

DETERMINATION OF REASONABLE CAUSE AND NO REASONABLE CAUSE

CASE NAME: Gural, Harry D. & Ruth E. v. Albright Care Services, et al.

CASE NUMBER: 03-20-6200-8

I. JURISDICTION

Complainants Harry and Ruth Gural timely filed a complaint with the United States Department of Housing and Urban Development (“HUD” or “the Department”). Complainant Ruth Gural is a person with a disability, as defined by the Fair Housing Act. Complainants allege they were discriminated against by Respondents because of Ruth Gural’s disability. Specifically, Complainants allege Respondents denied Complainant Harry Gural’s reasonable accommodation request to be a live-in-aide for his mother, Ruth Gural, and threatened to first evict Ruth Gural and then Harry Gural after asserting their fair housing rights.

Complainants reside at the subject property located at 270 Ridgecrest Circle, #109 Lewisburg, PA 17837. The subject property, RiverWoods, is part of a continuing care retirement community (CCRC) consisting of an independent living, personal care, and nursing section that is comprised of “dwellings” as defined in 42 U.S.C. § 3602(b). The subject property is not exempt under 42 U.S.C. §§ 3603 or 3607 of the Fair Housing Act, as amended (the “Act”). Neither Respondents nor the subject property receive federal financial assistance.

Respondents are Asbury Communities, Inc., a Maryland non-profit corporation which oversees and manages RiverWoods, and Albright Care Services, a Pennsylvania non-profit which owns and operates RiverWoods. The most recent act of discrimination was alleged to have occurred on July 06, 2020, and is continuing. Complainants timely filed the complaint with HUD on July 31, 2020.

If proven, Respondents’ alleged actions would violate subsections 804(f)(1)(A) and (C), 804(f)(2)(A) and (C), 804(f)(3)(B), and 818 of the Act. Sections 804(f)(1)(A) and (C) of the Act make it illegal to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter or any person associated with that buyer or renter. Section 804(f)(2)(A) and (C) make it illegal to discriminate in the terms and conditions of a rental because of disability, including a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling (Section 804(f)(3)(B)). Section 818 of the Act makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed rights protected by the Fair Housing Act.

II. COMPLAINANTS’ ALLEGATIONS

Complainants assert that Respondents were aware that Complainant Ruth Gural suffers from Alzheimer’s disease resulting in cognitive impairment and thus requires continuous non-

specialized support with daily activities. Because of the COVID-19 pandemic, beginning in March 2020 and continuing until June 2020 (when a letter was issued to residents stating a limited visitor policy would take effect), RiverWoods would not allow visitors or outside private aides onto the property. This policy made it impossible for Ruth Gural to receive needed assistance with activities of daily living. To address Ruth Gural's critical need for assistance, Complainant Harry Gural notified Respondents on March 15, 2020, that he would be moving in with his mother. Complainants allege Complainant Harry Gural needed to take care of Complainant Ruth Gural because of her disability; and because Complainant Ruth Gural's outside caregiver could no longer enter RiverWoods' campus.

Complainant Ruth Gural asserts she was discriminated against by Respondents because of her disability. Complainant Harry Gural asserts he is being discriminated against by Respondents because of his association with his mother, who is a person with a disability. Complainants assert Respondents unlawfully sent Complainant Ruth Gural a notice on May 18, 2020, threatening to take steps to evict Complainant Ruth Gural from RiverWoods if Complainant Harry Gural did not vacate the unit by May 28, 2020. Complainants assert they submitted a reasonable accommodation request to Respondents to waive Respondents' 14-day visitation policy to allow Complainant Harry Gural to remain in the unit as a live-in-aide. Complainants allege that Respondents denied their requests despite having medical documentation that described the nexus between the request and Complainant Ruth Gural's disability. Complainants further allege that Respondents threatened to move forward with legal action against Mr. Gural to effectuate his removal from the unit.

III. RESPONDENTS' DEFENSES

Respondents deny discriminating against Complainants Harry and Ruth Gural.

Respondents assert that Complainants never justified the need for Complainant Harry Gural to be a live-in-aide for Complainant Ruth Gural. Respondents further state that they are a CCRC and granting Complainant Harry Gural's reasonable accommodation request would be both an administrative and financial burden on them, as well as a fundamental alteration of how the CCRC operates. Respondents assert that its program is not meant for intergenerational families to live together; and doing so would undermine its financial model by giving residency to Complainant Harry Gural, who does not meet the age criteria to be a resident at RiverWoods. Respondents defend that Complainant Ruth Gural could get the care she needs by either going into a higher level of care, using RiverWoods' enhanced services staff, or hiring an outside qualified third-party caregiver.

