



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ELDA PETRINCIC ZONIS,

Complainant,

v.

**STUYVESANT OWNERS INC., DEAN THEODOS,
PAUL BRENSILBER,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10189166

Federal Charge No. 02-17-8126-8

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on July 17, 2019, by Thomas S. Protano, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE ANGELA FERNANDEZ, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any

member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **AUG 19 2019**
Bronx, New York



ANGELA FERNANDEZ
COMMISSIONER

TO:

Complainant

Elda Petrincic Zonis
333 East 14th Street, Apt. 10-J
New York, NY 10003

Respondent

Stuyvesant Owners Inc.
c/o Jordan Cooper & Associates, Inc. 440 9th Avenue, 15th Floor
New York, NY 10001

Respondent

Dean Theodos
Stuyvesant Owners Inc.
Attn: Chief Executive Officer
333 E. 14th Street, Apt. 17jk
New York, NY 10003

Respondent

Paul Brensilber
Stuyvesant Owners Inc.
Attn: Assistant Secretary
c/o Jordan Cooper & Associates, Inc. 440 9th Avenue, 15th Floor
New York, NY 10001

Respondent Secondary Address

Stuyvesant Owners Inc.
c/o Jordan Cooper & Associates, Inc. 440 9th Avenue, 15th Floor
New York, NY 10001

Respondent Attorney

Scot Mackoff, Esq.
Mitofsky Shapiro Neville & Hazen LLP
152 Madison Avenue, 3rd Floor
New York, NY 10016

Hon. Letitia James, Attorney General
Attn: Civil Rights Bureau
28 Liberty Street
New York, New York 10005

State Division of Human Rights

Robert Goldstein, Director of Prosecutions

Bellew S. McManus, Senior Attorney

Lilliana Estrella-Castillo, Chief Administrative Law Judge

Thomas S. Protano, Administrative Law Judge

Michael Swirsky, Litigation and Appeals

Caroline J. Downey, General Counsel

Melissa Franco, Deputy Commissioner for Enforcement

Peter G. Buchenholz, Adjudication Counsel

Matthew Menes, Adjudication Counsel



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

ELDA PETRINCIC ZONIS,

Complainant,

v.

**STUYVESANT OWNERS INC., DEAN
THEODOS, PAUL BRENSILBER,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10189166**

Federal Charge No. 02-17-8126-8

SUMMARY

Complainant has bipolar disorder and psoriasis. Complainant alleged that she was discriminated against on account of her disabilities. Complainant failed to prove her claim and the case is dismissed.

PROCEEDINGS IN THE CASE

On June 19, 2017, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on October 31, 2018.

Complainant and Respondents appeared at the hearing. The Division was represented by Bellew S. McManus, Esq. Respondents were represented by Scot Mackoff, Esq.

FINDINGS OF FACT

1. Complainant has psoriasis and bipolar disorder. (Complainant’s Exhibits 4-8, Tr. 52-53, 68-69, 100, 119-20)

2. Respondent Stuyvesant Owners Inc. (“Stuyvesant”) is a cooperative housing corporation. (Tr. 9, 124)

3. Stuyvesant is the proprietary lessor of 333 East 14th Street, New York, NY 10003. (Complainant’s Exhibit 2) Stuyvesant has rules that regulate the conduct of its tenants. (ALJ’s Exhibit 4; Complainant’s Exhibit 2)

4. Peter Zonis (“P. Zonis”), Complainant’s husband, is a proprietary lessee of a unit in 333 East 14th Street, New York, NY 10003. (Complainant’s Exhibits 2-4, Tr. 7, 47-48)

5. Complainant is the undertenant of P. Zonis’s unit, which they have occupied together since October 2003. (Complainant’s Exhibits 2-4, Tr. 9).

