

HUMAN AFFAIRS COMMISSION)
)
 South Carolina Human Affairs)
 Commission,)
)
 Complainant,)
)
)
 vs.)
)
 Bob Prawel, Picket Fences Community)
 HOA, Inc., Bob Bundy, Todd Keyserling,)
 and Bundy Appraisal and Management Co.)
)
 Respondent(s).)
 _____)

SCHAC No: H-4-16-020

**ORDER OF DISMISSAL
 PURSUANT TO SCRPC 41(B)**

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 SC Court of Appeals

This matter came before the Commission Panel on or about June 29, 2017, upon the filing of the Complaint and Order for Hearing on behalf of the Commission by Commissioner Raymond Buxton, II. All parties or their representatives were present for the hearing, which began June 28, 2018, and was continued to resume on August 6, 2018 and August 7, 2018. Complainant was represented by R. Alex Pate, Esq., and Respondents were represented by Reginald Belcher, Esq., and Hannah Stetson, Esq. Additionally Aggrieved Party, Chelsie Bottoms, was present on June 28, 2018.

The panel heard the case, reviewed the exhibits, and weighed the testimony of Complainant's witnesses, Chelsie Bottoms and Deloris Jenkins, and directly examined Bob Prawel. At the conclusion of this testimony, the Respondents moved for a directed verdict, which the Panel entertained as a Motion under Rule 41(b) of the South Carolina Rules of Civil Procedure. The Commission Panel grants that Motion and provides this Order formally dismissing the matter.

BACKGROUND/JURISDICTION

1. Aggrieved Party, Chelsie Bottoms, (hereinafter referred to as “Aggrieved Party” or “Ms. Bottoms”) filed a Charge of Discrimination with Complainant on or about December 5, 2016.
2. The Commission investigated and found reasonable cause to determine that Respondents had engaged in unlawful discriminatory practices, which violate South Carolina Fair Housing Law at S.C. Code Ann. § 31-21-40(6)-(7), and 31-21-80.
3. The Commission attempted to conciliate this matter prior to filing suit but was unsuccessful. The Commission issued its Complaint, Determination, Notice of Hearing, Right of Election, and Conciliation information on or about June 29, 2017. An Amended Complaint and several Amended Notices of Hearing were subsequently filed.
4. The Complainant alleged that Aggrieved Party is a qualified individual with a disability who requires the use of a service animal (or “assistance animal”) as part of her treatment.
5. The Complainant alleged that Respondents subjected Aggrieved Party to discrimination based on her disability by refusing to accommodate her request for an assistance animal, which resulted in her being denied the full use of the premises, and subjected her to discriminatory terms, conditions, or privileges of the use of the dwelling, or in the provision of services or facilities in connection with the dwelling. The Complaint further alleged that Respondents unlawfully

interfered with Aggrieved Party in the exercise of her rights found in the Fair Housing Law.

6. Respondents filed their Answer on or about July 27, 2017, admitting certain procedural allegations but denying that they had engaged in any unlawful discriminatory practices. An Answer to the Amended Complaint was also filed.
7. A public hearing was held at the South Carolina Human Affairs Commission, located at 1026 Sumter Street, Suite 101, in Columbia, South Carolina, after several continuances of the original hearing date of November 16, 2017.
8. The Commission is under a duty to immediately file a Complaint before a panel of Commissioners when a reasonable cause determination has been issued, and Complainant timely filed this action. S.C. Code Reg. § 65-227(A)(1)(a)(i).
9. The Commission has jurisdiction over Respondent pursuant to S.C. Code Reg. §§ 65-220(C)(1-2) and 65-210(B)(1-2).

FINDINGS OF FACT

10. "Picket Fences Community" is a gated residential community in Beaufort, South Carolina, located in Beaufort County. Picket Fences Community consists of single-family houses in a variety of sizes, and includes common areas such as a pool.
11. The single family homes in Picket Fences Community are "dwelling[s]" within the meaning of the South Carolina Fair Housing Law found at S.C. Code Ann. § 31-21-30(5).
12. Picket Fences Community HOA, Inc., (hereinafter "Respondent HOA" or "HOA") is a not-for-profit South Carolina corporation with its principal place of

business in Beaufort, South Carolina. Respondent HOA is a homeowners association that is managed by a Board of Directors (hereinafter "Board"), which included Respondent Bob Prawel as President at all times relevant to this present matter. Respondent HOA is responsible for, among other things, establishing, modifying and enforcing the rules and policies at Picket Fences Community; fixing, collecting and enforcing assessments and fines; hiring personnel and entering into agreements with contractors for the management and maintenance of Picket Fences; and delegating appropriate authorities to them.

