

PREET BHARARA
United States Attorney for the
Southern District of New York
By: PETER ARONOFF
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2697
Fax: (212) 637-2717
Email: peter.aronoff@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE CONDOMINIUM BOARD OF THE
KIPS BAY TOWERS CONDOMINIUM, INC.

Defendant.

COMPLAINT

17 Civ. _____

Jury Trial Demanded

Plaintiff, the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges for its complaint as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory relief, injunctive relief, and monetary damages under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*, brought by the United States of America on behalf of Henri Gueron, Felicia Porges, and Edward Melnick (collectively, “Complainants”), and pursuant to 42 U.S.C. § 3614(a), to redress discrimination on the basis of disability.

2. As alleged more fully below, defendant The Condominium Board of the Kips Bay Towers Condominium, Inc. (“Kips Bay” or “the Board”), which represents and governs a 1,118-unit housing cooperative with its management office located at 300 East 33rd Street, New York, New York, 10016, unlawfully discriminated against Complainants based on their disabilities.

3. Kips Bay’s conduct violates the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* (the “Act”), and should be declared unlawful and enjoined, and appropriate monetary damages and civil penalties should be awarded.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3612(o) and 3614(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 3612(o) because Kips Bay is situated in this district and the events giving rise to the Complaint occurred in this district.

THE PARTIES

6. Plaintiff is the United States of America (the “United States”).

7. Defendant Kips Bay is a private 1,118-unit housing cooperative with a management office at 300 East 33rd Street, New York, New York 10016, and buildings at 300 and 330 East 33rd Street, New York, New York 10016, and at 333 and 343 East 30th Street, New York, New York 10016.

8. Complainant Henri Gueron (“Gueron”) is the owner of a condominium unit at Kips Bay, and he has lived at Kips Bay since 1972. Gueron is subject to Kips Bay’s by-laws and rules and regulations (“House Rules”).

9. Complainant Edward Melnick (“Melnick”) lives with his partner, Barry Grayson (“Grayson”), who is the owner of a condominium unit at Kips Bay. Melnick has lived at Kips Bay since 1990, and is subject to Kips Bay’s By-Laws and House Rules.

10. Complainant Felicia Porges (“Porges”) is the owner of a condominium unit at Kips Bay, and she has lived at Kips Bay since 1967. Porges is subject to Kips Bay’s By-Laws and House Rules.

11. Each of Gueron’s, Melnick’s, and Porges’s apartments constitutes a “dwelling” within the meaning of the Act, 42 U.S.C. § 3602(b).

12. Each of Gueron, Melnick, and Porges is an “aggrieved person” as that term is defined in the Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of defendant’s conduct.

PROCEDURAL BACKGROUND

13. On February 4, 2015, Complainant Henri Gueron filed a Housing Discrimination Complaint with the U.S. Department of Housing and Urban Development (“HUD”) alleging discrimination on the basis of disability.

14. On March 4, 2015, Complainant Edward Melnick filed a Housing Discrimination Complaint with HUD alleging discrimination on the basis of disability.

15. On April 2, 2015, Complainant Felicia Porges filed a Housing Discrimination Complaint with HUD alleging discrimination on the basis of disability.

16. Each complainant alleged that Kips Bay interfered with his or her exercise of rights protected by the Fair Housing Act by, among other things, insisting that he or she produce unnecessary, excessive, and intrusive information to support his or her claim for a reasonable accommodation of his or her disability.

17. Pursuant to the requirements of 42 U.S.C. § 3610(a) and (b), the Secretary of HUD (the “Secretary”) conducted and completed an investigation of all three administrative complaints.

18. Based on the information gathered in the HUD investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Kips Bay discriminated against each complainant and violated the Act.

19. On August 22, 2016, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Kips Bay with engaging in discriminatory housing practices against all three complainants in violation of the Act.

20. On September 7, 2016, Kips Bay timely elected to have the charges resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a). Following this election, the Secretary authorized the Attorney General to file this action on behalf of all three complainants, pursuant to 42 U.S.C. § 3612(o)(1).

FACTS

21. In 1996, Kips Bay enacted a no-pet policy, contained in Kips Bay’s House Rules, which specifically prohibited animals in Kips Bay’s buildings without Kips Bay’s prior written consent. In 2011, Kips Bay amended the policy, stating that all requests for service and emotional support animals must be approved “in writing, by the Board.”

