

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

HUDALJ 02-93-0320-1

The Secretary, United States Department
of Housing and Urban Development, on
behalf of Beatrice Exelberth,

Charging Party,

Beatrice Exelberth,

Intervenor,

v.

Riverbay Corporation,

Respondent.

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OFFICE OF ADMINISTRATIVE
LAW JUDGES

MODIFIED ORDER

On September 8, 1994, the Administrative Law Judge ("ALJ") Samuel A. Chaitovitz issued an Initial Decision and Order in the above-captioned case. That Decision and Order became final on or about October 8, 1994 ("Final Agency Decision and Order"). On or about October 13, 1994 Respondent Riverbay Corporation ("Riverbay Corporation") filed an appeal of the Final Agency Decision and Order to the United States Court of Appeals for the Second Circuit. In order to avoid protracted appellate proceedings, the parties have agreed to this Modified Order.

Riverbay Corporation has agreed to comply with the following terms and to dismiss its appeal with prejudice.

Having concluded that Riverbay Corporation violated sections 804(f)(1), 804(f)(2) and 804(f)(3), it is hereby

ordered that:

A. Riverbay Corporation and its agents hereby agree:

- (i) not to implement and enforce the no pet rule against Ms. Beatrice Exelberth, the Complainant and Intervenor, and other individuals who are able to demonstrate that they require pets as a reasonable accommodation to their handicap; and
- (ii) not to evict or take any action against Ms. Exelberth or other individuals with handicaps who are able to demonstrate that they require pets as a reasonable accommodation to their handicap, based on Riverbay Corporation's no pet rule; and

B. Riverbay Corporation and its agents hereby agree to vacate the Order of the Civil Court of the City of New York in Riverbay Corporation v. Beatrice Exelberth, (Index No. 91430/92) dated March 12, 1993 (Judge Howard F. Trussel) and to provide HUD and Ms. Exelberth with a copy of the Order vacating same.

C. Riverbay Corporation agrees that, as a reasonable accommodation to her disability, Ms. Exelberth will be permitted to remain in Co-Op City with her canine companion and any successor canine companion selected in her sole discretion. Within thirty (30) days of execution of this Modified Order, Riverbay Corporation shall pay actual damages to Ms. Exelberth in the sum of \$2,500 for emotional distress.

D. Within thirty (30) days of the date of this Modified Order, Riverbay Corporation shall pay a civil penalty in the amount of \$5,000 to the Secretary of the United States

Department of Housing and Urban Development.

E. Within thirty (30) days of the date of this Modified Order, Riverbay Corporation shall inform all employees of Co-Op City of the provisions of the Fair Housing Act and the nondiscrimination policy in effect at Co-Op City.

To these ends, Riverbay Corporation shall do the following:

1. Riverbay Corporation shall provide each employee and agent with a memorandum ("Memorandum"), describing the policy of nondiscrimination at Co-Op City, a copy of which is annexed hereto as Exhibit "A". The Memorandum will be distributed together with a summary or synopsis of the Federal Fair Housing Act to all employees of Riverbay Corporation within 45 days of the signing of this Modified Order.
2. In addition, each of the three Community Service Officers employed by Riverbay Corporation will be directed to receive and report any conditions, inquiries, requests or complaints independently observed or received from individuals with disabilities to the Four Community Service Office Managers and Director of Employee and Cooperative Services.
3. Within 45 days of execution of the Modified Order, Riverbay Corporation will provide a letter of completion that states that the Memorandum together with a copy of the Fair Housing Act have been distributed to all employees of Riverbay Corporation and that states the manner of distribution.

4. Riverbay Corporation shall maintain, for inspection and borrowing by tenants at its rental offices, copies of the Fair Housing Act and the Fair Housing regulations.
- F. The following shall constitute Riverbay Corporation's written uniform and objective policies and procedures to be used in Co-Op City in reviewing and acting upon all requests for handicap accommodation and modification in housing:
- a. all information received by Riverbay Corporation regarding an individual's handicap including physical, mental, psychological, and/or psychiatric condition(s), shall be kept confidential and will be maintained by the Director of Cooperator and Employee Services (the "Director");
 - b. Riverbay Corporation shall make determinations whether to grant or deny requests for accommodation/modification due to a disability within thirty (30) days of receipt of the request unless it is impracticable to do so;
 - c. Riverbay Corporation shall provide written notice to the applicant for accommodation, within thirty (30) days of receipt of the request unless it is impracticable to do so. Said notice will indicate that the request is granted or denied. In the event that the request is denied, the notice will explain the reasons for such denial;
 - d. Any tenant whose request for a reasonable accommodation or modification is denied is entitled to appeal said

decision to the Cooperative Appeal Committee of the Riverbay Board of Directors (the "Board"). The Board will entertain and decide the tenants appeal within thirty (30) days of receipt of said appeal, unless it is impracticable to do so.

