

NORTH CAROLINA HUMAN RELATIONS COMMISSION
116 West Jones Street
Raleigh, North Carolina 27699-1318

CINDY BLOCK, IAN BLOCK and)
JEREMY BLOCK,)
)
Complainants,)
)
v.)
)
THE CARRIAGES AT ALLYN'S)
LANDING HOMEOWNERS')
ASSOCIATION, INC., V.P.J. ENTER-)
PRISES and VICTOR JONES, Com-)
munity Manager,)
)
Respondents.)

DETERMINATION

NCHRC Case No.: 11HO1685
HUD Case No.: 04-11-0597-8

Pursuant to N.C. Gen. Stat. 41A-7, the North Carolina Human Relations Commission (NCHRC) makes the following Determination that **reasonable grounds** exist to believe that an unlawful discriminatory housing practice has occurred in the above-entitled matter.

ALLEGATIONS OF PARTIES

In late Spring 2009 a wheelchair ramp was added to the home of Cindy and Ian Block's home to accommodate Complainants' disabled parents, one of whom resided at the home. As a courtesy, proper notification and application was made by Complainants to the Homeowners Association (HOA). The HOA responded with approval but required Complainants to sign a statement agreeing to remove the ramp when it was "no longer needed". In need of immediate access to the home, and under duress, Complainants signed the agreement. Complainants, their parents and friends enjoyed access to the home utilizing the ramp. In September 2010, the disabled parent who resided in the home passed away. Complainants received a letter from the HOA dated January 13, 2011 citing the aforementioned agreement and requesting Complainants to remove the ramp within thirty days. Complainants approached George Bode, Director of the HOA, with concerns about the effects of removing the ramp. Mr. Bode said he would approach the Board of the HOA. Complainants received a second letter from the HOA dated January 31, 2011 stating that the requirements of the January 13, 2011 letter were valid and requesting complainants to remove the wheelchair ramp by March 3, 2011. Complainants then submitted a letter to Respondents from Complainant Cindy Block's optometrist stating that she was

visually impaired, and legally blind. The doctor recommended that she be allowed to continue to have handicap ramp access because her condition makes mobility and depth perception judgments difficult. On February 11, 2011, the Respondents acknowledged receipt of this letter. On February 25, 2011, Respondents replied in writing, stating, that Complainant "...may retain the wheel chair ramp so long as a member of the family has a certifiable disability that requires a wheelchair ramp." The letter also indicated that Complainant must: "...remove the ramp when it is no longer needed by the homeowner" and "Therefore, the wheelchair ramp must be removed when you sell your home." And, "If you sell your home, you must disclose to the prospective buyer that the wheelchair ramp must be removed, unless the new owner has a certifiable disability that requires a wheelchair ramp." Further, Respondents stated that: "If the prospective new owner does not have a certifiable disability that requires the use of the wheel chair ramp, the wheelchair ramp must be removed prior to the sale of the property. If the prospective new owner does have a certifiable disability that requires the use of the wheelchair ramp, he/she must submit, prior to the closing of the sale, an Architectural Review Committee request to retain the wheelchair ramp. If this request is denied, the wheelchair ramp must be removed prior to the closing of sale. The Board anticipates that, as recommended in your letter from Academy Eye Associates, Mrs. Block will use the wheelchair ramp as the sole entry/exit point for your town home, since the courtyard, garage and rear door entrances pose a safety hazard to her due to her stated disability." Complainants allege Respondents have retaliated against them since filing of the Fair Housing Complaint.

Respondents state that they have ample documentation showing that all actions have been taken with strict adherence to all regulatory requirements and the Complainants' are incorrect in filing their Complaint. The Respondents had originally requested that the unused ramp be removed until they received a notice of disability from the Complainants, at which time they immediately authorized the wheel chair ramp remain in place as long as a person with disabilities remains in the home. If the home is sold to a person with disabilities and that person properly submits a request to retain the ramp as required in the Carriages HOA Covenants and Regulations, the ramp may be retained by the new owner. Respondents state that, with respect to Homeowner's Associations, some courts have held that the Fair Housing Act does not reach "post-acquisition" discrimination. In other words, no discrimination can give rise to a valid claim, since all of the alleged discrimination took place after they purchased the subject property in July 2009. Respondents deny that they failed to grant a reasonable accommodation. The evidence shows that the original purpose of the ramp was for Complainant's mother, and it was approved with conditions such as painting the ramp the color of the home. At the time Respondents were unaware of Complainant Cindy Block's vision problems. After the passing of Complainant's mother, Respondents requested that Complainant's remove the

ramp since there was no longer a need. Complainant discussed this with an HOA board member and expressed concerns that the removal of the ramp would diminish the value of the home. Subsequently, Respondents received notice that Complainant Cindy Block had a visual disability, and Respondents wrote Complainants that the ramp could stay as long as the color matched that of the home. Respondents deny any form of retaliation toward Complainants for filing a fair housing complaint.

