, and again he would not read the paperwork.

Thus, Ramirez has proven all four elements of a housing-based failure to provide reasonable accommodation claim and established that DeAmaral violated M.G.L. c. 151B, §§ 4(6) and 4(7A)(2).

B. THE COMPLAINT AGAINST 39 IRVING STREET REALTY TRUST IS DISMISSED

Except for a business trust, a “trust is not a legal entity which can be sued directly.” Morrison v. Lennett, 415 Mass. 857, 859-60, n. 7 (1993)²⁴ The “purpose of the business trust is to hold and manage the assets of an active business.” First E. Bank, N.A. v. Jones, 413 Mass. 654, 657, n. 5 (1992) A Massachusetts business trust “may operate in a similar fashion to a corporation.” “A Massachusetts business trust is: ‘a form of business organization ... consisting essentially of an arrangement whereby property is conveyed to trustees, in accordance with the terms of an instrument of trust, to be held and managed for the benefit of such persons as may from time to time be the holders of transferable certificates issued by the trustees showing the share into which the beneficial interest in the property is divided. These certificates, which resemble certificates for shares of stock in a corporation and are issued and transferred in like manner, entitle the holders to share ratably in the income of the property, and, upon termination of the trust, in the proceeds.’ [Citation omitted] See G.L. c. 182, § 1” Brigade Leveraged Cap. Structures Fund Ltd. v. PIMCO Income Strategy Fund, 466 Mass. 368, 369-370, n. 4 (2013) Nothing in the record suggests that the Trust operated akin to a corporation or that there were such transferable certificates. Based on the record, the Trust is not a business trust.

²³ DeAmaral’s statement during the October 24 Meeting that he would think about the issue and speak with his lawyer is not sufficient to constitute meaningful dialogue.

²⁴ “By statute, a business trust may be sued directly ‘for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees.’ G.L. c. 182, § 6.” Morrison, 415 Mass. at 859-860, n. 7

I conclude that the Trust is a nominee trust based on the following.²⁵ A nominee trust is “an entity created for the purpose of holding legal title to property with the trustees having only perfunctory duties” and “is often used to hold legal title to real estate so that the identity of the trust beneficiary may remain undisclosed.” Morrison, 415 Mass. at 860 (Citations omitted) The common features of “a nominee trust are as follows: ‘(1) the names of the beneficiaries are filed with the trustees rather than being publicly disclosed; (2) a trustee may serve simultaneously as a beneficiary; (3) the trustees lack power to deal with the trust property except as directed by the beneficiaries; (4) a third party may rely on the disposition of trust property pursuant to any instrument signed by the trustees, without having to inquire as to whether the terms of the trust have been complied with; and (5) the beneficiaries may terminate the trust at any time, thereby receiving legal title to the trust property as tenants in common in proportion to their beneficial interests.’ [Citation omitted] It is the third feature, in which the trustees have no power to act in respect to the trust property but may only act at the direction of the beneficiaries, that is key to the nature of the nominee trust.” Guilfoil v. Sec’y of Exec. Off. of Health & Hum. Servs., 486 Mass. 788, 793–94 (2021) The Trustees Certificate has language indicating that trustees of the Trust could only act upon beneficiary directive. The trustees were *explicitly* authorized to purchase a *specific* property, 39 Irving Street (which *they* owned as tenants in the entirety), for a *specific* consideration, ten dollars. (Exhibit 4) I infer from this that the Trust’s trustees acted at the beneficiaries’ directive and were not authorized to act on their own authority.²⁶ Further, the Trustees Certificate states that as to a conveyance of real estate held in the Trust, “no purchaser or third party shall be bound to inquire whether the trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a

²⁵ I recognize that the record includes a Trustees Certificate but not the instrument creating the Trust.

²⁶ In reaching this conclusion, I have considered that the Trustees Certificate states that trustees have “full and absolute power under said Trust to convey any interest in real estate and improvements thereon held in said Trust.” This language is part of a provision expressing that purchasers and third parties are not obligated to inquire whether the trustees were acting in accordance with the Trust. (Exhibit 4) Read in this context, the “full and absolute power” language is an allayment of third-party concerns about dealing with trustees and not a reflection of a broad scope of trustee powers.

conveyance thereof.” (Exhibit 4) This language is also consistent with the Trust being a nominee trust because it permits a third-party purchaser to rely on the instrument signed by the trustees without having to inquire whether the terms of the Trust have been complied with.²⁷

A nominee trust cannot be sued directly. In Morrison, the Supreme Judicial Court stated that the “claims against the trust itself are not maintainable” in a case involving a “classic nominee trust.” Morrison, 415 Mass. at 860-61²⁸ Because the Trust is not a legal entity which can be sued directly, it is not a proper party, and the Complaint against the Trust cannot be maintained. Morrison, 415 Mass. at 859-60, n. 7; Keegan v. Pellerin, 76 Mass. App. Ct. 186, 186 n. 1 (2010); Morgan v. Roberts, 90 Mass. App. Ct. 1101, 1101 n. 2 (2016) (Rule 1:28) (c. 151B housing discrimination claim; “with very limited exceptions, ‘a trust is not a legal entity which can be sued directly.’ *Morrison*”) Thus, I dismiss the Complaint against the Trust.