- e. In cases where the accommodation/modification request is approved, Riverbay will complete the work and take any required action to provide the accommodation/modification within (60) days of receipt of the request.
- f. Riverbay will maintain written records of all such inquiries, and outcomes to any requests for reasonable accommodations and/or modifications.
- g. A copy of these policies and procedures for requesting reasonable accommodations/and or modifications will be available and provided to any tenant upon request.

Nothing in this provision shall be construed to prohibit Riverbay Corporation from imposing reasonable screening processes for making determinations as to requests for handicap accommodation. Any such screening processes, however, shall give deference to the assessment by the individual and/or where voluntarily provided by the individual, the assessment of public health officials and/or reasonable medical evidence, as to the abilities of the individual and whether it may be necessary for the individual to have an accommodation to rules, policies, practices, or services, in order to be afforded equal opportunity to use and enjoy the dwelling unit, including public or common use areas. Any such screening process shall

also be designed to guarantee the confidentiality of records and the privacy of the individual requesting an accommodation.

G. HUD, upon request, has the right to review and inspect the written records of all inquiries and requests for reasonable modifications and accommodations, and outcomes to any requests for reasonable accommodations and/or modifications.

1. On March 1, 1996 and on March 1, 1997, Riverbay shall submit an annual report to HUD containing a list of all oral and written requests made by individuals for an accommodation or modification by reason of their handicap or disability. The report will include the name, address, phone number, specific request of the individual making the request and a summary indicating action taken by Riverbay in response to requests for accommodations by individuals with handicaps, including information as to whether such requests were granted or denied and the reason for the action taken, information indicating whether accommodations were completed, and information indicating the timeliness of respondent's response to requests and completion of accommodations.
2. The report required under this section shall be sent to the Director, Compliance Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 26 Federal Plaza, Room 3532, New York, N.Y. 10278.

This Modified Order shall be enforceable by the United States Court of Appeals, as if it had been part of the Final

Agency Decision and Order. See 42 U.S.C. §3612(j) and (m).

The parties hereby agree that the Order dated September 8, 1994 be vacated and that this Modified Order be "So Ordered" by the Administrative Law Judge and entered in its place.

Complainant and Intervenor, Beatrice Exelberth, and ALAN M. BRENNER on behalf of Riverbay Corporation have read this Modified Order and willingly sign it with a full understanding of the rights and responsibilities it imposes on them.

Complainant and Intervenor:

Beatrice Exelberth
Beatrice Exelberth

Stanley Seidenfeld
Stanley Seidenfeld, HUD
Director, FHEO for NY/NJ

Hildamar Ortiz
Hildamar Ortiz
Assistant General Counsel
for New York/New Jersey

Janet Dreifuss
Janet Dreifuss
Trial Attorney
U.S. Department of Housing
and Urban Development
26 Federal Plaza
New York, New York 10278

Respondent:

Alan M. Brenner
Riverbay Corporation
By: ALAN M. BRENNER
Title General Manager

Philip F. Foglia
Philip F. Foglia
Culletton Marinaccio & Foglia
Attorneys for Riverbay Corp.
245 Main Street
White Plains, N.Y. 10601

Dated: FEB 10 1995

SO ORDERED:

Alan W. Heifetz 3/1/95
Chief Administrative Law Judge

EXHIBIT "A"

MEMORANDUM

TO: ALL RIVERBAY EMPLOYEES
RE: NON-DISCRIMINATION POLICY
FROM: RIVERBAY CORPORATION
DATE: FEBRUARY __, 1995

GENERAL POLICY AGAINST DISCRIMINATION AT CO-OP CITY

Riverbay Corporation prides itself on providing an environment in which everyone is treated with respect and dignity. Riverbay Corporation is an equal opportunity employer and housing provider. Riverbay Corporation does not and will not discriminate on the basis of race, color, creed, religion, sex, sexual orientation, national origin, age, veterans status (including Vietnam era or special disabled veteran), marital status, familial status, disability or handicap.

Riverbay Corporation does not discriminate in the terms, conditions, privileges, services and facilities associated with the rental or occupancy of the premises.

