#157319-HOA58 Margaret LePore
vs. Cummingston Court Condominium Association

Order
Nanette L. Reynolds, Director

State of Michigan
CIVIL RIGHTS COMMISSION
Michigan Plaza Building
1200 Sixth Avenue
Detroit, MI 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS, ex rel. MARGARET LEPORE,

Claimants,

MDCR No. 157319-HOA58

v

CUMMINGSTON COURT CONDOMINIUM ASSOCIATION,

Respondent.
_____/

ORDER

At a meeting of the Michigan Civil Rights Commission
held in Lansing, Michigan
on the 25th day of June, 2001

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed Findings of Fact and Recommendations regarding the issues involved in this case. The parties had an opportunity to make presentations in support of or in objection to the Referee's proposals at the public meeting of the Commission held on April 24, 2001. Commissioner Albert Calille has issued an Opinion, which has been adopted by a unanimous vote of the Commission. That Opinion shall be made a part of this Order.

## FINDINGS OF FACT

1. Claimant, Margaret LePore, is physically disabled and was regarded by respondent as being disabled.

2. Respondent, Cummingston Court Condominiums, is an 18 unit condominium complex.

3. At all pertinent times, Renee Godin was the owner of Unit 13 in Cummingston Court Condominiums.

4. On or about March 16, 1997, Ms. Godin entered into a one year lease of her condominium unit with claimant and her husband. Further, Ms. Godin renewed this lease with the claimant for one additional year.

5. At the conclusion of the second year, the lease between Ms. Godin and claimant was not renewed. The non-renewal of this lease was unrelated to any allegations of discrimination or retaliation.

6. As a tenant, Ms. LePore was required to abide by the Cummingston Court Condominium Association Master Deed, including the association bylaws.

7. The parking lot at the condominium consisted of 18 covered spaces located at the south end of the parking area and 18 open parking spaces located at the north end of the parking lot, as required by the City of Royal Oak.

8. The 18 uncovered parking spaces in the parking lot at Cummingston Court are common elements.

9. Owners were not allowed to have more than two cars per unit at the complex.

10. On April 30, 1997, claimant submitted a letter to the board requesting that one of the first two common area parking spots nearest her unit be designated as handicapped and that a "handicap" sign be placed in the spot. Further, claimant stated that the parking space need not be widened or relined and that she would bear the cost of obtaining and installing the sign.

11. Respondent denied claimant's requested accommodation.

12. In denying claimant's request for an accommodation, respondent did not, in writing, advise claimant that this denial was based on the Condominium Act or due to financial hardship.

13. The respondent did not, in writing, provide any list to claimant advising why the requested alteration could not be made in accordance with the Condominium Act.

14. Respondent did not propose any alternative accommodations nor engage in any interactive process with claimant to ascertain what other alternative accommodation could be reasonably made.

15. Respondent's Master Deed set forth the process whereby a common element could be altered, but that process was not utilized by the association.

16. The claimant had three cars in violation of the Condominium Association Rules.

17. The claimant received a violation notice regarding the three cars, but received no fines.

18. The claimant was not fined by respondent for any damage done by any pet.

19. The claimant was not fined and did not receive any written violation notices for failing to take out the garbage.

20. The claimant did not incur any out-of-pocket expenses related to her claim of disability discrimination.

21. The claimant wanted to continue to reside at Cummingston Court Condominiums even after her request for accommodation was denied.

22. The claimant did not suffer any emotional distress damages as a result of any actions by respondent.

## CONCLUSIONS OF LAW

1. Claimant is a person regarded as having a disability, and as such, is entitled to protection under the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*

2. Respondent is subject to the provisions of the Persons With Disabilities Civil Rights Act.

3. Claimant established a *prima facie* case of failure to make a reasonable accommodation.

4. Claimant showed by preponderance of the evidence that respondent discriminated against her in violation of the PWDCRA, MCL 37.1101 *et seq.*

5. Claimant did not prove by a preponderance of the evidence that respondent retaliated against her in violation of the PWDCRA, MCL 37.1602.

6. Claimant did not prove by a preponderance of the evidence that two or more members of respondent's board discriminated against claimant by conspiring to retaliate against her in violation of the Michigan Person's With Disabilities Act, MCLA 37.1602.