6. Respondent Dean Theodos is the President of the Board of Directors of Stuyvesant. (ALJ’s Exhibit 4)

7. Complainant has never interacted with Respondent Theodos and “did not know who he was.” Complainant acknowledged Theodos has “done nothing to” Complainant. (Tr. 115-16)

8. Respondent Paul Brensilber is the president of Jordan Cooper, LLC, the management company of Stuyvesant, and is the registered managing agent of Stuyvesant. (Tr. 10, 124)

9. As the registered managing agent, Respondent Brensilber guards Stuyvesant’s building, attends its board meetings, deals with tenant complaints, and works on capital projects. (Tr. 133-34)

10. Respondents learned of the Complainant’s psoriasis in 2006. P. Zonis informed Respondent’s workmen about her condition when they wanted to enter the unit for repairs. P. Zonis also discussed Complainant’s condition with Brensilber in 2010. (Tr. 52-55)

11. Complainant and Cissy Stamm, a director on Stuyvesant’s board, also discussed Complainant’s psoriasis. (Tr. 55)

12. Complainant takes Enbrel, a prescription medication to treat her psoriasis. Side effects of Enbrel include hair loss, and mental or mood changes. (Complainant’s Exhibit 5, Tr. 51-52, 56-57)

13. Complainant experienced psychological distress and agitation, weight-gain, and hair loss, as a result of taking Enbrel and, in part, from a housing court litigation, commenced in March 2016. (Complainant’s Exhibit 5, Tr. 62-64, 74-76, 100-01, 116-17)

14. Complainant testified that Stuyvesant’s board members and Complainant’s neighbors have made comments about her mental health “all the time.” (Tr. 106-08)

15. Complainant testified that, in 2006, Mr. Walter Lopez (“Lopez”), Stuyvesant’s superintendent, came up to within an inch of her face and told her to “get out of here. You’re

retarded. And get off your Prozac.” Complainant also stated that Lopez “would call [her] a dog,” and he would come out of the building and scream “die -- fucking die.” (Tr. 110-12)

16. Lopez did not recall making comments of that nature to Complainant. (Tr. 138, 144-45)

17. Lopez testified that Complainant would curse at him, call him a “fat pig,” and state that Lopez works for her. (Tr. 138, 142) While Lopez was testifying about Complainant’s comments, Complainant interrupted Lopez’s testimony by stating, “Yeah, you fucking do [work for Complainant].” (Tr. 142)¹

18. I do not credit Complainant’s testimony regarding Lopez’s alleged 2006 remarks because her testimony was directly refuted by Lopez and her interruption partly affirmed Lopez’s testimony about the way Complainant spoke to him. (Tr. 138, 142, 144-45)

19. In approximately 2007, P. Zonis damaged Stuyvesant’s elevator after moving his equipment. Stuyvesant and P. Zonis engaged in housing court litigation related to the damage. The parties settled in 2007 or 2008, and P. Zonis agreed to store his equipment in the parking garage located on Stuyvesant’s property. (Tr. 11-13)

20. P. Zonis testified that, in 2012, he was bullied and threatened by parking garage attendants, who “tried to kill [him] with [a] metal pipe.” (Tr. 24-25)

21. On October 25, 2012, P. Zonis’ artwork was slashed with a knife, while it was stored in the parking garage. (Complainant’s Exhibit 1; Tr. 21-22)

22. P. Zonis stated that he told Respondent Brensilber about these incidents, but Respondents took no action against the parking garage staff. (Tr. 20-21, 25-26)

¹ Complainant interrupted the proceedings multiple times with curses or other commentary. (Tr. 69, 72, 89, 97, 129, 131-32, 139-40, 142-150)

23. In March of 2016, P. Zonis was unable to access to his artwork in the parking garage.

In response, P. Zonis called the police. (Tr. 28-32)

24. The parking garage is not used exclusively by tenants of Stuyvesant, and is managed by an independent company. The parking garage staff are not employees of Stuyvesant. (Tr. 18-19, 124-25)

25. Respondent Brensilber has inspected Complainant's apartment several times in response to complaints from neighbors about cat urine and an unidentified infestation. (Tr. 125-28)