C. I DECLINE TO ADD AS PARTIES, THE TRUSTEES AND/OR BENEFICIARIES OF THE TRUST

A nominee trust’s “assets may, in certain circumstances, be reached by a suit *naming the trustees in their representative capacities*,” and the beneficiaries themselves may be liable. Morrison, 415 Mass. at 862, 863 (Emphasis added) See also Goodwill Enterprises, Inc. v. Kavanagh, 95 Mass. App. Ct. 856, 858-59 (2019) (trustees of a nominee trust often viewed as agents of the beneficiaries). Thus, I have analyzed

²⁷ Regarding the other common features of a nominee trust, the record is devoid of information which would allow a determination as to whether the names of the Trust’s beneficiaries were publicly disclosed; whether a trustee of the Trust may serve simultaneously as a beneficiary; or whether the Trust’s beneficiaries may terminate the Trust at any time, thereby receiving legal title to the trust property.

²⁸ I have considered, and rejected, a federal District Court decision stating that a nominee trust is “not immune from suit” under Massachusetts law. Atl. Specialty Ins. Co. v. Karl's Boat Shop, Inc., 480 F.Supp.3d 322, 329, n. 3 (D. Mass. 2020), appeal dismissed, 2021 WL 1984868 (1st Cir. 2021) The District Court improperly relied upon Apahouser Lock & Sec. Corp. v. Carvelli, 26 Mass. App. Ct. 385, 388 (1988), review denied, 403 Mass. 1104 (1988) for that proposition. Apahouser did not address a claim against a trust. Apahouser addressed whether a *trustee* was personally liable under a contract. Apahouser, 26 Mass. App. Ct. at 385–86 In the context of interpreting a statute regarding scope of *trustee* liability, the Appeals Court distinguished trustee liability under a nominee trust from trustee liability under a donative trust. Apahouser, 26 Mass. App. Ct. at 388 To the extent any clarification was necessary regarding whether a nominee trust could be sued directly under Massachusetts law, five years after Apahouser, the Supreme Judicial Court in Morrison, in a case involving a “classic nominee trust”, stated that the “claims against the trust itself are not maintainable.” Morrison, 415 Mass. at 860, 861

whether to add as respondents, DeAmaral, in his representative capacity as trustee of the Trust; Mrs. DeAmaral, in her representative capacity as trustee of the Trust; and/or the Trust's beneficiaries.²⁹ For the following reasons, I decline to exercise my discretionary authority. First, Mrs. DeAmaral was not named a respondent in any capacity, and as a result, was never put on notice of an action against her. Adding Mrs. DeAmaral as a respondent in her representative capacity at this stage would be manifestly unfair.³⁰ Second, assuming, without deciding, that adding DeAmaral as a respondent in his representative capacity would not implicate the same issues of unfairness because he already is a named respondent,³¹ nevertheless, it would be underinclusive and redundant to do so. Adding DeAmaral as trustee, but not Mrs. DeAmaral as trustee, runs counter to the principle that "[w]here [as here] several trustees hold property jointly, *all* are necessary parties to an action concerning it." Equilease Corp. v. D'Annolfo, 6 Mass. App. Ct. 919, 919 (1978) (rescript) (emphasis added) Further, as detailed in Section II(D), DeAmaral is personally liable for violating M.G.L. c. 151B. Third, the record includes no information as to the identities of the Trusts' beneficiaries and therefore, adding beneficiaries of the Trust as respondents is not feasible.³²

²⁹ I have authority to add respondents, when it is consistent with fair notice. See M.G.L. c. 151B, § 5 ("The commission or the complainant shall have the power reasonably and fairly to amend any complaint...."); 804 CMR 1.15 (2)(2020) ("Commission may sua sponte ... make such substitution, joinder, or amendment of parties as justice or convenience may require.") Compare M.G.L. c. 231, § 51 ("In all civil proceedings, the court may at any time, allow amendments adding a party ... which may enable the plaintiff to sustain the action for the cause or for recovery for the injury for which the action was intended to be brought....")

