



Maine Human Rights Commission

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INVESTIGATOR'S REPORT MHRC # H16-0401, HUD Inquiry # 515311 November 28, 2016

Charles Clay (Bangor)

v.

DES Properties, LLC (Bangor)

I. Summary of Case:

Complainant alleged that Respondent discriminated against him in the terms and conditions of the housing application process based on disability by refusing to waive the pet fee for Complainant's assistance animal. Respondent, the owner and manager of the property Complainant inquired about renting, denied discriminatory intent. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the parties, an Issues and Resolution Conference ("IRC"), and requests for further information and documents. Based on this information, the Investigator recommends that the Commission make a finding that there are reasonable grounds to believe Respondent discriminated against Complainant in housing on the basis of disability.

II. Jurisdictional Data:

- 1) Date of alleged discrimination: June 6, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 25, 2016.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Respondent is represented by Matthew Cobb, Esq. Complainant is not represented by counsel.

III. Development of Facts:

- 1) Complainant provided the following in support of his claims:
 - a) Complainant called Respondent after his wife had viewed an apartment owned by Respondent and was told that a fee was charged for assistance animals. Respondent spoke to the property manager ("Property Manager") over the phone and recorded the conversation. Property Manager confirmed that Respondent charges a fee for assistance animals, which Complainant believes is unlawful.

2) Respondent provided the following in support of its position:

a) Respondent did not intend to discriminate against Complainant. Property Manager does not believe that any tenant with an assistance animal has rented from Respondent before, so the issue regarding whether a fee is charged for assistance animals had never come up before. Complainant was immediately accusatory in his phone call with Property Manager and did not give Respondent the opportunity to discuss the fee further.

3) The Investigator made the following Findings of Fact:

a) Complainant submitted medical documents from a psychiatric nurse practitioner showing that he has an assistance animal that has been deemed necessary for his disability.

b) Complainant provided an audio recording of a conversation with Property Manager during which Property manager stated, "we charge a fee for any animals. Doesn't matter if it's a service animal or a cow, we charge \$300."

c) Respondent has a general policy of charging a one-time fee for animals. Respondent has no policy regarding assistance animals.

V. Analysis:

1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

2) The MHRA makes it unlawful for an owner or manager of rental property to discriminate against any individual because of disability in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.

3) The MHRA provides that it is unlawful:

For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. ***The use of an assistance animal may not be conditioned on the payment of a fee or security deposit***, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such an assistance animal.

5 M.R.S. § 4582-A(3) (emphasis added).

4) For housing, the MHRA defines "assistance animal" as "an animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant,

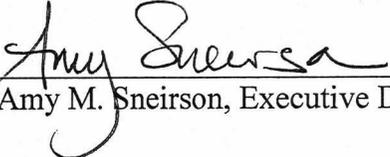
nurse practitioner or licensed social worker” or as “an animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items. 5 M.R.S. § 4553(1-H).

- 5) Here, Complainant was able to show that Respondent discriminated against him in the housing application process because of his use of an assistance animal. Reasoning is as follows:
- a) Complainant provided medical documentation to show that he has an assistance animal as defined by the MHRA above.
 - b) Property Manager clearly stated in the recorded conversation with Complainant that all animals were subject to a fee, including assistance animals.
 - c) As stated above, the use of an assistance animal may not be conditioned on the payment of a fee or security deposit.
- 6) Disability discrimination was found.

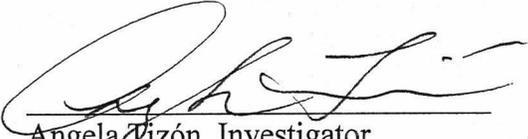
VI. Recommendations:

For the reasons stated above, it is recommended that the Commission issue the following finding:

There are **Reasonable Grounds** to believe that DES Properties, LLC discriminated against Charles Clay in the terms and conditions of housing based on disability and conciliation of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Angela Tizon, Investigator