13. Respondent Bundy Appraisal & Management, Inc. ("Respondent BAMC") is a for-profit South Carolina corporation with its principal place of business in Beaufort, South Carolina. Respondents Todd Keyserling and Bob Bundy are the Assistant Manager and Manager, respectively, for Respondent BAMC. Respondent BAMC served as Property Manager for Picket Fences Community at times relevant to this matter. As an agent of Respondent HOA, Respondent BAMC was responsible for, among other things, assisting with correspondence to owners and tenants regarding Picket Fences Community (i.e. rules and policies); collecting and enforcing assessments and fines; and interacting with Respondent HOA and its Board regarding a wide variety of matters relating to Picket Fences Community.

14. As previously stated, all Respondents are "Persons against whom complaints may be filed" pursuant to S.C. Code Reg. § 65-220(C) and S.C. Code Ann. § 31-21-30(9).

15. Ms. Bottoms is a resident of the Picket Fences Community, and on August 12, 2016, she was warned by the HOA through a letter from Respondent BAMC, that she was in violation of the *Declaration of Covenants, Conditions, and Restrictions* of the HOA because she had a pit bulldog at her residence. Ms. Bottoms testified that she became the owner of the dog in January 2015. The Board was made aware of the dog's presence in the community by way of a neighborhood complaint in the summer of 2016.
16. Following the warning, Ms. Bottoms subsequently denied the dog's classification as a pit bull, and maintained the dog's true breed was a hound mix, which would mean the dog would be in compliance with the HOA's *Declaration of Covenants, Conditions, and Restrictions*.
17. Respondent Prawel visited Ms. Bottoms' home after she claimed it was a hound in order to see the dog and assess its breed. Following the visit, the HOA's Board, by way of Respondent Prawel, maintained its position that the dog was a pit bulldog.
18. For clarification as to the animal's breed, in the latter part of August 2016, the HOA's Board, by way of Respondent Prawel, offered to have the dog's DNA tested. Initially, Ms. Bottoms agreed to have the dog's DNA tested, but reneged on the offer prior to a test being administered.
19. On or around August 31, 2016, Ms. Bottoms indicated to the HOA Board, via email to several Board members including Respondent Prawel, that the dog was a service animal under fair housing laws. Thereafter, on or around September 15, 2016, Respondent Keyserling sought medical documentation reflecting the

disability-related need for the dog. Ms. Bottoms provided at least two notes from a doctor (Kenneth Alea) to the HOA, with the second note being sent on October 26, 2016.

20. Ms. Bottoms was aware of the breed restriction and pet policy prior to acquiring the animal and she and Dr. Alea referred to it as a family pet prior to receiving the violation.
21. Dr. Alea's note of October 26, 2016, identified his familiarity with Ms. Bottoms as a patient, and further identified Ms. Bottoms' status as having limitations in daily activities. Additionally, the note states "It has come to my attention that Sgt. Bottoms' family pet is a registered service dog and that this dog has been assisting her with some of her activities of daily living." Complainant's Exhibit 12.
22. After receiving the October 26, 2016 note, Respondent Prawel had direct contact with Dr. Alea, but the HOA decided to deny Ms. Bottoms' request for the dog.
23. Ms. Bottoms filed a charge of discrimination with the Complainant on December 5, 2016, and Investigator Deloris Jenkins (hereinafter "Ms. Jenkins") was assigned to investigate the charge.
24. During the course of her investigation, Ms. Jenkins received a letter from Dr. Alea, dated February 2, 2017, which states "Per Sgt. Bottoms, the dog in question helps assist her with reaching low lying objects which decreases her need to bend over thus helping prevent exacerbate (sic) her chronic pain issues. *I cannot personally corroborate this assertion* but if in fact this dog is able to perform these tasks it would contribute in a positive way to Sgt. Bottoms'

overall quality of life and would represent a reasonable accommodation.”

Respondents Exhibit 5 (emphasis added).

25. Dr. Alea never saw the dog, according to Ms. Bottoms’ testimony.
26. Ms. Jenkins testified that she did not visit Ms. Bottoms’ house to corroborate Ms. Bottoms’ assertion that the dog could perform specific tasks.
27. Mr. Prawel testified that he did not observe the dog perform any specific tasks for Ms. Bottoms during his visit to Ms. Bottoms’ home.
28. Ms. Bottoms testified extensively about the dogs’ purported services, such as picking things up for her and providing her assistance getting up from a seated position and ascending stairs.
29. Ms. Bottoms testified that she personally trained the dog to perform these tasks and that her other dogs were untrainable and not large enough or strong enough to give her assistance.

CONCLUSIONS ON LAW

30. Complainant alleged that Respondent violated S.C. Code § 31-21-40(6)/(7) by denying Complainant a reasonable accommodation for a service animal that otherwise would be a violation of the *Declaration of Covenants, Conditions, and Restrictions*.
31. The Commission has the burden of proof in cases brought under S.C. § Code 31-21-10, et seq. The Commission must prove a violation under this law by a preponderance of the evidence. S.C. Code §§ 31-21-130(k) and 1-23-600(A)(5).
32. The Commission acts as the United States Department of Housing and Urban Development (hereinafter “HUD”) “Fair Housing Assistance Program” for the

State of South Carolina and relies on HUD guidance and regulations in conjunction with the South Carolina code to investigate and adjudicate Fair Housing violations. See S.C. Code § 31-21-100, et seq.