26. In 2015, Lopez visited Complainant's unit a few times to inspect for odor from cat urine. Complainant and P. Zonis were using a baking pan in the kitchen as a litter box, and the resulting odor permeated to the living room. (Tr. 140-41, 147-49)

27. P. Zonis believes that Respondents' claims of an odor was fake, and an excuse to inspect his unit. I do not credit his testimony that there was no odor from cat urine, and that he "solved" the problem in June 2015, because P. Zonis did not directly respond to questions about the odor and used hyperbole to describe Respondents' apartment inspections.² (Tr. 39-40, 44, 62)

28. P. Zonis received a Notice to Cure dated March 4, 2016, from Stuyvesant. (Complainant's Exhibit 2, Tr. 34-35)

29. In its Notice to Cure and at the public hearing before the Division, Stuyvesant complained that P. Zonis permitted "unreasonably loud noises" and "noxious and unreasonable odors" to emanate from the apartment, and permitted Complainant to "accost, verbally assault

² P. Zonis testified that the situation with Respondents was "overwhelming, meaning that they had turned the apartment into a torture chamber." (Tr. 62)

and make verbal threats” towards the other occupants of Stuyvesant. (Complainant’s Exhibit 2, Tr. 35-39, 125-28, 138-43)

30. Thereafter, on March 4, 2016, Stuyvesant began a petition holdover noting that Complainant and P. Zonis had failed to cure the violations of his tenancy and seeking his eviction from his apartment. (Complainant’s Exhibit 2; Tr. 32-33)

31. Complainant has insulted and cursed at Respondent Brensilber, Lopez, and other tenants. (Tr. 126, 138, 142-43)

32. Complainant believes that the housing litigation was commenced against her and P. Zonis for financial reasons, not because of any discrimination. (Tr. 118-19)

33. Complainant stated that “it’s all about money...they stand to financially gain tremendously by taking our apartment...it’s a beautiful apartment. The building is shit. The management is shit. But our home is paradise.” (Tr. 119)

34. On June 17, 2017, in an amended answer to an eviction proceeding, Complainant disclosed that she was disabled to the Respondents. She noted that she suffers from “injuries and illnesses,” including “a partial psychological disability.” (Complainant’s Exhibit 4)

35. Respondent Brensilber testified that he had not “formed an opinion” that Complainant was “crazy,” but that she was “aggressive” and it “doesn’t take much to get a response.” In its Notice to Cure, Stuyvesant also described Complainant’s behavior as aggressive. (Complainant’s Exhibit 2; Tr. 126-28, 132-33)

36. Complainant did not request any kind of accommodation from Respondents that would ease the application of Stuyvesant’s rules, or for any other purpose. (Tr. 85-86, 127-28)

37. During the Division’s investigation, Complainant indicated that she did not believe she was mentally disabled, even though she filed her complaint based upon her disability.

Complainant also stated that it took her a long time to figure out that she has a mental disability, but that she is bipolar. (Tr. 118-20)

OPINION AND DECISION

New York Executive Law, Article 15 (“Human Rights Law”) §296.5(a)(2) provides that it is an unlawful discriminatory practice for the “owner...or managing agent of, or other person having the right to...sell, rent or lease a housing accommodation...[t]o discriminate against any person because of...disability...in the terms, conditions or privileges of the...lease of any...housing accommodation...”

Complainant has presented no evidence that Respondent Theodos engaged in any unlawful discriminatory practice against her and, in fact stated that he “did nothing” to her. Complainant has not met her prima facie burden of proving any claim under the Human Rights Law with respect to Respondent Theodos. The claims against Respondent Theodos are dismissed.

Complainant has alleged that Respondents have committed a series of discriminatory acts since 2006. “Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice.” N.Y. Exec. Law, art. 15, § 297.5. This provision is mandatory and constitutes a statute of limitations. See *Queensborough Cmty. Coll. v. State Human Rights App. Bd.*, 41 N.Y.2d 926, 363 N.E.2d 349, 394 N.Y.S.2d 625 (1977).