7. Claimant did not prove by a preponderance of the evidence that respondent interfered with her lease agreement.

**IT IS HEREBY ORDERED That**

A. Respondent be ordered to cease and desist from unlawfully discriminating against any person on the basis of disability and to engage in an interactive process with any person with a disability who hereafter requests an accommodation at the condominium complex.

B. Respondent receive training from the Michigan Department of Civil Rights as it relates to unlawful discrimination against persons with disabilities.

C. Respondent post HUD and MDCR notices in conspicuous places informing owners and their tenants and/or assignees of their rights under the federal and state civil rights laws.

D. Respondent pay a civil fine to the State in the amount of $1,500.00.

E. Claimant's attorney pay the amount of $150.00 to respondent.

F. The requests of the Department and claimant for attorney fees be denied.

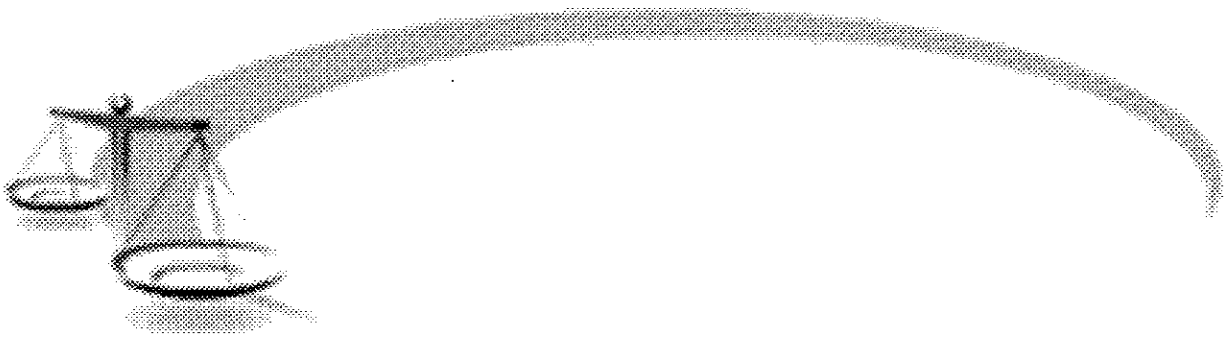
MICHIGAN CIVIL RIGHTS COMMISSION

Dated: 6.28.01

Nanette Lee Reynolds/vg
Nanette Lee Reynolds, Ed.D., Director

**NOTICE OF RIGHT TO APPEAL**

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction provided by law. MCL 37.2606



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CUMMINGSTON COURT CONDOMINIUM ASSOCIATION,

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OPINION

**Albert Calille, Commissioner**

I

Claimant, Margaret LePore, is physically disabled. Since 1979, she has had nine operations on her right knee. In the future, she will require a total knee replacement and a possible hip replacement. Three years ago, she was in an automobile accident that left her with a broken right heel. That condition cannot be corrected. Claimant also has back problems related to her leg. (T: 220-224). All of these conditions have limited her ability to walk. *Id.*

This case arises from a complaint initially filed by claimant with the United States Department of Housing and Urban Development (HUD) on September 20, 1997.[1] In her complaint, claimant alleged that respondent, Cummingston Court Condominiums, in April 1997, denied her request for a designated handicapped space in violation of the federal fair housing act, 42 USC 3600-3620. This complaint was referred by HUD to the Michigan Department of Civil Rights for investigation.[2] Respondent submitted a written response to the complaint, dated October 21, 1997, admitting that the claimant had requested the posting of a handicapped parking sign, but stating that it was not obligated to modify the general common elements of the development in order to accommodate a person who claims to be disabled.

The Department investigated this case and found probable cause. A conciliation was held between the parties, which did not resolve the matter. On September 29, 1999, the Department issued a charge alleging that the respondent unlawfully denied claimant's request for accommodation in violation of the Persons With Disabilities Civil Rights Act (PWDCRA), MCL §37.1101 *et seq*. The charge further alleged that the claimant was subjected to retaliation after filing her complaint, in that respondent threatened to levy fines against her for parking and other alleged violations under respondent's bylaws and/or other rules. Claimant further alleged that respondent interfered with claimant's contractual agreement with her landlord to rent their unit and

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[1]Under federal civil rights procedures the initial filing by an aggrieved individual is called a "charge", while the pleading filed, once a case becomes contested, is called a "complaint". In cases filed with the Michigan Department of Civil Rights, this nomenclature is reversed.