³⁰ Taylor Bryan, Elijah Bryan and Massachusetts Commission Against Discrimination v. Bergantino Realty Trust, Pauline M. and Angelo Bergantino, Trustees and John Federico, 33 MDLR 161, n. 1 (2011) (Hearing Officer denied "Complainants' 11th hour motion to amend the complaint to include GMRE [a real estate company] as a Respondent ... because the case had proceeded through discovery without GMRE as a party and to amend the complaint on the eve of hearing would have constituted unfair surprise.")

³¹ Compare Bryan, 33 MDLR at 161-162, n. 3 ("changing [after public hearing, Respondents] Bergantinos' designation from trustees to individuals is merely technical and does not constitute unfair surprise" because they "participated in MCAD proceedings for the past two years") with Berish v. Bornstein, 437 Mass. 252, 269 (2002) ("breach of fiduciary duty claim sets forth allegations against 'Bornstein,' whereas other counts in the complaint identify 'Bornstein, individually and as Trustee of the [nominee trust]'. Applying our own view of the law ... we conclude that the complaint did not afford fair notice that the trustees were asserting this claim against Bornstein in his capacity as trustee of the nominee trust.") (Brackets in original text)

³² I considered re-opening the hearing in furtherance of obtaining such information. The missing information is likely within DeAmaral's knowledge. He is unlikely to appear for a further hearing after having failed to appear at

D. DEAMARAL IS PERSONALLY LIABLE

Personal liability under M.G.L. c. 151B for his refusal to make a reasonable accommodation in policy necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, c. 151B, § 4(7A)(2), is imposed upon DeAmaral as managing agent of a multiple dwelling. c. 151B, § 4(6).³³ Any argument that the Complaint against DeAmaral should be dismissed because of a failure to include necessary parties was waived by DeAmaral's failure to appear at the hearing.³⁴

III. REMEDIES

A. AWARD OF EMOTIONAL DISTRESS DAMAGES

DeAmaral's refusal to allow Kelly to live full-time in Apartment 2L, without an offensive condition (increased rental payments) attached, amplified Ramirez's considerable challenges of having a hearing-related disability with associated concerns about safety at home. The discussions with DeAmaral regarding Kelly in September 2019 upset and disappointed Ramirez and caused her to feel overwhelmed. The October 24 Meeting caused her to feel discouraged and helpless. The October 28 Meeting caused her

the original hearing, file a post-hearing brief and/or seek removal of the entry of default. As I do not expect that re-opening the hearing would yield the necessary information, I decline to do so.

³³ The Massachusetts Uniform Trust Code addresses personal liability of trustees, M.G.L. c. 203E, § 1010, but is not applicable because that code does not apply to nominee trusts. c. 203E, § 2; Healy v. Hagberg, 98 Mass. App. Ct. 1109 (2020) (Rule 23.0)

³⁴ I address one further issue before remedies. During the hearing, Commission Counsel suggested that this case may raise an issue of disparate treatment based on disability. In response, I stated the following. "The sole certified claim [] is not disability discrimination in general, but more specifically, it's whether one or more of the respondents discriminated against Ms. Ramirez on the basis of her alleged disability when it allegedly refused to provide a reasonable accommodation. If Commission Counsel believes that the evidence raises any issues besides that specific certified claim, he may file a written motion seeking to amend the certification order...." (Day II) Commission Counsel filed a letter stating that "Complainant and Commission Counsel will not be seeking to amend the Certification Order ... to include additional claims beyond those certified.... The sole certified issue in this matter remains: 'Did the Respondents ... discriminate against Complainant, Alexia Ramirez, on the basis of her disability when it [sic] refused to provide a reasonable accommodation in violation of M.G.L. c. 151B § 4(7A)?' As a result, the Hearing Officer may close the record." In Complainants' post-hearing brief, Commission Counsel argues that Ramirez was subjected to disparate treatment through adverse actions caused by discriminatory animus towards her disability when she received the letter to vacate and when the security deposit was not returned. Because Complainants declined the opportunity to amend the certification order and stated the record can be closed, it would be unduly prejudicial to Respondents to certify and address the merits of a disparate treatment claim at this stage, and I decline to do so. The findings of fact in paragraph 13 relate to a claim of disparate treatment and thus have not been relied upon in determining remedies.