22. Kips Bay has no written procedure for deciding reasonable accommodation requests for individuals who require service or emotional support animals because of a disability.

23. When a unit owner requests a reasonable accommodation for a service or emotional support animal, Kips Bay asks for two medical affidavits testifying to the unit owner’s disability and need for the animal. Kips Bay’s Board sends the request, along with the affidavits and any other supporting material, to its counsel to make a recommendation about Kips Bay’s obligation

to provide a reasonable accommodation. Kips Bay's counsel makes a recommendation, and relays the recommendation to the Board. The Board ultimately votes on the decision to grant or deny the reasonable accommodation request.

Complainant Henri Gueron

24. Complainant Henri Gueron has occlusive retinal vascular disease, partial vision loss from recurrent thrombosis, hypertension, and anxiety. Gueron's illnesses have substantially impaired his eyesight, his circulatory function, and his ability to sleep and eat. Gueron is a person with a disability as defined by the Act, 42 U.S.C. § 3602(h).

25. Article 1, subsection 4 of the By-Laws entered into by and between Kips Bay and Gueron states that all unit owners are subject to the Kips Bay's House Rules. Rule 14 specifically prohibits animals in Kips Bay's buildings without Kips Bay's prior written consent, and states that all requests for service and emotional support animals must be approved "in writing, by the Board."

26. Several years ago, Gueron suffered major loss of vision in his right eye. As a result of his permanent injury, Gueron began suffering from a dramatic increase in anxiety, which exacerbated his existing condition of high blood pressure.

27. During the summer of 2014, Gueron and his doctors discussed obtaining an emotional support dog because research indicated that a support dog could alleviate Gueron's physical and psychiatric symptoms.

28. Gueron began spending a significant amount of time with his son's dog, Coco. Gueron immediately noticed an improvement in his symptoms related to his anxiety and high blood pressure.

29. Coco has been trained as a therapy dog. In addition to providing emotional support to Gueron, Coco alerts Gueron to objects that Gueron cannot see because of his partial vision loss.

30. In October 2014, Gueron and his son agreed that Coco's presence mitigated Gueron's symptoms, and that Coco should live with Gueron.

31. On October 10, 2014, Gueron submitted a request for reasonable accommodation to Kips Bay's managing agent ("Gueron's First Reasonable Accommodation Request") to keep Coco in his apartment beginning on October 16, 2014. The request was accompanied by a handwritten letter from Dr. Steven A. Odrich, Gueron's ophthalmologist, that stated that "[d]ue to" Mr. Gueron's "medical condition," it was "a necessity" for him to have a dog in his residence.

32. By letter dated October 14, 2014, Kips Bay responded to Gueron's First Reasonable Accommodation Request, asking for two sworn medical affidavits to "determine whether an exception should be made" to Kips Bay's House Rules. The response also stated that any breach of Kips Bay's rules prior to a decision would result in immediate legal action, and Gueron would be responsible for all fees incurred.

33. On October 24, 2014, in response to Kips Bay's October 14 letter, Gueron submitted a follow-up request for reasonable accommodation ("Gueron's Second Reasonable Accommodation Request"). The request was accompanied by a notarized letter from Dr. Odrich, dated October 15, 2014, that stated that a "canine companion reduces [Gueron's] blood pressure and is therefore medically beneficial," and that it was a medical necessity that Gueron have a dog in his apartment. The letter included Dr. Odrich's address and telephone number and invited Kips Bay to contact Dr. Odrich to discuss the situation further, if necessary. Gueron's second request was also accompanied by an additional, notarized letter from Dr. Lawrence Hecker, Gueron's internist and cardiologist, that stated that "a canine would be medically beneficial to

reduce the patient's blood pressure and stress," and that it was a medical necessity that Gueron have a support animal.

34. By letter dated October 29, 2014, Kips Bay, through its managing agent, denied Gueron's Second Reasonable Accommodation Request, without explanation.

35. On November 21, 2014, Kips Bay sent a memorandum to every unit on Gueron's floor stating that "there may be an illegal dog being harbored in an apartment," that any resident currently harboring an illegal dog should remove it from the premises immediately, and that any resident who heard barking should contact the management office.