[2]An amended complaint was filed by claimant on November 26, 1997, changing the name of the respondent to Cummingston Court Condominiums from the previously named individual board member.

this conduct was unlawful pursuant to MCL §37.1602. Claimant also alleged that after she filed her complaint with the Michigan Department of Civil Rights, two or more members of the condominium association acted in concert to annoy, harass, and retaliate against claimant and her family, and that this was done in violation of MCL §37.1602. Finally, claimant alleged that she was denied the full enjoyment and benefits of the premises and an equal opportunity to access her rental unit, that she was forced to move from the premises at an inopportune time and suffered out-of-pocket expenses and costs as a result of the forced relocation, as well as emotional distress.

Respondent's Answer and Amended Answer denied the allegations of discrimination, retaliation, and conspiracy. Respondent also raised several Affirmative Defenses which will be discussed in the course of this Opinion.

II

At the outset, it is necessary to address several preliminary issues which were raised by the parties.

A. Jurisdictional and Evidentiary Issues

Respondent argued that it was necessary to join claimant's landlord, Renee Godin, and/or the builder of the condominium project. With respect to Michael Church, the builder, respondent claimed that Mr. Church was a necessary party because the Department was seeking equitable relief or corrective action relating to the subsequent designation of additional handicapped parking spots in respondent's parking lot.

Respondent subsequently waived the joinder issue relative to Renee Godin. (T: 8). Inasmuch as claimant stated she was not seeking such equitable relief with respect to the parking spaces, joinder of the builder became a moot point. (T: 9).

Claimant objected to the introduction of testimony regarding her employment at Liz Claiborne. Susan Eperjesy, claimant's former supervisor, was allowed to testify because claimant had testified, at length, about her employment with the company and the alleged physical effects that it had on her, as well as her alleged reasons for leaving that employment.

Claimant also objected to the testimony of Michael McCulloch, Esq. based on respondent's assertion of the attorney/client privilege during the discovery process. Mr. McCulloch's testimony was limited to those matters which were not covered by the previously asserted attorney/client privilege.

The Hearing Referee properly ruled on these evidentiary issues.

B. Pre-Hearing Motions

On January 13, 2000, respondent filed a motion to compel the deposition of claimant and for the execution of releases for employment and medical records. None of these requests was seriously challenged, and an Order, dated January 25, 2000, was issued, granting respondent's requests for claimant's deposition and her employment and medical records. The parties were also granted extended discovery.

On February 23, 2000, respondent filed a motion to dismiss, hold claimant in contempt, grant costs and attorney fees, and award sanctions for claimant's failure to

execute medical authorizations and appear at her deposition. The Department filed a response to the motion. A hearing on the motion was held on March 9, 2000. Claimant's attorney did not file any written response to the motion or appear in person at the motion hearing. After claiming office confusion and delaying the hearing on this motion, claimant's attorney attended the hearing by telephone conference. Respondent's motion to dismiss was properly denied by the Hearing Referee.

In this connection, respondent requested attorney fees for having to file and appear on the motion to dismiss, and, in that connection, filed a bill of costs. The question of attorney fees was taken under advisement and addressed by the Hearing Referee in her Report. That issue is discussed in Section V, *infra.*

C. Timely Submission of Post-Hearing Briefs

Post-hearing briefs were initially due by October 27, 2000. At the request of claimant, that date was extended to November 13, 2000. Again, at claimant's request, the filing date was extended to November 20, 2000, then to November 22, 2000, and finally to November 27, 2000. Claimant's counsel was advised that there would be no further extensions, unless good-cause was shown. Other than for the first extension, claimant provided no reason for her several requested filing extensions.

On November 27, 2000, respondent filed its brief. At that same time, a partial brief was filed on behalf of the Department and claimant. That portion of claimant's brief, which was to be submitted by her own attorney, was not filed. As a result, certain issues were not addressed.

On December 4, 2000, respondent filed a motion to strike any late post-hearing brief by claimant. The Department, but not the claimant, filed a response. On December 13, 2000, claimant and the Department filed a joint motion to allow the remaining portion of this brief to be filed and attached the completed brief. By that time the Hearing Referee had completed her Findings of Fact and Recommendations. Consequently, respondent's motion to strike was granted. Those portions of the brief previously filed by the Department were accepted and taken into consideration by the Hearing Referee in reaching her decision.

