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**State of Florida  
Division of Administrative Hearings**

FILED  
2010 MAY 17 A 11:52  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

NANCY B. KING,

Petitioner,

vs.

CHESTERBROOK OF LEESBURG  
CONDOMINIUM ASSOC., INC.,

Respondent.

Case No. 10-1881  
2010H0126  
04-10-0259-8

**MOTION TO SUPPRESS SPECIFIC BEHAVIORS REGARDING  
VIOLATIONS OF PETITIONER'S RIGHTS**

Petitioner hereby asks the Court to suppress certain behavior of Respondents and Respondents' Counsel. The behavior in question is free-ranging discussion of Petitioner's disability status. Such open-ended, non-restricted behavior violates Petitioner's Fair Housing rights and violates Petitioner's rights to privacy.

**Argument One: The Act establishes limits on discussion of disability**

1. Authority to discuss Petitioner's disability status is limited by the Federal Fair Housing Act (Act) (42 U.S.C. §§ 3601 – 3619), and this Court is not the appropriate jurisdiction for more than a decidedly limited discussion of disability status. The appropriate jurisdiction presumably would be a Federal court, where it seems the issue has already been settled.<sup>‡</sup>

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<sup>‡</sup> "Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of

2. Limitations regarding the discussion of Petitioner's disability and her disability accommodation are provided in the "Joint Statement of the Department of Housing and Urban Development and the Department of Justice," Washington, D.C., May 17, 2004 (Joint Statement) (a relevant portion of the Joint Statement is attached). These limitations are as follows:

a) Just as a disability itself is established by certain specified, circumscribed actions, including:

i) "...proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits...." Or

ii) Diagnosis by "A doctor or other medical professional...."

b) Likewise, a disability accommodation is established by certain specified, circumscribed actions. In other words, the Joint Statement recognizes and protects the disabled person's rights to privacy by establishing specific limits on the amount and kind of information that can be requested from a disabled person:

i) First, it is generally unlawful to ask whether a person has a disability or to ask about the severity of a disability (Paragraph 16). Thereafter,

ii) "...the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability."

iii) The disabled person need only provide information that:

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disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)."

- iv) "... (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation."
- v) "...if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation."
- vi) In addition:
  - a) "An individual making a reasonable accommodation request does not need to mention the Act or use the words 'reasonable accommodation.'"

**Argument Two: Petitioner has met the requirements of the Act**

3. Since 1993, Petitioner has been continuously declared by the Social Security Administration to be on Social Security disability (SSDI). (See attachment: Award Notice).
4. In November of 2009, Petitioner provided The Florida Commission on Human Relations (FCHR) with a copy of the 1993 Award Notice. Based on receipt and acceptance of this document, which meets the requirement of the Acts, FCHR began an investigation of Petitioner's complaints of violations to her rights.
5. Each time, upon applying for a disability accommodation (originally in 2004 and a revision in 2009), Petitioner provided a letter from her physician.
6. Petitioner also provided Respondent Board with a personal letter dated October 12, 2009, in which she stated the benefits of her accommodation.
7. Petitioner also met the requirements when she filed a motion (for a disability accommodation) with this Court on April 19, 2010.

8. Petitioner and/or her physician have supplied Respondents with the required information about the nexus (of Petitioner's disability and her accommodations), as follows:

- a. Medical benefits (for swimming accommodation),
- b. improved daily functioning from exercising in the pool (for swimming accommodation),
- c. easy fatigue that can lead to confusion and loss of focus (for Court accommodation).

**Argument Three: Respondents and Respondents'  
Counsel knew or should have known the facts regarding  
Petitioner's disability and accommodation**

- a) According to the FCHR Determination (2/23/10) Respondents have formally acknowledged Petitioner's disability:
  - i) "Respondent does not dispute that it knew that Complainant belongs to a class of persons protected from unlawful discrimination based on her ... disability. Additionally, Complainant provided a letter from her treating medical physician to Respondent notifying Respondent that she is a disabled-person under the Fair Housing Act." (FCHR Determination)
  - ii) Respondent Board informally acknowledged Petitioner's disability status as early as 2004 when Petitioner first requested (and was granted) a disability accommodation.
    - a) Consequently, Respondent Board has had six years to become familiar with the Joint Statement which is widely disseminated by the federal government, state governments and disability organizations. Also, there

has been considerable public discussion in recent years regarding the Americans with Disabilities Act which contains similar disability provisions.

- b) Furthermore, it is to be assumed by any reasonable person that Respondent Board previously familiarized itself with applicable condo-related laws, including the Act, since Respondent Board members, upon assumption of office, are required by state law to certify in writing that they have familiarized themselves with such documents.