Complainant filed this complaint on June 19, 2017. Thus, any allegation of discrimination prior to June 19, 2016, would be untimely, unless it is part of a continuing violation.

Under the “continuing violation” doctrine, a series of violations may be considered timely as long as one of the related, discriminatory acts occurred within the statute of limitations.

Matter of Lozada v. Elmont Hook & Ladder Co. No. 1, 151 A.D.3d 860, 861-62, 54 N.Y.S.3d 688, 689-90 (2d Dept. 2017); *see also Clark v. State*, 302 A.D.2d 942, 945, 754 N.Y.S.2d 814, 817 (4th Dept. 2003) (*quoting Cornwell v. Robinson*, 23 F.3d 694, 704 (2d Cir. 1994)) (a continuing violation may be found where specific and related instances of discrimination are permitted by a respondent to continue unremedied so as to amount to a continued violation of the Human Rights Law).

The 2007 litigation was a discrete act that was brought and settled beyond the statute of limitations. There is no evidence that it is part of any alleged harassment or discrimination or that it was part of an alleged continuing violation.

The eviction proceeding was begun in March 2016, which was before the statutory period. The parties continue to litigate in housing court and Complainant has alleged, among other claims, violations of the Human Rights Law. Respondents' continued pursuit of the eviction proceeding can be viewed as a continuing violation of the Human Rights Law and, thus, within the statute of limitations.

Complainant asserts that she is being evicted because of Respondents' discriminatory animus towards residents who are disabled. In order to prevail, Complainant must first make out a prima facie case of housing discrimination. To do so, a complainant must allege that: 1) she was a member of a protected class; 2) she was qualified to reside in the premises; 3) she was asked to vacate the premises; and 4) this occurred under circumstances that would give rise to an inference of unlawful discrimination. *See Dunleavy v. Hilton Hall Apartments Co., LLC*, 14 A.D.3d 479, 480, 789 N.Y.S.2d 164, 165 (2d Dept. 2005). Respondent then has the burden of rebutting any inference of housing discrimination by articulating a legitimate, non-discriminatory reason for its actions. *New York State Div. of Human Rights v. Caprarella*, 82 A.D.3d 773, 774,

917 N.Y.S.2d 704 (2d Dept. 2011). If respondent does that, the burden shifts to complainant to show that the articulated reason was pretextual. *Id.*, 917 N.Y.S.2d 704.

Complainant meets her initial burden. The statute defines the term disability as “a physical, mental or medical impairment...which...is demonstrable by medically accepted clinical or laboratory diagnostic techniques or...a condition regarded by others as such an impairment.” Human Rights Law §292.21. Complainant’s bipolar disorder and psoriasis are disabilities under the Human Rights Law. *See Ferguson v. Frank Management, LLC, Revolutions at Destiny, LLC*, D.H.R. Case No. 10167833 (Aug. 2, 2016). The uncontroverted evidence establishes that Complainant was entitled to reside in the unit, as undertenant of P. Zonis, Respondents were aware of Complainant’s disabilities, and Respondents Stuyvesant and Brensilber instituted eviction proceedings against Complainant and P. Zonis.

Complainant has shown that the eviction arose under circumstances that gave rise to an inference of discrimination. A complainant may produce either direct evidence of discriminatory intent, or indirect evidence creating an inference of discriminatory intent. *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 87 (2d Cir. 2015); *U.S. v. Hylton*, 944 F. Supp. 2d 176, 187 (D. Conn. 2013). Discriminatory practices are often pursued in subtle and elusive ways, rather than announced overtly. *See e.g., Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 322, 819 N.E.2d 998, 1018-19, 786 N.Y.S.2d 382, 402-03 (2004) (citations and quotations omitted); *see also Vega*, 801 F.3d at 86 (Clever men may easily conceal their motivations, so a plaintiff may be forced to rely on bits and pieces of information to support an inference of discrimination.) (quotations omitted).