The Hearing Referee's ruling, which granted respondent's motion, is affirmed. Claimant's attorney did not timely or properly show good cause for failing to submit claimant's portion of the brief within the extended filing period.

III

This case raises the following substantive issues:

1. Was claimant discriminated against in violation of the Persons With Disabilities Civil Rights Act, by virtue of the respondent's denial of her request of an accommodation of a designated parking space?

2. Was claimant retaliated against by respondent after having filed her complaint with the Michigan Department of Civil Rights in violation of MCL §37.1602?

3. Did claimant prove that she was subject to a conspiracy where two or more members of the condominium association acting in concert to harass, annoy, or otherwise retaliate against claimant for filing a charge of discrimination with the Michigan Department of Civil Rights in violation of MCL §37.1602?

4. Was claimant's exclusive remedy under the Michigan Condominium Act, MCL 559.100 *et. seq.,* specifically, MCL 559.147a?

5. Did claimant prove that she suffered economic and/or emotional damages as a result of any alleged discriminatory or retaliatory conduct on the part of respondent?

These issues are discussed in Section IV, *infra*.

IV

A. Disability and Failure to Accommodate Claim

On April 15, 1997, claimant leased condominium unit Number 13 owned by Renee Godin, for one year. (Exhibit 2). On March 16, 1998, claimant entered into a second one year lease, which commenced on April 15, 1998. (Claimant's Exhibit 7).[3] Claimant resided in the unit with her husband and teenage daughter. Prior to entering into the lease arrangement, Ms. Godin advised the LePores that there was a two-car limit at the complex. (T: 174 -175).

Cummingston Court Condominiums consists of 18 units, which are attached in a "L" shaped pattern. (T: 571; Exhibit 1). Unit No. 13 is located in the corner where the two rows of units meet. (Exhibit 1). In front of the units is a grassy area, with sidewalks coming from each unit leading to the parking lot. The parking lot consists of 18 covered spaces ("carports"), located in the south end of the parking area, and 18 open parking spaces located at the north end of the parking lot. (T: 571-572; Exhibit 1). The zoning ordinances of the City of Royal Oak require that there be two parking spaces for each unit. (T: 578).

[3]The parties stipulated that any subsequent non-renewal of the lease at the end of the term in March of 1999 is unrelated to these proceedings.

Cummingston Court Condominiums is an association of co-owners. (Exhibit GG). The Condominiums are administered by an association of co-owners, which is a nonprofit corporation and is responsible for the management, maintenance, operation, and administration of the common elements, easements and affairs of the condominium project in accordance with the condominium documents and the laws of the State of Michigan. (Exhibit GG). Pursuant to the Bylaws, the co-owners elect a board of directors. (Exhibit GG). In 1997, Jennifer McLean was elected president. (T: 465; Exhibit KK). The meetings of the association are open to all tenants at Cummingston Court Condominiums. (T: 469).

The budget for the association is $17,000 annually. (T: 642). The total expenditures for the association on an annual basis are approximately $16,000 a year, exclusive of miscellaneous items, such as flowers, light bulbs, roof leaks, or other items that need to be fixed. *Id.*

The Master Deed for the Condominium provides for the individual units owned by the various owners; limited common elements, which are owned by all of the owners, but used exclusively by a particular owner; and several general common elements that are owned equally by all of the owners and are for use by all of the owners on an equal basis. (Exhibit FF). The carports and the outdoor decks attached to each of the units are limited common elements. (T: 572; Exhibit FF). The 18 uncovered parking spaces in the parking lot at Cummingston Court are common elements. *Id.* The Bylaws and Master Deed also provide that the association must have access to the sump pump located in Unit No. 13. (Exhibit GG). In addition, pets cannot be left outside

unattended, and garbage must be left in receptacles only, until it is time to have the waste picked up by the city. (Exhibits FF, GG, and II).

