



PLAINTIFF-TENANT IS DISABLED BY DEPRESSION, DEFENDANT-LANDLORD'S REFUSAL OF PLAINTIFF'S REQUEST TO KEEP AN EMOTIONAL SUPPORT DOG IN HIS APARTMENT CONSTITUTED DISCRIMINATION UNDER THE FAIR HOUSING ACT AND THE HUMAN RIGHTS LAW, THE LANDLORD'S LIMITING PLAINTIFF'S LEASE TERM TO THREE MONTHS CONSTITUTED IMPERMISSIBLE RETALIATION (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Garry, reversing Supreme Court, determined plaintiff-tenant's discrimination and retaliation claims against defendant landlord should not have been dismissed. Plaintiff demonstrated his need for an emotional support dog (he suffers from debilitating depression) and further demonstrated the landlord's denial of his request to keep a dog was discriminatory, and the landlord's reduction of the lease term to three months constituted impermissible retaliation:

... [T]he parties have strictly limited their arguments on appeal on the question of discrimination to two narrow and carefully circumscribed issues: (1) whether defendant has a qualifying disability within the meaning of the FHA [Fair Housing Act] and the HRL [Human Rights Law] and (2) whether the accommodation he requested was "necessary to afford [him] equal opportunity to use and enjoy [his] dwelling" as provided in the statutes (42 USC § 3604 [f] [3] [B]; see Executive Law § 296 [18] [2]). * * *

... [B]ased upon defendant's significant limitations in the major life activities of working and interacting with others, we are satisfied that he is disabled within the meaning of the FHA

The HRL's definition of disability is broader than those used in the federal disability statutes The HRL does not require a showing of a limitation in a major life activity, but instead defines disability, as pertinent here, as "a physical, mental or medical impairment . . . [that] is demonstrable by medically accepted clinical or laboratory diagnostic techniques" (Executive Law § 292 [21] [a]). Defendant's therapist, a clinical psychologist, testified in some detail regarding the clinical techniques used to diagnose depression and defendant's specific symptoms

... [W]e find that defendant "offered sufficient evidence that having [an emotional support] dog would affirmatively enhance his quality of life by ameliorating the effects of his disability," and thus demonstrated necessity within the meaning of the FHA and the HRL * * *

We are satisfied that plaintiff's actions were sufficiently adverse to constitute interference with the exercise of defendant's rights. Notably, discrimination against a disabled person in the terms or conditions of a lease is prohibited by the FHA and its implementing regulations [Hollandale Apts. & Health Club, LLC v Bonesteel, 2019 NY Slip Op 03718, Third Dept 5-9-19](#)

HEARING WAS REQUIRED TO DETERMINE WHETHER A PERMANENT STAY OF EVICTION WAS A PROPER ACCOMMODATION FOR DISABLED TENANTS PURSUANT TO THE FAIR HOUSING ACT (FIRST DEPT).

The First Department, reversing (modifying) the Appellate Term, First Department, ruled that a hearing should be held to determine whether eviction proceedings should be permanently stayed. A guardian (GAL) had been appointed pursuant to Mental Hygiene Law article 81 for the disabled tenants who had not complied with stipulations for fumigation of the apartment to rid it of bed bugs. With the GAL's help the apartment was eventually fumigated. Under the Fair Housing Act the tenants were entitled to accommodations for their disabilities. A hearing was required to determine whether a permanent stay of eviction was an appropriate accommodation:

Under the Fair Housing Act (FHA), as amended, it is unlawful to discriminate in housing practices on the basis of a "handicap" (42 USC § 3604[f][2][A]). Handicap is very broadly defined, and a person is considered handicapped and thereby protected under the FHA if he or she: 1. Has a physical or mental impairment that substantially limits one or more major life activities, or 2. Has a record of such impairment, or 3. Is regarded as having such an impairment.

No specific diagnosis is necessary for a person to be "handicapped" and protected under the statute. In fact, the determination may even be based upon the observations of a lay person The appointment of an article 81 guardian for tenants sufficiently establishes that these tenants are "handicapped" within the meaning of the FHA, leading us to consider whether they are entitled to a reasonable accommodation. What is "reasonable" varies from case to case, because it is necessarily fact-specific The overarching guiding factor, however, is that a landlord is obligated to provide a tenant with a reasonable accommodation if necessary for the tenant to keep his or her apartment. The "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [the handicapped individual] equal opportunity to use and enjoy a dwelling" is a discriminatory practice... . A landlord does not have to provide a reasonable accommodation if it puts other tenants at risk, but should consider whether such risks can be minimized [Matter of Prospect Union Assoc. v DeJesus, 2018 NY Slip Op 09016, First Dept 12-27-18](#)



PLAINTIFF CONDOMINIUM OWNER STATED A CAUSE OF ACTION AGAINST THE CONDOMINIUM DEFENDANTS FOR VIOLATION OF THE FAIR HOUSING ACT 2ND DEPT.

The Second Department, reversing Supreme Court, determined plaintiff had stated a cause of action for violation of the Fair Housing Act. Plaintiff, a condominium owner, alleged she was denied access to common areas of the defendants' (Vista's) condominium complex because of her ethnicity:

The Supreme Court ... erred in granting that branch of the Vista defendants' motion which was pursuant to CPLR 3211(a) to dismiss the third cause of action to recover damages for housing discrimination in violation of the federal Fair Housing Act (42 USC § 3601 et seq.) insofar as asserted against them. That statute provides, in relevant part, that "it shall be unlawful . . . [t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin" (42 USC § 3604[b]). At the motion to dismiss stage, all that is required are sufficiently pleaded allegations that plaintiffs are part of a protected class and that defendants took actions against them that are forbidden by the Fair Housing Act on the basis of their membership in the protected class In this case, the complaint alleged, inter alia, that the Vista defendants discriminated against the plaintiff and her family "in an effort to prevent [them] from utilizing the facilities upon the common area," and that the Vista defendants had engaged in a pattern of discrimination against the plaintiff and her family because they are of Hispanic descent. Accepting these allegations as true, and affording the plaintiff the benefit of every possible favorable inference, the complaint adequately stated a cause of action to recover damages for housing discrimination in violation of the Federal Fair Housing Act (42 USC § 3601 et seq.) insofar as asserted against the Vista defendants. [Gutierrez v McGrath Mgt. Servs., Inc., 2017 NY Slip Op 05425, 2nd Dept 7-5-17](#)

FAIR HOUSING ACT (PLAINTIFF CONDOMINIUM OWNER STATED A CAUSE OF ACTION AGAINST THE CONDOMINIUM DEFENDANTS FOR VIOLATION OF THE FAIR HOUSING ACT 2ND DEPT)/CONDOMINIUMS (FAIR HOUSING ACT, PLAINTIFF CONDOMINIUM OWNER STATED A CAUSE OF ACTION AGAINST THE CONDOMINIUM DEFENDANTS FOR VIOLATION OF THE FAIR HOUSING ACT 2ND DEPT)/DISCRIMINATION (FAIR HOUSING ACT, PLAINTIFF CONDOMINIUM OWNER STATED A CAUSE OF ACTION AGAINST THE CONDOMINIUM DEFENDANTS FOR VIOLATION OF THE FAIR HOUSING ACT 2ND DEPT)