33. Pursuant to HUD guidance FHEO-2013-01, "housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests."

34. Specifically, the Commission in this case relies on one or more of the following statements set forth in FHEO-2013-01 (emphasis added):

a. An assistance animal is not a pet. It is an animal that works, provides assistance, or **performs tasks for the benefit of a person with a disability**, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.

- b. [T]he FHAct... require[s] the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services.
- c. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals.
- d. A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal.
- e. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit **reliable documentation of a disability and their disability-related need for an assistance animal**. If the disability is readily apparent or known but the

disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistance animal.

i. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

f. [A] housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider.

g. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments.

h. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves **an individualized assessment**. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed.

35. S.C. Code § 31-21-40(6) makes it illegal “to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (a) that buyer or renter; (b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (c) any person associated with that buyer or renter.”
36. Discrimination under Section 31-21-40(6) includes, but is not limited to, “(1) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; and (2) a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.” S.C. Code § 31-21-70(G) and see also S.C. Code Reg. 65-215(E).
37. Further, S.C. Code § 31-21-40(7) states it is also illegal “to discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a handicap of (a) that person; (b) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (c) any person associated with that person.”

38. To establish a Fair Housing Act or Fair Housing Law violation for failure to accommodate, the Complainant must establish first, that she is handicapped or disabled. The Fair Housing Law defines a handicap as a physical or mental impairment which substantially limits one or more of the person's major life activities. South Carolina Code 31-21-30(7)(a). This is consistent with the federal definition found at 42 US Code Section 3602 (h).
39. Based on the foregoing Findings of Facts and the record of the hearing, the Complainant established Ms. Bottoms is, in fact, 'handicapped' or 'disabled' under the Fair Housing Law, given the many major life activities her medical conditions limit. Such examples include Ms. Bottoms' medical records in Complainants' Exhibits 1-9 and the doctor's letters of October 26, 2016 and February 2, 2017.
40. However, the Complainant must next establish a prima facie case for the underlying reasonable accommodation. As adopted by the 4th circuit, this test should focus on whether the accommodation was 1) reasonable, 2) necessary and 3) afforded the person equal opportunity to use and enjoy her housing. See *Bryant Woods Inn, Inc. v. Howard County, Md.* 124 F.3d 597, 603 (1997).
41. That case goes on to state that "the 'necessary' element—the FHA provision mandating reasonable accommodations which are necessary to afford an equal opportunity—requires the demonstration of a direct linkage between the proposed accommodation and the 'equal opportunity' to be provided to the handicapped person. This requirement has attributes of a causation requirement.

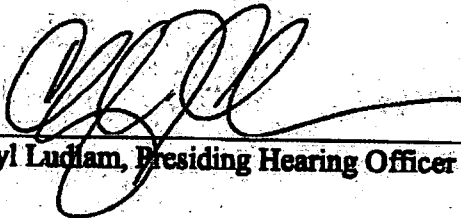
And if the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be 'necessary.'" *Id.* at 604.

42. Evidence presented before the panel was insufficient to establish that the animal in question performed specific tasks for Ms. Bottoms, and therefore the elements of the prima facie case were not met for the claims of discrimination found in Complainant's first two Causes of Action. More specifically, on the record, the testimony of Ms. Bottoms is the only evidence the panel received establishing a genuine link between the need for the dog and the equal opportunity to enjoy the home in which Ms. Bottoms lives. Ms. Bottoms' self-serving testimony did not meet the burden in showing that the animal was technically able to perform any task or service. The doctor's notes do not provide any first-hand account of the necessity of the specific animal for Ms. Bottoms' use and enjoyment of her home, since Dr. Alea stated he could not corroborate the precise services performed by the animal. Therefore, proof is insufficient that the animal in question would or does provide some type of disability-related assistance.
43. The remaining Cause of Action is brought under S.C. Code §31-21-80, which states that "it is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having aided or encouraged any other person in the exercise of, any right granted under this chapter."
44. The panel finds that there is insufficient evidence that the Respondents have interfered with Ms. Bottoms' exercise of her rights under the FHL, since they have not taken any adverse action against her, other than maintaining on her account the fines assessed for violating the pet policy.

WHEREFORE, IT IS THEREFORE ORDERED THAT

1. This matter be dismissed pursuant to SCRCP 41(b); and
2. A copy of this Order shall be sent to the Attorney General of South Carolina pursuant to S.C. Code Ann. §31-21-130(N).

AND IT IS SO ORDERED.



Cheryl Ludlam, Presiding Hearing Officer

8/17, 2018

Columbia, South Carolina