Respondents assert that they have not violated Section 818 by threatening Mrs. Gural or in retaliation for engaging in any protected activity. Respondents deny any link between their May 18, 2020, notice letter to Mrs. Gural and any alleged discrimination based upon disability. Respondents further assert that when the notice letter was sent to Mrs. Gural, Mr. Gural had not yet filed a fair housing complaint nor was there any active investigation. Lastly, Respondents assert

that they effectively rescinded their May 18, 2020, letter in a subsequent letter issued on July 6, 2020, to Complainants.

IV. STATEMENT OF FACTS

The investigation established that the subject property is operated as a CCRC. Respondents admit residents to the property in exchange for an entrance fee payment and the payment of a monthly fee. At least one member of the household is required to be age 62 or older, and Respondents allow only couples or siblings of the same generation to occupy a residential unit as co-occupants, with limited exceptions made for qualifying residents with a dependent, disabled child. RiverWoods guest policies allow guests to stay with a resident for up to 14 days.

The investigation found that residents residing in the independent living section of RiverWoods may pay for additional supportive services if this allows them to safely remain in their unit. The additional supportive services can be provided by either staff hired by Respondents, or independent service providers identified by the resident. Supportive services provided by Respondents are known as enhanced services, must be previously arranged, and require residents pay a supplemental hourly fee. Respondents' policies require that independent service providers comply with RiverWoods policies. If it is no longer safe for a resident to reside in their independent living arrangement, they may transfer to the personal or nursing care sections of the campus.

In December 2017, Complainant Ruth Gural paid an entrance fee and moved into a 1-bedroom, 1-den unit in RiverWoods' Ridgecrest independent living section.

Complainant Harry Gural is Ruth Gural's son and holds the durable power of attorney over Complainant Ruth Gural's finances and is responsible for also making medical decisions on Complainant Ruth Gural's behalf. Prior to the COVID-19 pandemic, Complainant Harry Gural lived and worked in Washington, D.C. Although he currently resides at RiverWoods with Ms. Gural, he continues to maintain an apartment in Washington, D.C.

On two occasions in October 2019, Complainant Ruth Gural became disoriented and wandered around the RiverWoods campus. Following these incidents, Mr. Gural hired Mary Ellen Stoltzfus to visit and assist with care for Ms. Gural. Mr. Gural also utilized Respondents' enhanced services for approximately 4-6 weeks, having staff check on Ms. Gural to ensure she was safe in her unit. On weekends, Mr. Gural would travel to the subject property and stay with Ms. Gural. On or around October 16, 2019, Ms. Gural's physician sent a letter to Respondents supporting Complainant Harry Gural's approach to Ms. Gural's care. Specifically, the physician indicated that, during Ms. Gural's October 2019 visit, Ms. Gural received the same score on the Montreal Cognitive Assessment (MOCO) as she had during her previous evaluation in April 2018. The physician concluded that having aides support Ms. Gural was a reasonable approach. The investigation established that Mary Ellen Stoltzfus and Mr. Gural continued to provide care to Ms. Gural through March 2020.

On March 15, 2020, RiverWoods closed its campus to all visitors due to COVID-19 concerns. Families and friends of residents were barred from entering the RiverWoods campus. Respondents

also barred Mary Ellen Stoltzfus from entering the Riverwoods Campus, even though Stoltzfus was the aide who had been providing regular daily care for Complainant Ruth Gural and helping meet her Instrumental Activities of Daily Living (IADLs). Respondents stated they had previously admitted Complainant Ruth Gural's aide as a visitor or family friend.

On March 15, 2020, Complainant Harry Gural notified Respondents' staff member Heather Colpetzer that he intended to stay at the subject property to provide care for Ms. Gural. The investigation found that Respondents made an exception to the no visitor policy and allowed Mr. Gural to remain at the property. Respondents assert that the exception was made in order to allow Mr. Gural reasonable time to obtain and coordinate third-party care for Ms. Gural and it was never intended nor was it ever communicated to Mr. Gural that he could stay in his mother's unit indefinitely. However, because there are approximately 180 miles between Riverwoods and Washington, D.C., remaining in his Washington, D.C. apartment would not have allowed Complainant Harry Gural to provide the care his mother needs following Riverwoods' March 2020 closure.