On April 30, 1997, claimant submitted a written request to the association board members that stated in pertinent part as follows:

> The purpose of this letter is to request a parking spot closest to my home to be designated as handicap. [sic]. I have a serious physical problem that does not allow me the pleasure of walking any great distances. I have had nine surgeries on my right knee and have a broken right heel. Because of 18 years of limping, I have a bad back and left hip. My doctor has applied to the State of Michigan for a permanent, not temporary, handicapped parking permit. Many factors over the years have contributed to further complicate my ability to function. When I get home from work (late afternoon or early evenings), I can barely walk. For these reasons, I am requesting that the first or second parking spot be designated as "handicapped." The parking spot need not be re-lined a true parking spot for the handicapped, as one and a half spaces. If there is a financial burden for applying for the sign, we will bear the cost. The State of Michigan requires that a facility be provided for a handicapped person.
>
> I hope this information helps you come to a decision that is comfortable for all of us. By the way, parking in the carport is not at all feasible. Please let me know your decision as soon as possible, so that the process may continue quickly.
>
> I appreciate your attention this very painful problem. Information and letters are available from both my doctor, A. Podolsky, D.O. and my attorney, Alexander Benson. If you would like anything else, please let me know. My phone number is: ____.

(Exhibit 3).

Ms. McLean testified that after receiving claimant's written request, she consulted with Mr. Church. (T: 474). They discussed, among other things, the fact that handicapped parking spaces are one and one half spaces; that they are required to have 36 parking spaces; that in order to put in a handicapped parking spot, they would have to add pavement, alter a retaining wall, and would cost between $8,000 and $10,000; that this alteration would cause a violation of the city code and there was a

setback requirement from Crooks Road that they were required to meet relative to the parking lot. (T: 476-477).

Ms. McLean testified that she shared this information with the board of directors, after which the board determined that they were unable to accommodate claimant's request. (T: 479). A letter, dated May 12, 1997, was sent to claimant, setting forth six reasons why they were denying claimant's request for an accommodation:

1. The unit already has an assigned parking spot that is in reasonable proximity to the unit.

2. According to the building inspector who inspected the complex during construction, a handicap spot is not required according to the building code in the City of Royal Oak.

3. According to Article IV of the master deed of the association, the area where the handicapped spot is requested is considered common area. This area is meant for the use of all of the residents of the complex.

4. If, in the future, the board of directors decides to assign a common parking spot as handicapped, they would be required to choose a location that would give access to every unit. This would require choosing a location at or near the middle of the common area. (Further than the current assigned spot under the carport).

5. The current officers are aware of the fact that there are friends and family of co-owners who are handicapped. Due to this fact, there is no guarantee that your tenant would get said handicap spot.

6. Finally, it should have been obvious to your tenant that there was no handicap parking prior to deciding to make Cummingston Court Condominiums her new residence.

(Exhibit 4).

In this regard, Ms. McLean testified as follows:

Q. And after you discussed those with Mr. Church, that was it?

A. We determined that we couldn't do it. And we --

Q. And that was it, wasn't it? Yes or no?

A. Yes.

* * * *

Q. You didn't consider any other alternatives?

A. No we did not.

(T: 506).

The Persons With Disabilities Civil Rights Act, as amended, requires that "a person shall accommodate a person with a disability for purposes of ... housing, unless the person demonstrates that the accommodation would impose an undue hardship." MCL 37.1102. The Act further prohibits a refusal to make reasonable accommodations when such accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property. MCL 37.1506a(1)(b).

A *prima facie* case of failure to make a reasonable accommodation is established by showing that (1) claimant suffers from a disability as defined by MCL 37.1103, (2) respondent knew or should have known of claimant's disability, (3) the accommodation of the disability may be necessary to afford the claimant an equal opportunity to use and enjoy the dwelling, (4) the accommodation is reasonable, (5) the respondent refused to make such accommodation. *Exelberth* v *Riverbay Corp,* 02-93-0320-1, 1994 WL 497536 (September 8, 1994).[4]

[4]The elements of a prima facie case are sufficiently equivalent to the issues of fact, which the parties agreed needed to be addressed. These elements, and not the issues of fact, will be the focus of this section of the Opinion.

Claimant has established a *prima facie* case of failure to make a reasonable accommodation. First, claimant suffers from a disability as defined by the statute. She has a degenerative condition in her right leg, a broken heel on her right foot, and various problems with her back as a result of her right leg. (T: 220-224). All of these conditions limit her mobility and constitute a significant impairment of a major life activity. [Walking has been defined as a "major life activity". *Stevens* v *Inland Waters, Inc*, 220 Mich App 212, 217; 559 NW 2d 61 (1997)].

The Act also includes being regarded as having a determinable physical characteristic in its definition of disability. Here, respondent never questioned claimant's disability, taking her at her word. Ms. McLean testified as follows:

Q. I am just going to mark that here. (Counsel writes on Exhibit). Did you request from Ms. LePore, you, or any other board members, additional information about her disability?