to feel more frustrated and very upset. Staying with Kelly at her mother's home caused Ramirez to feel "unstable." Ramirez saw a therapist in late 2020 on two or three occasions based, in part, on DeAmaral's refusal. For an undefined period, she suffered from depression based, in part, on DeAmaral's refusal. Three years after DeAmaral's refusal, Ramirez's testimony at hearing reflected the continued adverse impact that DeAmaral's discriminatory conduct had on her and the resulting continued need for emotional support from her mother and Montalvo. Based on these facts, I find that \$40,000 is a fair, reasonable and proportionate damage award for the emotional distress suffered by Ramirez caused by DeAmaral's refusal to allow Kelly to live full-time in Apartment 2L. This award does not compensate Ramirez for stress caused by the passing of her friend or caused by the pandemic.³⁵

B. CIVIL PENALTY

M.G.L. c. 151B, § 5 authorizes me to impose a civil penalty in addition to any other actions which I may order. Despite having four opportunities, DeAmaral failed to provide reasonable accommodation, including failing to meaningfully engage in interactive dialogue with Ramirez. DeAmaral's disturbing treatment of Ramirez in October 2019 when she requested accommodation is noteworthy. DeAmaral made weird faces at Ramirez, said Ramirez was "mumbling" and refused to review the documentary information that Ramirez and her mother tried to provide. DeAmaral's conduct exacerbated the situation and reflected a degree of indifference to Ramirez's plight. Based on this record, I impose a civil penalty of \$7,500 upon DeAmaral.

C. TRAINING

This case illustrates how important it is to know and follow disability law requirements. Landlords must have knowledge of pertinent law, including, as examples: they must meaningfully engage in an interactive dialogue with a tenant requesting accommodation; they are not permitted to charge a higher rent in exchange for a tenant having an assistance animal; and, in many circumstances, a no-pets policy

³⁵In awarded emotional distress damages, I heed the principles that the Supreme Judicial Court enunciated in Stonehill Coll. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549, 575–76 (2004)

does not negate the requirement to permit a tenant with a disability to have an assistance animal. I impose upon DeAmaral the training requirements detailed in Section IV. The Commission shall retain jurisdiction over training requirements.

IV. ORDER

For the reasons detailed above, and pursuant to the authority granted me under M.G.L. c. 151B, § 5, I order the following.

1. The Complaint against 39 Irving Street Realty Trust is dismissed.
2. Manuel J. DeAmaral a/k/a Manuel J. Amaral shall immediately cease and desist from failing to provide reasonable accommodation to tenants.
3. Manuel J. DeAmaral a/k/a Manuel J. Amaral is personally liable for, and shall pay Ramirez, as an emotional distress damage award, \$40,000 - plus interest thereon at the 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.
4. Manuel J. DeAmaral a/k/a Manuel J. Amaral is personally liable for, and shall pay, a civil penalty of \$7,500 within 60 days of receipt of this decision, payable to the Commonwealth of Massachusetts.
5. Manuel J. DeAmaral a/k/a Manuel J. Amaral shall comply with the following training requirements.
 - i. Within 30 days of receipt of this decision, DeAmaral is ordered to contact the Commission's Director of Training ("MCAD Director") to schedule individualized training on disability law, which he shall attend, at his expense, within 75 days of receipt of this decision. The MCAD Director shall determine the length of the training.
 - ii. Within 30 days of receipt of this decision, DeAmaral is ordered to contact the Massachusetts Commission for the Deaf and Hard of Hearing ("MCDHH") and request to participate in the "Deafness and Hearing Loss" training. DeAmaral shall participate in such training, at his expense, within 90 days of receipt of this decision, and report his attendance to the MCAD Director within 30 days of its completion.³⁶

³⁶ The MCDHH website generally describes this training as "an introductory training covering legal obligations, demographics, communication methodologies, reasonable accommodations, communication suggestions and a brief introduction to assistive technology."

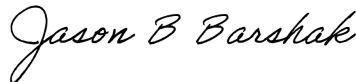
V. NOTICE OF APPEAL

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 within ten (10) days of receipt of this decision and file a Petition for Review within thirty (30) days of receipt of this decision. 804 CMR 1.23 (2020) If a party files a Petition for Review, each of the other parties has the right to file a Notice of Intervention within ten (10) days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within thirty (30) days of receipt of the Petition for Review. 804 CMR 1.23 (2020) All filings referenced in this paragraph shall be made with the Clerk of the Commission, with a copy served on the other parties.

VI. PETITION FOR ATTORNEY'S FEES AND COSTS

Any petition for attorney's fees and costs for Commission Counsel shall be submitted to the Clerk of the Commission within fifteen (15) days of receipt of this decision. Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit. Respondent DeAmaral may file a written opposition within fifteen (15) days of receipt of said petition. All filings referenced in this paragraph shall be made with the Clerk of the Commission, with a copy served on the other parties.

So ordered: July 10, 2024.



Jason B. Barshak
Senior Hearing Officer