On May 18, 2020, RiverWoods' executive director, Lennea Brown, sent a letter to Complainant Ruth Gural addressing Complainant Harry Gural's stay at RiverWoods. Specifically, the letter stated: "continued violations of the visitor policy will result in the issuance of termination and discharge notice. Your son must vacate the apartment on or before 5/28/2020."

Between May 27 and May 28, 2020, Complainant Harry Gural discussed with Respondents their May 18th letter. Complainant Harry Gural explained that, given the present restrictions for visitors at RiverWoods, he needed to remain at RiverWoods to provide care for Complainant Ruth Gural, who previously relied on her private aide. While Complainant Harry Gural retains a permanent residence in Washington D.C., his residence is 180 miles from RiverWoods. Complainant Harry Gural told Respondents that he did not wish to hire third-party aides for his mother given the risks associated with COVID-19 transmission for seniors. Respondents told Complainant Harry Gural that he was not old enough to live at Riverwoods as a co-resident with his mother.

On June 12, 2020, Complainant Harry Gural's legal counsel submitted a reasonable accommodation request to Respondents to allow Complainant Harry Gural to be a live-in-aide for Complainant Ruth Gural. The letter specifically stated the following: "This letter is an explicit request to RiverWoods, Asbury and Albright to permit Mr. Gural to remain in the unit with his mother as an additional occupant, without interference, as a reasonable accommodation to any rule or policy limiting the length of time that visitors may remain with their families at RiverWoods." The letter also noted that Complainant Ruth Gural's reliance on her son, Harry Gural, as an aide "was necessitated by the fact that the community barred external visitors to the community due to COVID-19 restrictions."

On July 06, 2020, Respondents' legal counsel issued a letter denying Complainant Harry Gural's reasonable accommodation request to be a live-in-aide for Complainant Ruth Gural. The letter noted that RiverWoods had never denied Mrs. Gural, "the ability to obtain paid private duty nursing or companion services in her residential unit in order to accommodate and meet her needs" and that Ms. Gural could utilize the services of private duty nurses and companions so long as she

was able to “satisfy the Conditions of Occupancy with such supportive services.” The letter further stated that if Complainant Harry Gural did not vacate Complainant Ruth Gural’s unit by August 7, 2020, Respondents’ counsel would “pursue any and/all available remedies under the law on behalf of RiverWoods to effectuate his removal.” Respondents’ counsel also noted that “the prior letter to Mrs. Gural ha[d] been rescinded” and their proposed legal action would “be brought against Mr. Gural directly.”

On August 5, 2020, notification letters were sent to the parties advising that the subject fair housing complaint had been filed. Additionally, Respondents agreed, at the Department’s request, to allow Complainant Harry Gural to stay at RiverWoods pending the completion of the HUD investigation. To date, Respondents have not granted Complainant Harry Gural’s reasonable accommodation request to be a live-in-aide for Complainant Ruth Gural. Complainant Harry Gural continues to reside in Complainant Ruth Gural’s unit at Riverwoods as requested by the Department.

On or around March 2021, following a period of no and limited visitor opportunities, RiverWoods reopened fully to visitors.

The investigation established that from March 2020 through the present Complainant Ruth Gural’s need for assistance with daily activities continued and was exacerbated by the restrictions imposed by the COVID-19 pandemic. For example, Ms. Gural was unable to access the dining hall for meal services or engage in community activities with other residents which were key to her mental well-being. As a result of Riverwoods closure, Ms. Gural had no one to assist her with her Instrumental Activities of Daily Living (IADLs), the tasks a person performs every day to care for themselves and their home. In Ms. Gural’s case, the IADLs that she could not independently perform included obtaining groceries, preparing nourishing meals, cleaning her unit, and taking prescribed medications at the appropriate times as directed by her physician. In turn, following Riverwoods closure, it fell on Mr. Gural to provide assistance to his mother with these IADL tasks. In their August 3, 2021, response to the Department’s request for an assessment of Complainant Ruth Gural’s health, the Complainant’s primary care physician confirmed that Ms. Gural would not be able to complete IADLs independently.