A. No, I did not.

Q. Why not?

A. I took her at her word. I mean she said she had a handicap, she needed a handicap parking space, and that is what we tried to accommodate. (T: 505).

Second, respondent knew of claimant's disability, having acknowledged receipt of claimant's letter which advised them of her walking related disability. (Exhibit 4).

Third, respondent did not challenge the requested claim that having a shorter distance to walk to and from her car may be necessary to afford claimant an equal opportunity to use and enjoy the dwelling. Claimant submitted a letter dated August 19, 1997 from her physician, which states that Ms. LePore suffers significant residual

effects of a permanent nature that render her disabled. These include chronic, advanced, degenerative arthritic changes in the right knee, chronic tendinitis of the left ankle secondary to a heel fracture and peripheral neuropathy of the right lower extremity, secondary to the original trauma and the multiple surgeries performed on her right knee. The letter goes on to state that any assistance that can be provided to minimize the distance walked from her vehicle to her residence entrance would be of great benefit to her continued health and well being. (Exhibit 6).

The Persons With Disabilities Civil Rights Act is remedial in nature and is to be construed liberally. *Minikel v Mercy Memorial Medical Center, Inc,* 183 Mich App 221 (1989). Respondent took claimant at her word that she had a disability and needed a handicap parking space. (T: 505). That alone satisfies the third element that the accommodation was necessary to afford claimant an equal opportunity to use and enjoy the property.

Claimant also established that the accommodation was reasonable. Claimant's April 30, 1997 letter specifically states that she was only requesting that the first or second parking spot be designated as "handicap space." The letter further states that the parking spot need not be relined a true "handicapped" parking spot, which would have required one and one half spaces. Claimant goes on to state that if there is a financial expense involved in installing the sign, she would bear the cost. (Exhibit 3).

Claimant was not asking for the creation of a handicap parking space, only that a sign be placed in either the first or second parking spot. This request did not require widening any of the existing parking spaces or creating a new one. This request would

not have required respondent to expend any monies, since claimant was willing to assume the costs related to installing the sign. The requested accommodation posed no undue hardship upon respondent.

Finally, the fifth element is satisfied by respondent's admission that it refused to make such an accommodation. Instead, respondent argues that it was not required to accommodate claimant because claimant's exclusive remedy to alter or modify a general common element is pursuant to the Michigan Condominium Act, MCL 559.100 *et seq.*

Respondent, however, provides no authority to support its position that the Condominium Act supersedes the Persons With Disabilities Civil Rights Act. Respondent cites to the Senate Fiscal Bill Analysis of the legislative history of the Condominium Act as it relates to modifications or improvements requested by handicappers:

> "Owners of condominium units who want to make their units more accessible to handicappers, either for their own benefit or to help others, cannot make needed exterior alterations if fellow owners in condominium project do not approve the modification, or if the condominium association has adopted rules prohibiting such alterations. The only recourse available in this situation is to file a complaint under the Michigan Handicappers Civil Rights Act, which is a lengthy process and has not produced favorable results for handicappers. Some people believe that a statutorily defined procedure is needed to deal fairly and expeditiously with the conflicting interests with the condominium management and handicapper residents. Senate Fiscal Bill Analysis, House Bill 4070, April 22, 1987."

Nothing quoted by the respondent demonstrates that the Legislature intended the Condominium Act to supersede the Persons With Disabilities Act. If anything, the analysis indicates that recourse to the PWDCRA is available to redress alleged

violations. In addition, the cited language refers to a situation where fellow owners in a condominium project refused to approve a modification or where the condominium association has adopted rules prohibiting such alterations. Here, Article IX of the Master Deed permits amendments to the Master Deed with the consent of two-thirds of the owners. In this particular case, no requested modification was ever presented to the owners for a vote. Moreover, there is nothing in the Master Deed to prohibit alterations that would accommodate handicappers.

Additionally, claimant substantially complied with the Condominium Act. She requested, in writing, that a sign be placed at the first or second parking spot reading handicap. Respondent argues that before such an improvement or modification is allowed by the Condominium Act, the co-owner must submit plans and specifications for the improvements or modifications. Here no such plans or specifications were needed since the request was limited to the placement of a sign in an existing parking space.

