

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19153
W/prt

_____AD3d_____

Argued - March 27, 2008

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
HOWARD MILLER
RUTH C. BALKIN, JJ.

2007-04990

DECISION & JUDGMENT

In the Matter of 105 Northgate
Cooperative, et al., petitioners, v Michelle
Cheney Donaldson, etc., et al., respondents.

(Index No. 23534/06)

Marin Goodman, LLP, New York, N.Y. (Margaret J. Leszkiewicz of counsel), for
petitioners.

Caroline J. Downey, Bronx, N.Y. (Michael K. Swirsky of counsel), for respondent
Michelle Cheney Donaldson.

Proceeding pursuant to CPLR article 78 to review a determination of the
Commissioner of the New York State Division of Human Rights dated October 2, 2006, which, after
a hearing before an administrative law judge, found that the petitioner 105 Northgate Tenants Corp.
discriminated against the complainant in the terms, conditions, and privileges of the rental of a
housing accommodation because of disability, and unlawfully refused to reasonably accommodate the
disability, by withholding permission for the complainant to own and maintain a companion dog, and
awarded the complainant the sums of \$5,000 in compensatory damages and \$5,000 in punitive
damages.

ADJUDGED that the petition is granted, on the law, with costs, and the determination
is annulled.

In March 2005 the complainant submitted, to the petitioners, a brief note from her
internist stating that having a pet would be “medically and psychologically beneficial” for her “chronic
depression.” In response, the petitioner 105 Northgate Tenants Corp. (hereinafter Northgate) advised

August 19, 2008

Page 1.

MATTER OF 105 NORTHGATE COOPERATIVE v DONALDSON

her, by letter dated March 24, 2005, that the rules of the cooperative housing corporation that it operated permitted her to have up to two cats, but that dogs were prohibited. In a letter dated April 12, 2005, the complainant made a second request, this time specifically asking for permission to have a dog. With her second letter, the complainant submitted another brief note from her internist, which included a conclusory assertion that the complainant's "having a dog is both therapeutic [sic] and necessary in working through her disability." Northgate responded with a letter, dated April 22, 2005, requesting more detailed information supporting the complainant's need to have a dog. Three weeks later, without having provided Northgate any further information, the complainant filed a verified complaint with the New York State Division of Human Rights (hereinafter the SDHR) alleging that, in violation of the Human Rights Law (Executive Law § 296), the petitioners had engaged in "an unlawful discriminatory practice relating to housing because of disability."

After a hearing held before an administrative law judge, the Commissioner of the SDHR, Michelle Cheney Donaldson, upheld the complaint and awarded the complainant the sums of \$5,000 in compensatory damages and \$5,000 in punitive damages. The petitioners commenced the instant proceeding to review the determination. We grant the petition and annul the determination.

On the record presented, the complainant failed to demonstrate, through either medical or psychological expert testimony or evidence, that she required a dog in order to use and enjoy her apartment unit (*see Matter of One Overlook Ave. Corp. v New York State Div. of Human Rights*, 8 AD3d 286, 287), and failed to establish that, by requesting more information, the petitioners had denied her request for a reasonable accommodation. Accordingly, the challenged determination was not supported by substantial evidence (*cf. 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176).

PRUDENTI, P.J., FISHER, MILLER and BALKIN, JJ., concur.

ENTER:


James Edward Peizer
Clerk of the Court