V. ANALYSIS

A. Failure to Provide Reasonable Accommodation, Making Housing Unavailable and Discriminatory Terms and Conditions under subsections 804(f)(1)(A), 804(f)(2)(A), and 804(f)(3)(B) – Finding of Reasonable Cause

In order to establish a case of disability discrimination in violation of Sections 804(f)(1), 804(f)(2), and 804(f)(3)(B) of the Act, the evidence must satisfy the following prima facie elements:

1. The Complainant is a person with a disability.

2. The Respondent knew or reasonably should have known that the Complainant was a person with a disability.
3. The Complainant requested a reasonable accommodation in the rules, policies, practices, or services of the Respondent.
4. The requested accommodation may be necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling.
5. The Respondent refused the Complainant's request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial.

And for 804(f)(1):

6. The Respondent's refusal made housing unavailable to the Complainant.

The investigation established Elements 1-5. Complainant Ruth Gural has been diagnosed with Alzheimer's disease, a condition that limits one or more major life activities, and thus is a person with a disability. Respondents acknowledge that Complainant Ruth Gural is a person with a disability within the meaning of the Fair Housing Act. The investigation established that Complainant Harry Gural made a formal reasonable accommodation request to Respondents to waive their policy limiting stays by visitors and allow Complainant Harry Gural to stay in the unit as a live-in-aide for Complainant Ruth Gural. The investigation established that Complainant Ruth Gural requires an aide who can provide continuous non-specialized support to use and enjoy her independent living unit at Riverwoods.

More specifically, medical documentation provided to Respondents revealed that Complainant Ruth Gural suffers from a disability that requires continuous non-specialized support from an aide to perform IADLs. This level of care was provided by a private aid, Mary Ellen Stoltzfus, between October 2019 and March 2020. From the time of Riverwoods closure to visitors in March of 2020 to present, Complainant Ruth Gural's disability has continued to require this support. While Respondents allege that third-party care for Complainant Ruth Gural could have been made available through their enhanced services, the investigation revealed that Riverwoods retains only a limited number of staff in enhanced services and it would not have been possible for its team to provide the support Complainant Ruth Gural's disability requires. Additionally, while Respondents allege that care for Complainant Ruth Gural could have also been provided by a third-party "qualified" care giver, the investigation did not reveal that Complainant Ruth Gural's disability requires specialized medical care that could not be provided by her son, Complainant Harry Gural. Moreover, the ongoing COVID-19 pandemic has presented challenges that make it reasonable for Complainants not to want to enlist the care of third-party aides who could present a risk to Complainant Ruth Gural's health. While Respondents also allege that Complainant Ruth Gural could receive the support she needs if she were transferred to a higher level of care, assisted living or nursing care, the investigation did not reveal that Complainant Ruth Gural's disability requires this more specialized level of care. Lastly, the investigation established that on July 6, 2020, Respondents denied Complainant Harry Gural's request for an accommodation to serve as a live-in aid for his mother Complainant Ruth Gural.

Element 6 is also satisfied. The investigation revealed that Respondents warned Complainant Ruth Gural on May 18, 2020, that continued violation of their visitor policy would lead to Ruth Gural's termination or discharge. Although Respondents rescinded their May 18, 2020, letter in their subsequent July 6, 2020, response to Complainants, between May 18, 2020, and July 6, 2020, Complainants were under the Respondents' warning that Ms. Gural tenancy would be terminated if Mr. Gural did not vacate her apartment. Even after revoking the warning, Complainant Ruth Gural continued to live with the fear that her son would have to abandon the Riverwoods campus, which would have resulted in denial of care for Complainant Ruth Gural. Thus, element 6 is satisfied.

Respondents defended that granting Complainants' reasonable accommodation request for an exception to either its visitor or caregiver policies would create an undue financial and administrative burden or fundamentally alter the nature of its continuing care program. The investigation did not support this defense. Allowing Complainant Harry Gural to live at the subject property as a caregiver would not create an undue financial and administrative burden, or fundamentally alter the nature of its continuing care program and would not prohibit Respondents from overseeing Mrs. Gural's care in accordance with regulatory and contractual requirements.

Respondents further defended that the Complainants' requested accommodation was not necessary for Complainant Ruth Gural to have equal use and enjoyment of her unit. Respondents assert that Complainant Ruth Gural was never denied the ability to obtain paid private duty nursing or companion services in her residential unit to meet her care needs, and therefore there was no need for Mr. Gural to move into the unit to care for her. The investigation also did not support this defense.