RESULTS OF INVESTIGATION

The investigation revealed the following:

Complainant Cindy Block is disabled. She is congenitally visually impaired and is legally blind. She has problems with depth perception and this condition affects her mobility. Complainant Cindy Block, her husband, Complainant Ian Block, and their son, Complainant Jeremy Block reside at 8204 Lloyd Allyn's Way, a town home located in The Carriages of Allyn's Landing community in Raleigh, North Carolina. Complainants also own the land extending six feet beyond the perimeter of the town home. The community has approximately 56 town home lots and features an 8 acre lake. At the time of the investigation there were 44 residents in the community. Complainants have resided at the subject town home since they purchased it in February 2009. Respondent The Carriages of Allyn's Landing Homeowner's Association Inc. is the controlling Homeowner's Association for this community. Respondent VPJ Enterprises manages the homeowners' association, and Respondent Victor Jones is the Community Manager for VPJ Enterprises.

Complainant's Cindy and Ian Block submitted an application to install a wheelchair ramp at the subject town home on June 12, 2009 as a reasonable modification of the existing premises in order to accommodate Complainant Cindy Block's disabled mother, who also resided there. Respondents approved the application on or about July 2, 2009 with two conditions: *1) that the vertical pickets match the green siding (not necessary if treated wood specified is not paintable or stainable) and 2) Remove entire ramp structure if, and when, it is no longer needed by the town home owner. Return site to existing condition before construction.* Complainant Ian Block signed the architectural request form addendum containing these conditions on July 3, 2009. § 5.02, of the governing Declaration of Restrictive Covenants provides that any additions or improvements must be approved in writing - as to harmony of external design and location in relation to surrounding structures - by the Board of Directors and Architectural Review Committee.

The ramp was constructed, and it did not encroach beyond the property owned by the Complainants. Upon visual inspection of the ramp by the investigator, the ramp appeared to be well designed and constructed in harmony with surrounding structures. In interviews with former Board President Hurley Gough and Les Harrison, they acknowledged the quality construction of the wheel chair ramp.

In September 2010 Complainant Cindy Block's mother passed away. The investigation reveals that Complainants have at least four mobility impaired friends who indicated visiting the subject town home routinely in 2010 and 2011, one acknowledging that she visits the subject town home weekly. On January 13, 2011, Respondents sent Complainants a letter stating that in 2009, they approved the installation of a wheelchair ramp for Complainant Cindy Block's mother, with a condition that Complainants remove it when it was no longer required for the purpose for which it was built. Additionally, Respondents noted that it was their understanding that effective September 5, 2010, the wheel chair ramp was no longer required for the purpose for which it was built. Lastly, Respondents requested the dismantling of the wheel chair ramp within 30 days "of this letter." Complainant Cindy Block met with one of the Board members, George Bode shortly after receiving this letter. They discussed her concerns about removing the ramp, including, among other things, her desire to market the home as handicap accessible. The Respondent HOA board met on January 17th to discuss the wheel chair ramp at the subject town home. According to board minutes the consensus was that Complainant Cindy Block wanted the ramp to remain because of an increased chance of selling the home as a handicap accessible property. A motion, by then board President Hurley Gough (who resides next door to the subject town home) to retain the requirement to remove the ramp by February 15, 2011 was unanimously passed by Respondents. On January 31, 2011, Respondents sent Complainants a letter stating that Respondents had met and consulted with real estate experts regarding the marketing impact of removing the ramp and that the board unanimously concurred that, in accordance with the North Carolina Planned Community Act as well as the Declaration of Covenants and Restrictions for the community, the requirements of Respondents' January 13, 2011 remained valid. Additionally, Respondents requested the removal of the ramp by March 3, 2011.

Upon receipt, Complainant Ian Block emailed Respondents on February 3, requesting a copy of the minutes of the board meeting regarding the removal of the wheel chair ramp, and requesting any reports, evaluations, or publications from real estate experts with whom the Board consulted.