Respondent presented testimony relating to relining a parking lot for a one and one half wide handicapped parking space. That, however, is not what claimant had requested.

The Condominium Act provides that the association of co-owners shall determine whether the proposed improvement or modification substantially conforms to the requirements of this section. The Act further states that an association shall not deny a proposed improvement or modification without good cause. Here, no good cause was ever given for refusing to provide a sign on a parking space.

The Condominium Act also requires that the association of co-owners, if they deny a proposed improvement or modification, list, in writing, the changes needed to make the proposed improvement or modifications conform to the requirements of this section and deliver that list to the co-owner. No such list was ever delivered to the claimant when respondents denied claimant requested accommodation in their letter of May 12, 1997. (Exhibit 4). Interestingly, that letter makes no reference to the Condominium Act or the need for claimant to 'submit plans or specifications.

We find that the Condominium Act is not claimant's exclusive remedy since that Act does not supersede the PWDCRA. We further find that respondent, in any event, could not have relied upon the Condominium Act in denying claimant's request for accommodation since the association did not comply with the Act's requirements.

In *Shapiro* v *Cadman Towers, Inc*, 844 F Supp 116 (EDNY 1994), aff'd, 51 F3d 328 (2nd Cir. 1995), Plaintiff suffered from certain conditions which affected her ability to walk. Plaintiff requested a closer parking space within the cooperative, which management denied. The Court held that Defendant violated the fair housing laws in refusing to accommodate Plaintiff's disability. The Court stated: "Giving the best spaces to handicap individuals would clearly inconvenience those who also prize them. However, for the non-handicapped individuals, the prime parking spaces are a convenience, whereas for the handicapped, they are instrumental to living as close to normal lives as possible." 844 F Supp at 126. Recently, the Michigan Supreme Court in *Michalski* v *Bar-Levav*, 2001 WL 438991 (Mich), set forth the evidentiary standards for establishing a prima facie case of handicap discrimination under the theory of being

regarded as having a determinable physical or mental characteristic, MCL 37.1103(d)(i)(A), (iii). (At Page 6). The Court stated that plaintiff "must be regarded as presently having a characteristic that currently creates a substantial limitation of a major life activity." *Id.*

In *Michalski*, plaintiff did not present any evidence that defendant regarded her as unable to perform basic tasks of ordinary life. *Id.* In contrast, respondent never questioned either claimant's degenerative condition or that her condition significantly impaired a major life activity, which is her ability to walk. Instead, the association regarded claimant as having a characteristic which substantially limited a major life activity at the time she was a tenant at the complex. (Exhibit 3; T: 505). See also *Shapiro v Cadman Towers*, *supra*.

Respondent's refusal to accommodate claimant's request, therefore, constitutes a violation of the PWDCRA.

It is important to note in this case that respondent never attempted to engage in the interactive process by which accommodation is often reached. Ms. McLean's testimony that the requested accommodation would have required the widening of an existing parking space and extensive modifications to the parking lot, shows that respondent did not understand and never took the time to understand the nature and extent of claimant's request for accommodation. Claimant never asked that the parking

lot be relined or widened. She simply wanted a "handicap" sign placed in one of the existing spots and offered to pay the cost for installing it.[5]

Respondent showed no willingness to consider claimant's request or propose alternative accommodations. (T: 92; 98-99). Ms. McLean testified that the board considered no alternatives. (T: 506). No further discussions or actions were held regarding claimant's request for an accommodation. Even after the charge of discrimination was filed, respondent simply took the position that they were not obligated legally to modify the general common elements of the development in order to accommodate a person who claims to be handicapped or disabled. Instead, respondent relied upon the Condominium Act, MCL 559.147a, and stated that the association had no duty to take any further action, because claimant had not submitted plans as required by the statute. This position is untenable since no plans or specifications were needed for the mere installation of a parking sign. Respondent never explained why claimant's request was an unacceptable proposal to the association. Nor did respondent propose an alternative to the claimant. Accordingly, we find that respondent discriminated against the claimant by denying her an accommodation in violation of the Person's With Disabilities Civil Rights Act.

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[5]In this regard, it is interesting to note that the financial issue was not even raised in respondent's reply letter of May 12, 1997. (Exhibit 4).

B. Retaliation Claim

Claimant alleges that after she filed her disability discrimination complaint, respondent retaliated by threatening to levy fines against her for various alleged violations of respondent's bylaws and/or other rules, including parking. There is no factual support for this allegation.