The investigation found that Respondents' denial of her reasonable accommodation request and subsequent threats to evict Complainant Ruth Gural denied Complainant Ruth Gural the opportunity to fully use and enjoy her home and threatened to deprive her of housing. Based on these facts, the Department concludes that there is reasonable cause to believe the Respondents discriminated against Complainants in violation of subsections 804(f)(1)(A), 804(f)(2)(A), and 804(f)(3)(B) of the Act.

B. Discriminatory Terms and Conditions under subsections 804(f)(1)(C) and 804(f)(2)(C) - Finding of No Reasonable Cause

While 804(f)(1)(C) and 804(f)(2)(C) claims were also raised in the complaint filed with HUD, the investigation revealed that Respondents discriminated against Complainants on the basis of Complainant's Ruth Gural's disability and not on the basis of any disability by Complainant Harry Gural. Therefore, no reasonable cause exists to believe that Respondents discriminated against Complainants in violation of subsections 804(f)(1)(C) and 804(f)(2)(C) of the Act.

C. Coercion, Intimidation, Threats, and Interference under Section 818 – Finding of No Reasonable Cause

To prevail in a complaint under Section 818 the Act, the evidence must satisfy the following prima facie elements:

1. Complainant engaged in (or attempted to engage in) an activity protected by the Act or aided/encouraged another to do so.
2. Respondent interfered with that activity, or coerced, intimidated, or threatened Complainant.
3. Circumstantial evidence indicates that the Respondent's actions were related to the protected activity. Such circumstantial evidence could be the sequence of events leading up to the interference or other context for the Respondent's actions.

The evidence, as discussed above established that Element 1 is satisfied. Complainants engaged in a protected activity by requesting a reasonable accommodation and by filing a complaint with HUD.

The investigation did not find evidence to meet elements two (2) or three (3). The investigation did not reveal that Respondents interfered with the protected activity or that Respondents issuing letters to Complainants notifying them of the potential consequences of their continued violation of Riverwoods visitor policies were related to the protected activity.

Respondents issued a letter on May 18, 2020, notifying Complainant Ruth Gural that continued violation of Riverwoods' visitor policies would result in RiverWoods issuing a termination or discharge notice to Complainant Ruth Gural. The investigation established that Complainants had not yet requested a reasonable accommodation at the time this letter was issued. The Respondents' May 18, 2020, letter does not rise to interference, coercion, intimidations, or threats related to a protected activity.

On June 12, 2020, Complainant Harry Gural's legal counsel submitted a reasonable accommodation request to Respondents to allow Complainant Harry Gural to be a live-in-aide for Complainant Ruth Gural. Respondents issued a letter on July 6, 2020, denying Complainant Harry Gural's request for a reasonable accommodation. The investigation did not establish that this denial of the requested accommodation rises to interference, coercion, intimidation, or threats related to a protected activity. On August 5, 2020, notification letters were sent to the parties advising that the subject fair housing complaint had been filed. Respondents did not take any further action to remove Complainant Harry Gural from his mother's unit.

Based upon the evidence described above, no reasonable cause exists to believe that Respondents engaged in coercion, intimidation, threats, or interference based on a protected activity towards Complainants in violation of Section 818 of the Act.

VI. CONCLUSION

Based on the evidence gathered, the Department has concluded that there is reasonable cause to believe that Respondents Asbury Communities, Inc., and Albright Care Services discriminated against Complainants Ruth and Harry Gural on the basis of disability in violation of Sections 804(f)(1)(A), 804(f)(2)(A), and 804(f)(3)(B) of the Fair Housing Act.

Based upon the evidence described above, no reasonable cause exists to believe that Respondents Asbury Communities, Inc. and Albright Care Services discriminated against Complainants Ruth and Harry Gural on the basis of disability in violation of Sections 804(f)(1)(C) and 804(f)(2)(C) of the Fair Housing Act or that Respondents engaged in coercion, intimidation, threats, or interference based on a protected activity towards Complainants Ruth and Harry Gural in violation of Section 818 of the Fair Housing Act.

VII. ADDITIONAL INFORMATION

A copy of the Final Investigative Report for this case can be obtained from: Patricia McGarvey Knebels, Acting Director, Office of Fair Housing and Equal Opportunity Region III, U.S. Department of Housing and Urban Development, Philadelphia Regional Office, The Strawbridge Building, 12th Floor, 801 Market Street Philadelphia, Pennsylvania 19107-3380; or at patriciamcgarvey.knebels@hud.gov .

On behalf of the Department of
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