On February 4, 2011, Respondents wrote the Complainants:

"The Board's request to remove the wheel chair ramp is based solely on your June 2, 2009, request to the Architectural Review Committee to install the ramp. That request which was signed by you includes the requirement to remove the ramp when the purpose for which it was installed no longer exists. Mrs. Block has verbally acknowledged that you agreed to remove the ramp. Therefore, the Board has determined that the information you requested is immaterial to the removal of the wheelchair ramp. The letter dated January 31, 2011 and mailed to you via certified mail is still effective as the Board's request that you remove the ramp on or before March 3, 2011."

On February 4, 2011, Respondents received a letter (dated February 2, 2011) from Complainant Ian Block, as follows:

I am in receipt of your letter of 1/13/11, requesting me to remove the wheel chair ramp on my home. Enclosed, please find a letter from my wife's doctor specifying her need for said ramp. I will not remove the ramp. Please acknowledge receipt of this letter. Thank you. Ian Block.

Attached was a letter from Academy Eye Associates, dated January 27, 2011, as follows:

"Dr. Cindy Block is congenitally visually impaired and is legally blind. Her condition makes mobility and especially depth perception judgments difficult and can cause the use of stairs and curbs to be hazardous to her. We highly recommend that she be allowed to use and have handicapped ramp access maintained whenever and wherever possible. Thank you for your consideration and cooperation in this matter. Sincerely, Henry A. Greene, O.D., F.A.A.O., Clinical Professor, Low Vision Service, University of North Carolina at Chapel Hill."

In a letter dated February 11, 2011, Respondents wrote Complainants stating they had received the letter from Academy Eye Associates and the note from Complainant Ian Block stating that he would not take the ramp down. The letter stated that Respondents would provide the details of the ramp issue to their attorneys at Jordan Price Wall Gray & Carlton for review.

On February 25, 2011, Respondents, after consulting with counsel, wrote Complainants, as follows:

You may retain the wheelchair ramp as long as a member of the family has a

certifiable disability that requires a wheel chair ramp. In addition, in accordance with Addendum 11 of the approved ARC request, you must "prime/paint the vertical pickets to match green siding of town home" because the wood has had time to season and is now paintable or stainable. The ramp itself is not part of the "exterior surface of the town home" therefore you are responsible for maintenance of the wheelchair ramp under § 7.02 of the Declaration of Covenants, Condition and Restrictions for the Carriages at Allyn's Landing. Therefore, you are requested to comply with the approved ARC request on or before March 31, 2011 i.e. "prime/paint the vertical pickets to match green siding of town home."

In accordance with Addendum 2 of the approved ARC request for your wheel chair ramp, you must remove the ramp "when it is no longer required by the homeowner." Therefore, the wheelchair ramp must be removed when you sell your home. If you sell your home, you must disclose to the prospective buyer that the wheel chair ramp must be removed unless the new owner has a certifiable disability that requires a wheelchair ramp. This disclosure is required by N.C.G.S §47E-4, if your home is subject to any violations or issues associated with "the zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property.

If the prospective new owner does not have a certifiable disability that requires the use of the wheelchair ramp, the wheelchair ramp must be removed prior to the sale of the property. If the prospective new owner does have a certifiable disability that requires the use of the wheelchair ramp, he/she must submit, prior to the closing of the sale, an Architectural Review Committee request to retain the wheelchair ramp. If this request is denied, the wheel chair ramp must be removed prior to the closing date of the sale.

*The Board anticipates that, as recommended in your letter from Academy Eye Associates, Mrs. Block will use the wheelchair ramp as the sole entry/exit point for your town home, since the courtyard, garage and rear door entrances pose a safety hazard to her due to her stated disability. For the Board of Directors
Victor Jones, Property Manager*

On March 8, 2011, the Complainant filed a fair housing complaint against the Respondents. Respondents rescinded the February 25, 2011 letter in its entirety in mid July 2011, approximately four months after the fair housing complaint was brought by Complainants.

CONCLUSION

NCHRC has jurisdiction over the parties and the subject matter.

Condominium and Homeowner's Associations are subject to the Fair Housing Act, post-acquisition, or at any point during a housing transaction. Homeowners Associations continue to regulate the terms and conditions of real estate transactions, and provide services arising out of those transactions. Members pay fees to the HOAs for these services, and their property is subject to the HOA's covenants and bylaws. HOAs can and do record and foreclose on liens against a member's real property if the member fails to pay his or her assessments.

The investigation reveals that while Respondents did allow for the building of the wheel chair ramp to assist Complainant Cindy Block's disabled mother, they violated the Fair Housing Act by the imposition of an unreasonable requirement upon Complainants as a condition to granting the requested modification. For example, when the wheel chair ramp was initially requested in 2009, one of the Respondents' requirements was:

"2) Remove entire ramp structure if, and when, it is no longer needed by the town home owner. Return site to existing condition before construction."