Claimant testified that she never was fined. (T: 298). Even though claimant left her son's dog outside unattended, she was not fined. (T: 446). Nor was she fined for failing on three separate occasions to take out the garbage receptacles on the day when the trash was collected. (T: 193; 2II-213).

With regard to the parking situation, claimant admitted that she knew her daughter had a car and that the family was using three cars in violation of the association rules. Claimant testified that she made no effort to comply with the rule that required there to be only two cars. (T: 346). Claimant received a written notice stating that she was in violation of the parking rules, but was never fined. (T: 333).

If anything, it was claimant who caused problems by disregarding the association rules. Respondent submitted evidence that other condominium owners were fined and/or warned regarding moving trash, (Exhibit TT, Exhibit UU, Exhibit VV, Exhibit WW). A notice went out to the attention of all co-owners advising that dog owners in the complex would be responsible for replacing any dead grass as the result of their pet or other damage caused by their pet. (Exhibit PP).

Claimant was not singled out in regard to the enforcement of the association rules. To the contrary, she seemed to be given more lenient treatment. For purposes

of this issue, we find that any actions taken by respondent with respect to the enforcement of its rules were unrelated to the filing of the complaint. No claim of retaliation was established.

C. Conspiracy to Retaliate Claim

Claimant also alleged that two or more members of respondent discriminate against her by conspiring to retaliate against her in violation of the Persons With Disabilities Civil Rights Act, MCL §37.1602? For the reasons set forth above, we find there was no credible evidence to substantiate a claim of conspiracy to retaliate against claimant.

D. Interference with Contractual Agreement

Claimant further alleged that respondent interfered with claimant's contractual agreement with Ms. Godin in the rental of her unit. The parties stipulated that the non-renewal of the lease for a third year was unrelated to claimant's charge of discrimination. In fact, unrebutted testimony was presented that Ms. Godin decided to sell her unit, and, as a result, chose not to renew the lease. (T: 191). Accordingly, we find this claim to be without merit.

V

Claimant seeks damages for being forced to move from the premises, together with expenses and costs incurred as a result of the forced relocation. The parties,

however, had stipulated that this move was unrelated to the discrimination complaint. Therefore, claimant is not entitled to any damages arising from her relocation, including any related out-of-pocket expenses.

Claimant also seeks damages for humiliation, emotional distress, embarrassment, mental anguish, and physical injury. Claimant submitted no proofs to support this claim. In fact, claimant wanted to continue living at Cummingston Court. (T: 189). Accordingly, there was no credible evidence to support claimant's allegation that she had suffered emotional distress because her requested accommodation had been denied.

The State also requested certain injunctive and remedial relief. Included in that request, was the requirement that respondent develop a policy for handling requests for reasonable accommodation from persons with disabilities in the future.

With certain modifications, we believe that the Referee's recommended remedy of a cease and desist order, together with department training and the posting of HUD and Department fair housing notices, is sufficient in this case. We, however, change the cease and desist language to read as follows:

> That respondent be ordered to cease and desist from unlawfully discriminating against any person on the basis of disability and to engage in an interactive process with any person with a disability who hereafter requests an accommodation.

In addition, the State seeks a fine of $10,000.00 against respondent for its violation of the civil rights laws. The record is clear that respondent failed to engage in any meaningful dialogue with claimant regarding her modest request for

accommodation. Nonetheless, this is respondent's first violation. Therefore, a fine of $1,500.00 is appropriate.

The Referee has proposed that $150.00 be assessed against claimant's attorney for his delay in dealing with respondent's motion to compel claimant's deposition. No exceptions were filed in this regard. Costs in this amount are to be assessed against claimant's attorney.

The Referee denied the request of the Department and the claimant for attorney fees. No exceptions were filed by either party in respect to this matter. Neither the Department nor the claimant is granted attorney fees.

VI

Section 85 of the Administrative Procedures Act requires the Commission to rule upon any submitted proposed findings of fact. In this case, the parties stipulated to certain facts in the Final Pre-Trial Order. Those stipulated facts will be incorporated into the Order issued in this matter. No rulings, however, are necessary since claimant did not timely submit any proposed findings of fact, and respondent did not submit proposed findings of fact in the proper form.

Dated: 6-28-01

Albert Calille, Commissioner