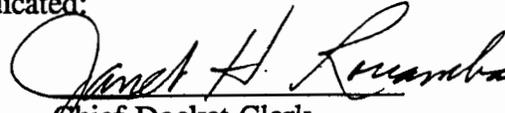
Riverbay Corporation will make reasonable accommodations in rules, practices, policies and services and/or reasonable modifications to its premises when such an accommodation may be necessary to afford a person with handicaps or disabilities an equal opportunity to use and enjoy a dwelling, including the public and common use areas. In the event, an employee is approached by an applicant, tenant or cooperator seeking a reasonable accommodation or modification to their premises, the employee should notify and forward the request to the appropriate management personnel.

In support of this policy, Riverbay will not tolerate any form of discrimination or harassment. It is the responsibility of each member of management to create an atmosphere free of discrimination or harassment, sexual or otherwise. In addition, it is everyone's responsibility to respect the rights of the residence, tenants, cooperators, applicants and co-workers. Your support and understanding of our fair housing and employment practices and policies is mandatory and will keep Co-Op City a good place in which to live and work.

A copy of the Fair Housing Act setting forth the federal law prohibiting discrimination in housing and rental practices is attached hereto and being distributed to all employees for their review.

CERTIFICATE OF SERVICE

I hereby certify that copies of this MODIFIED ORDER issued by ALAN W. HEIFETZ, Chief Administrative Law Judge, in HUDALJ 02-93-0320-1, were sent to the following parties on this 3rd day of March, 1995, in the manner indicated:


Chief Docket Clerk

REGULAR MAIL:

Beatrice Exelberth
24A Debs Place
Bronx, NY 10475

Steven M. Post, Esq.
Phillips Nizer Benjamin Krim & Ballon
31 West 52nd Street
New York, NY 10019-6167

Janet B. Dreifuss, Esq.
Office of Regional Counsel
U. S. Department of Housing
and Urban Development
Room 3500
26 Federal Plaza
New York, NY 10278-0068

INTEROFFICE MESSENGER:

Roberta Achtenberg, Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100
Washington, D.C. 20410

Harry L. Carey, Assistant General Counsel for Fair Housing
Jonathan Strong, Deputy Assistant General Counsel
for Fair Housing Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10270
Washington, D.C. 20410

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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filed
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RIVERBAY CORPORATION,

Petitioner,

-v-

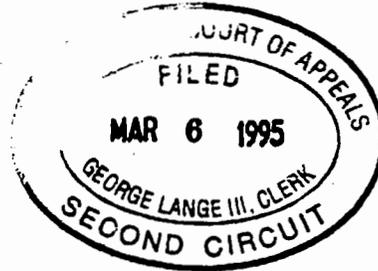
THE SECRETARY, UNITED STATES
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT, on behalf of BEATRICE
EXELBERTH, and BEATRICE EXELBERTH,

Respondents.
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A.U.D
02-93-0320-1

STIPULATION AND ORDER

Docket No. 94-4180



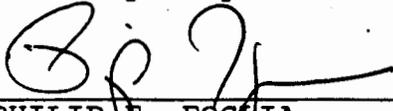
IT IS HEREBY STIPULATED AND AGREED that the above-captioned appeal is withdrawn with prejudice and without costs and attorneys' fees.

IT IS FURTHER STIPULATED AND AGREED that this case be and hereby is remanded to the Office of Administrative Law Judges, United States Department of Housing and Urban Development, for the purpose of submission and entry of the agreement of the parties dated February 16, 1995.

Dated: New York, New York
February 16, 1995

CULLETON, MARINACCIO & FOGLIA
Attorney for Appellant
Riverbay Corporation

By: _____


PHILIP F. FOGLIA
245 Main Street
White Plains, New York 10601

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RIVERBAY CORPORATION,

Petitioner,

-v-

THE SECRETARY, UNITED STATES
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT, on behalf of BEATRICE
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Received by Regional Counsel
New York Area Office HUD

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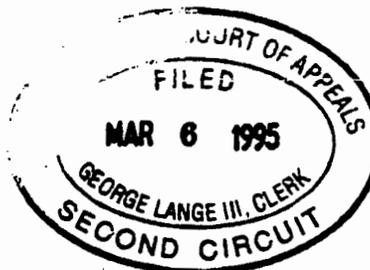
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93-0320-1

STIPULATION AND ORDER

Docket No. 94-4180



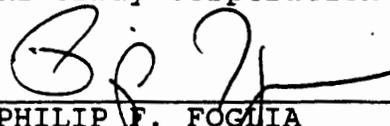
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Dated: New York, New York
February 16, 1995

CULLETON, MARINACCIO & FOGLIA
Attorney for Appellant
Riverbay Corporation

By:


 PHILIP F. FOGLIA
 245 Main Street
 White Plains, New York 10601

CERTIFIED:

3-8-95