36. On December 8, 2014, Gueron's attorney, Darryl Vernon, sent another reasonable accommodation request on Gueron's behalf ("Gueron's Third Reasonable Accommodation Request"), reiterating that Gueron's physicians advised that a dog would be medically helpful to his disability. The request was accompanied by an additional letter from Dr. Perry Cook, dated November 24, 2014, which provided a detailed history of Gueron's medical conditions, and stated that "an animal is therapeutic for people with chronic disability and medical stress as experienced by Mr. Gueron." The letter included Dr. Cook's address and telephone number and invited Kips Bay to contact Dr. Cook if additional medical information was required.

37. By letter dated December 15, 2014, Kips Bay, through its counsel, denied Gueron's Third Reasonable Accommodation Request, on the ground that none of the documents submitted required Kips Bay to make an exception to its policy and allow Gueron to have an emotional support animal.

38. On February 4, 2015, Gueron filed a complaint with HUD.

Complainant Edward Melnick

39. Complainant Edward Melnick has chronic psychiatric conditions which can cause anxiety and depression, and which limit his ability to cope with stress. Melnick's condition has substantially impaired his ability to engage in social interactions, sleep, eat and remember to take medication. Melnick is a person with a disability as defined by the Act, 42 U.S.C. § 3602(h).

40. In 2012, Melnick experienced an increase in his depression and anxiety symptoms. Melnick had difficulty getting up in the morning, and he had difficulty socializing. At the same time, Melnick feared isolation and avoided returning home at night.

41. At some point in 2012, Melnick had discussions with his healthcare providers about obtaining an emotional support dog as part of his ongoing therapy.

42. In late October 2012, Melnick acquired Kimba, a 12-pound Havanese dog.

43. Kimba immediately helped to alleviate the symptoms of Melnick's depression and anxiety.

44. In November 2012, Melnick submitted a reasonable accommodation request to Kips Bay in which he asked to be allowed to keep Kimba ("Melnick's Reasonable Accommodation Request").

45. By letter dated November 12, 2012, Kips Bay responded to Melnick's Reasonable Accommodation Request, asking for two sworn medical affidavits to determine whether an exception should be made to Kips Bay's House Rules.

46. By letter dated January 3, 2013, Melnick responded to Kips Bay's letter and included three medical affidavits. The first, from Dr. Louisa Livingston, a PhD psychologist, stated that Melnick "continues to struggle with debilitating attacks of strong self-criticism, worthlessness, and bouts during which he feels very empty and disconnected, especially when he is alone." Dr. Livingston's letter noted Melnick's symptoms, including Melnick's difficulty sleeping, and

abnormal weight gain, and stated that a dog would likely reduce Melnick's symptoms. The second letter, from Dr. Mary Salke, Melnick's psychiatrist, stated that Melnick "has a diagnosis of generalized anxiety disorder and major depressive disorder," and that Melnick "has significant symptom relief" when he is with a dog. The third letter, from a New York State-certified social worker and psychotherapist, Polly McCall, noted that Melnick has "struggled with pervasive depression" and a dog "could greatly help Mr. Melnick in managing and ameliorating his depression."

47. Melnick noticed that his symptoms of anxiety significantly increased throughout the period when he was corresponding with Kips Bay. Melnick began to experience "panic attacks" because he believed he could lose Kimba.

48. By letter dated April 2, 2013, Kips Bay responded to Melnick's Reasonable Accommodation Request, asking Melnick to have his treating professionals answer additional questions, including about Melnick's medical need for Kimba. In response, Melnick provided Kips Bay with supplemental letters from each of Melnick's healthcare providers. In her letter, Dr. Livingston stated that Melnick had become more anxious and depressed over time and it was medically necessary for Melnick to have a dog for the use and enjoyment of his apartment. Dr. Livingston also noted that the Board's "drawn-out" reasonable accommodation process had "worsened [Melnick's] condition." Dr. Salke's supplemental letter stated that it was necessary for Melnick to obtain a therapy pet for the use and enjoyment of his apartment. And in her letter, Ms. McCall stated that it was "essential" for Melnick to have a therapy pet for the use and enjoyment of his apartment.