While the Complainants acknowledged this condition by way of Complainant Ian Block's signature on the addendum containing the stated condition, the condition itself is "unreasonable." "The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored." *Joint Statement of the Department of Housing & Urban Development and the Department of Justice, "Reasonable Modifications Under the Fair Housing Act," USHUD & USDOJ March 5, 2008, p. 13, #26.* The ramp is not an interior modification.

More importantly, Complainants did not request a reasonable *modification* of the premises. Reasonable modifications, as defined by statute, are requests by a tenant to make physical alterations to property owned by another person, usually a landlord. Complainants requested a reasonable *accommodation* in Respondents' rules to allow them to modify their own property. There is no provision for restorations of reasonable accommodations in the Fair Housing Acts, state or federal.

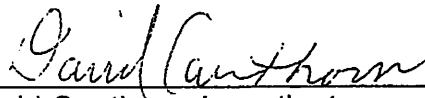
Additionally, Respondents imposed "unreasonable" conditions on Complainants in their February 25, 2011 letter to Complainants, which was written in response to a reasonable accommodation request letter from Complainant Cindy Block's doctor. The letter evidences Complainant Cindy Block's disability, and establishes her need for handicap ramp access due to her vision disability. In reply, the Respondents wrote that Complainants were allowed to keep the ramp so long as a member of the family has a certifiable disability that requires a wheelchair ramp. The letter also instructed that Complainants must: "...remove the ramp when it is no longer needed by the homeowner" and "Therefore, the wheelchair ramp must be removed when you sell your home." And, "If you sell your home, you must disclose to the prospective buyer that the wheelchair ramp must be removed, unless the new owner has a certifiable disability that requires a wheelchair ramp. This disclosure is required by N.C.G.S §47E-4..." The investigation reveals that N.C.G.S. §47E-4 contains no such requirement that a seller interview a prospective buyer to determine the prospective buyer's disability status. Furthermore, if a "seller" did this, the seller would, themselves, be vulnerable to fair housing claims brought by the prospective buyer. Therefore, Respondents instructions to Complainants are discriminatory terms, conditions and privileges within the meaning of § 41A-4(a)(2) of the North Carolina Fair Housing Act, and § 804(b) of the Federal Fair Housing Act. Moreover, Respondents instructions to Complainants are a failure to grant a reasonable accommodation, within the meaning of § 41A-4(f)(2) of the North Carolina Fair Housing Act and §804(f) of the Federal Fair Housing Act. Additionally, the instructions conveyed in the February 25, 2011 letter to Complainants evidences Respondents' intent to limit Complainants' rights to sell an accessible property as well as their right to market their home without conditions that could cause legal harm to them as sellers. Therefore, these instructions are discriminatory statements within the meaning of § 41A-4(a)(6) of the North Carolina Fair Housing Act, and § 804 (c) of the Federal Fair Housing Law.

Respondents rescinded their February 25, 2011 letter to Complainants in its entirety in mid July 2011, approximately four months after the filing of the fair housing complaint. This rescission, though welcome, does not relieve Respondents of liability for the earlier violations. However, it does constitute evidence that Respondents have not continued their violations since the rescission, and supports a finding that **there is insufficient evidence** that Respondents' actions rise to level of harassment, interference, coercion, or retaliation in violation of § 41A-4(e) of the North Carolina Fair Housing Act, and § 818 of the Federal Fair Housing Act.

Therefore, based upon this evidence, the NCHRC finds that **reasonable grounds** exist to believe that Respondents have engaged in unlawful discriminatory housing practices against Complainants within the meaning of:

N.C.G.S. § 41A-4 (f)(2); and § 804(f) of the Federal F.H. Act;
N.C.G.S § 41A-4(a)(2) and § 804(b) of the Federal F.H. Act;
N.C.G.S § 41A-4(a)(6) and § 804 (c) of the Federal F.H. Act.

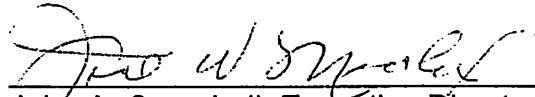
This the 27th day of April, 2012.



David Cauthorn, Investigator
North Carolina Human Relations Commission



Richard Boulden, Agency Counsel
North Carolina Human Relations Commission



John A. Campbell, Executive Director
North Carolina Human Relations Commission