Respondents Stuyvesant and Brensilber knew about Complainant’s disabilities before commencing eviction proceedings. Respondents repeatedly used phrases implying “aggression”

to describe Complainant, which evokes stereotypes of individuals with bipolar disorder.

Complainant has shown an inference of discrimination and has met her prima facie burden of proving a disparate treatment complaint.

In response to Complainant's allegations, Respondents have offered a legitimate, non-discriminatory reason for commencing eviction proceedings against Complainant and P. Zonis. Respondents had building rules in place, which Complainant repeatedly violated. Complainant and P. Zonis allowed their cat to excrete waste in an unsanitary manner, which caused neighbors to complain about the odor. Complainant swore at and accosted Respondent Brensilber, Lopez, and other tenants.

Complainant has not presented sufficient evidence to suggest that Respondent's proffered reason is merely a pretext for discrimination. In fact, Complainant herself alleged that Respondents were motivated by financial greed, which is a non-discriminatory reason for the eviction proceedings.

Complainant also asserts that she has been harassed by Respondents on account of her disability. To prevail on a hostile housing environment claim under Human Rights Law § 296.5(a)(2), a complainant must show that: 1) she is a member of a protected group; 2) she was subject to unwelcome and extensive harassment; 3) such harassment was based on the complainant's disability; 4) such harassment affected a term, condition or privilege of housing; and 5) if vicarious liability is claimed, the complainant must show that the owner knew or should have known about the harassment and failed to remedy the situation promptly. *See State Div. of Human Rights v. Stoute*, 36 A.D.3d 257, 265, 826 N.Y.S.2d 122, 128 (2d Dept. 2006).

Complainant claims that Stuyvesant has harassed her and her husband through confrontations in the parking garage and through apartment inspections for "fake" odor.

Stuyvesant does not operate the parking garage or manage any of the staff that work there. Acts by parking garage staff were outside the control of Stuyvesant. *See e.g., Hollandale Apts. & Health Club, LLC v. Bonesteel*, 2019 NY Slip Op 03718, ¶ 1 (3d Dept. May 9, 2019) (courts do not determine issues that depend on events outside the control of the parties) (citations omitted). Complainant has failed to meet her burden of showing that Respondents created a hostile housing environment through harassment in the parking garage.

Stuyvesant and its agents inspected Complainant's apartment for odors and noise, and then brought and maintained a housing action. Respondents' actions are not "harassment" under the Human Rights Law. *See Hood v. Guerrero*, D.H.R. Case No. 10107097 (Feb. 23, 2007). Moreover, Respondents' actions were not initiated because of Complainant's disability. Complainant has not met her prima facie burden of establishing a hostile housing environment claim.

Complainant further alleges that she has been denied a reasonable accommodation in violation of the Human Rights Law. To make out a claim of discrimination based on failure to reasonably accommodate (in the housing context), a complainant must demonstrate that: (1) she suffers from a disability (2) the respondent knew or reasonably should have known of the complainant's disability; (3) accommodation of the disability "may be necessary" to afford the complainant an equal opportunity to use and enjoy the dwelling; and (4) the respondent refused to make such accommodation. *Lindsay Park Hous. Corp. v New York State Div. of Human Rights*, 56 A.D.3d 477, 478, 866 N.Y.S.2d 771, 773 (2d Dept. 2008) (*citing One Overlook Ave. Corp. v. New York State Div. of Human Rights*, 8 A.D.3d 286, 777 N.Y.S.2d 696 (2d Dept. 2004)).

Complainant has neither identified a reasonable accommodation for her disabilities that

would allow her to use and enjoy her dwelling, nor asked Respondent for an accommodation.
Complainant therefore failed to make her prima facie case.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the case be dismissed.

DATED: July 17, 2019
Bronx, New York

A handwritten signature in black ink, appearing to read 'Thomas S. Protano', written in a cursive style.

Thomas S. Protano
Administrative Law Judge