49. By letter dated May 2, 2013, Kips Bay denied Melnick's Reasonable Accommodation Request, without explanation.

50. In a letter dated November 1, 2013, and addressed to Melnick's partner, Barry Grayson, Kips Bay reiterated that it denied Melnick's Reasonable Accommodation Request, and instructed Grayson to "take the necessary steps to have the dog removed, or we will have no other alternative but to forward this matter to legal counsel for further action. All legal fees incurred will be billed back to you."

51. In November 2013, Mitchell Berg, who was Melnick's neighbor and president of the Kips Bay Board at the time, told Melnick and Grayson that he had to report them for having an unapproved animal, but they should ignore the letter because it was a formality. Because of Mr. Berg's representations, Melnick did not take any action in response to Kips Bay's letter.

52. In a letter dated January 6, 2015, and addressed to Grayson, Kips Bay again reiterated that Kips Bay denied Melnick's Reasonable Accommodation Request. The letter stated that Grayson should take the necessary steps to remove Kimba by January 9, 2015, and it repeated its threat of taking legal action. The letter also requested an inspection of Grayson and Melnick's apartment to "verify the removal of the dog."

53. On March 4, 2015, Melnick filed a complaint with HUD.

Complainant Felicia Porges

54. Complainant Felicia Porges has psychiatric conditions, including depression, which substantially limit her ability to emotionally cope with her circumstances. Porges' condition has affected her ability to engage in social interactions, and has made it difficult for her to sleep, eat, and enter certain rooms in her apartment. Porges is a person with a disability as defined by the Act, 42 U.S.C. § 3602(h).

55. Beginning in August 2012, Porges began experiencing symptoms of post-traumatic stress disorder ("PTSD") when she was diagnosed with breast cancer. In November 2012, Porges'

symptoms worsened when her husband passed away in her apartment in the middle of the blackout caused by Hurricane Sandy. Porges' symptoms made it difficult for her to continue her work as a medical doctor and researcher, and she decided to gradually transition her responsibilities to a successor and retire within two years.

56. In 2014, Porges began speaking with her doctor regarding acquiring an emotional support dog to alleviate her symptoms.

57. By letter dated February 6, 2015, Porges submitted a request for reasonable accommodation to Kips Bay ("Porges' First Reasonable Accommodation Request") informing Kips Bay that she had purchased a support dog, Businka, according to the advice of her physician, and requesting permission to keep Businka in her apartment. The request was accompanied by a letter from Dr. Richard Nachtigall, Porges' primary care physician for over forty years, that stated that he had prescribed an emotional support animal for Porges because she "had increasing emotional difficulty in coping with situations and is suffering from a pervasive mood of unhappiness." The letter further stated that a support animal would mitigate Porges' symptoms.

58. Businka has been trained, and is registered, as an emotional support dog. In addition to providing emotional support to Porges, Businka enables Porges to be more active, eat regularly, maintain a stable blood pressure, and interact regularly with neighbors.

59. By letter dated February 12, 2015, Kips Bay, through its counsel, responded to Porges' First Reasonable Accommodation Request, asking for two sworn medical affidavits, and stating that any dog "must be removed immediately."

60. By letter dated February 16, 2015, Porges provided Kips Bay with two medical affidavits. The first, from Dr. Nachtigall, stated that Porges was suffering from depression and that she

would benefit from an emotional support animal. The second letter, from Dr. Horacio Kaufmann, a neurologist, similarly stated that Porges was suffering from depression and would benefit from a support animal.

61. By letter dated February 24, 2015, Kips Bay, through its counsel, denied Porges' First Reasonable Accommodation Request, without explanation.

62. By letter dated March 1, 2015, Porges informed Kips Bay that she did not accept the denial of her request because she had complied with Kips Bay's requirements for an emotional support animal.

63. By letter dated March 5, 2015, Kips Bay, through its counsel, reiterated to Porges that Kips Bay had denied her request to keep an emotional support dog and that Kips Bay "has authorized us to take appropriate actions to enforce its [p]olicy, including the commencement of legal proceedings," to obtain a court order directing the removal of Businka. The letter further stated that Porges would be responsible for all costs and expenses incurred.