### **Conclusion One**

- 9. Because Petitioner has satisfied the Federal requirements for SSDI disability and for disability accommodations under the Act and because Respondent Board has recognized Petitioner's disability status and her disability accommodations as facts, Petitioner's 7/22/93 disability and her 7/28/09 disability accommodation are non-disputable. Any current or future open-range discussion or dispute of these facts is in violation of the Act.

### **Argument Four: Violations of the Act have occurred as follows:**

- 10. Respondent Bowden provided prima facie evidence of violation of the Act when, under oath, she voluntarily and without Petitioner's permission, discussed Petitioner's disability information in a public forum (police station and board meeting).
  - a) Basis for a claim of violation: The Joint Statement requires that once information necessary to establish an accommodation has been obtained,

“Such information must be kept confidential and must not be shared with other persons...” unless sharing the information is related to establishing the accommodation.

11. Despite the fact that Petitioner’s 4/19/10 motion clearly established a nexus (between disability and accommodation), Respondents’ Counsel, on 5/07/10<sup>§</sup> pressed for more disclosure of medical information. Counsel also questioned Petitioner’s disability itself by referring to it as “alleged,” as follows:

- a) "I don't know the nature of her alleged disability...."
- b) "She apparently has been granted disability by Social Security but she hasn't described what her alleged disability is...."

12. Counsel further challenged Petitioner’s disability by saying:

- a. “If she’s able to swim in a pool, I think she’s able to sit in a chair and answer some questions.” (motion hearing, 5/07/10)<sup>§</sup>
- b. In addition, the Court may have sanctioned more disclosures of medical information by suggesting to Respondents’ Counsel (5/07/10) that a deposition and/or discovery could be undertaken at a later date to further explore and clarify Petitioner’s disability status. (motion hearing, 5/07/10)<sup>§</sup>

### **Final Conclusions**

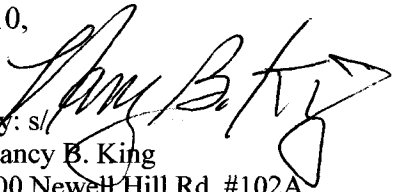
13. For all the foregoing reasons, Petitioner asserts that her burden on this issue has been satisfied, and she respectfully submits that the Court suppress the following:

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<sup>§</sup> A disk recording of the 5/7/10 hearing has been forwarded to Respondents’ Counsel and to the Court.

- a) Use of the words "alleged disability," and by corollary, any challenge or prohibited reference to Petitioner's disability.
- b) Any interrogatories or depositions involving Petitioner if the purpose is to question Petitioner's disability or to attempt to re-diagnose Petitioner.
- c) Any interrogatories or questions of any kind directed to witnesses (including medical witnesses) if the purpose is to obtain information which in any way challenges Petitioner's disability.
- d) Any discussion, questions or references in the hearings that serve to challenge Petitioner's disability or violate the boundaries established by the Act.
- e) In sum, Petitioner asks the Court to recognize her disability status as non-disputable and to limit discussions as provided for in the Act.
- f) Petitioner also asks the Court to consider reminding all parties of the here-to-fore described laws which protect Petitioner's disability rights to services, opportunities and privacy.

Respectfully submitted on May 13, 2010,

  
By: s/  
Nancy B. King  
500 Newell Hill Rd. #102A  
Leesburg, FL 34748

1228

**Social Security Administration**  
**Retirement, Survivors, and Disability Insurance**  
Notice of Award

Office of Disability and  
International Operations  
1500 Woodlawn Drive  
Baltimore, Maryland 21241  
Date: July 22, 1993  
Claim Number: 252-78-3914 HA

NANCY B KING  
P O BX 490450  
LEESBURG FL 34749

We are writing to let you know that you are entitled to monthly disability benefits from Social Security beginning May 1993.

**What We Will Pay**



**Your Benefits**



ENCLOSURE:  
SSA-10153  
1

SEE NEXT PAGE

**If You Have Any Questions**

If you have any questions, you may call us toll-free at  
1-800-772-1213, or call your local Social Security office at  
1-904-787-2624.



*Joseph R. Muffolet*  
Joseph R. Muffolet  
Director

U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.  
May 17, 2004

**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT***

.....

**16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?**

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities.....:

**17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?**

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

**Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent,

the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

**Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

**Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

**18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?**

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits\*\* or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a

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\*\* Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

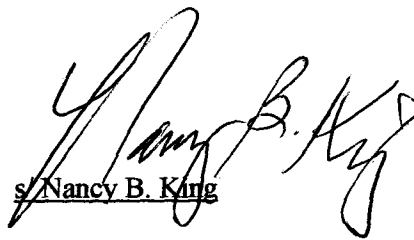
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail on May 13, 2010, to:

Gregory Glenn Ackerman, Esq.  
Cole, Scott & Kissane  
1900 Summit Tower Blvd.  
Tower Place, Suite 750  
Orlando, FL 32810

Fax: (321) 972-0099



s/ Nancy B. King

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