64. By letter dated March 19, 2015, Porges' attorney, Darryl Vernon, sent Kips Bay another reasonable accommodation request on Porges' behalf ("Porges' Second Reasonable Accommodation Request"). Accompanying Porges' Second Reasonable Accommodation Request was an additional affidavit from Dr. Nachtigall, in which he opined that Porges suffered from depression and anxiety, which interfered with her ability to work and ultimately led to her retirement. Dr. Nachtigall also stated that Porges' depression and anxiety had caused considerable weight loss and low blood pressure. The letter further stated that having Businka "has already enabled [Porges] to cope better with her disability" by encouraging her to be more active, eat regularly, provide her with interactions with neighbors, and help her maintain her blood pressure.

65. By letter dated On March 26, 2015, Kips Bay, through its counsel, responded to Porges' Second Reasonable Accommodation Request, stating that it could not make a determination as to the request unless Porges provided extensive additional information, including, *inter alia*, her medical need for Businka, and how her "diagnosis of breast cancer and [her] husband's death interfere[d] with [her] ability to work."

66. By letter dated March 27, 2015, in response to Kips Bay's request for additional information, Porges' counsel stated that Porges' diagnosis and her husband's death were "devastating," and "[t]he loss was substantial," which made her "very anxious" and significantly interfered with her ability to work.

67. By letter dated April 1, 2015, Kips Bay, through its counsel, denied Porges' Second Reasonable Accommodation Request and stated that "it continue[d] to be [Kips Bay's] view that [Porges] is not legally entitled to an emotional support pet, notwithstanding the obvious unfortunate circumstances in her life."

68. On April 2, 2015, Porges filed a complaint with HUD.

CLAIMS FOR RELIEF

FIRST CLAIM: 42 U.S.C. § 3604(f)(2)

69. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 68 of this Complaint as if fully set forth in this paragraph.

70. Kips Bay violated the Fair Housing Act, 42 U.S.C. § 3604(f)(2), by discriminating against Complainants in the terms, conditions, and privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability.

SECOND CLAIM: 42 U.S.C. § 3604(f)(3)(B)

71. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 68 of this Complaint as if fully set forth in this paragraph.

72. Kips Bay violated the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

THIRD CLAIM: 42 U.S.C. § 3617

73. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 68 of this Complaint as if fully set forth in this paragraph.

74. Kips Bay violated the Fair Housing Act, 42 U.S.C. § 3617, by coercing, intimidating, threatening, and interfering with Complainants in the exercise or enjoyment of, and on account of their having exercised, their rights under the Act.

FOURTH CLAIM: PATTERN OR PRACTICE

75. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 68 of this Complaint as if fully set forth in this paragraph.

76. Kips Bay's conduct described above constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and/or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, which denial raises an issue of general public importance.

77. Other persons may have been injured by Kips Bay's discriminatory actions and practices as described above, and such individuals are "aggrieved" persons under the Fair Housing Act, 42 U.S.C. §§ 3602(i).

78. The discriminatory actions of Kips Bay were intentional and taken in disregard of Complainants' rights.

RELIEF REQUESTED

WHEREFORE, Plaintiff the United States of America requests that the Court enter judgment:

1. Declaring that Kips Bay's policies and practices as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*;
2. Enjoining Kips Bay, its officers, employees, agents, successors, and all other persons in active concert or participation with it, from:
 - a. discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
 - b. failing or refusing to make reasonable accommodations as required by 42 U.S.C. § 3604(f)(3)(B);
 - c. coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act, in violation of 42 U.S.C. § 3617;
 - d. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Complainants, and any other individuals injured by Kips Bay's discriminatory conduct, to the position they would have been in but for the discriminatory conduct;

- e. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Kips Bay's discriminatory conduct.
3. Awarding monetary damages to Complainants for injuries caused by Kips Bay's discriminatory conduct, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1);
4. Awarding monetary damages to other aggrieved individuals injured by Kips Bay's discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);
5. Assessing a civil penalty against Kips Bay, pursuant to 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest; and
6. Granting such further relief as this Court may deem just and proper.

The United States requests trial by jury.

LORETTA E. LYNCH
Attorney General of the United States

/s/ Vanita Gupta
VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

Dated: New York, New York
January 18, 2017

PREET BHARARA
United States Attorney

By: /s/ Peter Aronoff
PETER ARONOFF
Assistant United States Attorney
86 Chambers Street
Third Floor
New York, New York 10007
Tel.: (212) 637-2697
Fax: (212) 637-2717
Email: peter.aronoff@usdoj.gov