

POSTDETERMINATION SETTLEMENT AGREEMENT

CP# 09-18-72563
HUD# 07-18-0259-8

PARTIES TO THE SETTLEMENT AGREEMENT

RESPONDENT

CITY OF EARLING
P.O. Box 147
Earling, Iowa 51530

COMPLAINANT

DAVID SHURTER
P.O. Box 92
Harlan, Iowa 51537

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties: Complainant is a person with a disability who has three assistance animals. Two of his assistance animals are pit bulls. When Complainant moved to Earling, Iowa, he learned of Earling’s animal control ordinance, which banned the presence of certain breeds of dogs, including pit bulls, from city limits. Complainant then applied for a variance to the animal control ordinance to allow him to keep his dogs at his home as a reasonable accommodation for his disability. Respondent initially granted the variance in January 2018, but then cited Complainant for holding dogs of a prohibited breed within city limits in August 2018. The Commission found there was probable cause to believe denial of the requested variance constitutes a failure to make a reasonable accommodation and has resulted in different terms and conditions of rental based on disability.

Terms of Settlement: A complaint having been filed by Complainant against Respondent with the Commission under Iowa Code Chapter 216 and there having been a probable cause finding, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondent agrees there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the “Iowa Civil Rights Act

of 1965” (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).

2. Respondent acknowledges the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).

Respondent acknowledges that the Federal Fair Housing Act, as amended, makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of the person’s race, color, religion, sex, disability, familial status, national origin, or disability. 42 U.S.C. 3604(b), 3604(f)(2) (§ 804 of the Fair Housing Act).

3. Respondent acknowledges the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider’s operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
4. Respondent acknowledges the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
5. Respondent acknowledges their obligation under the FHA and ICRA to allow assistance animals as a reasonable accommodation when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling. See Iowa Code §§ 216.8B, .8C.

Assistance animals are often referred to as service animals, emotional support animals, therapy animals, companion animals or support animals. Under the FHA and ICRA, “assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities.” *Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 3; Iowa Code § 216.8B.

Some examples of work, tasks, assistance or support provided by assistance animals include “[h]elping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors; [r]eminding a person with mental illnesses to take prescribed medication, [t]aking action to calm a person with post-traumatic stress disorder (PTSD) during an anxiety attack, . . . [or] [p]roviding emotional support that alleviates at least one identified symptom or effect or a physical or mental impairment.” *Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 19.

After receiving a request, housing providers must consider the following:

- (1) Does the person seeking to use and live with the animal have a disability (a physical or mental impairment that substantially limits one or more major life activities)?
- (2) Does the person making the request have a disability-related need for an assistance animal? (afford a person with disabilities an equal opportunity to use or enjoy the dwelling).

A request for accommodation can be denied if the accommodation would impose an undue financial and administrative burden or if it would fundamentally alter the essential nature of the housing provider's services. "The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs." Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under The Fair Housing Act*, May 17, 2004, at 7.

The request may also be denied if "the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a secure enclosure)." *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 14.

Housing providers may not limit the breed or size of a dog used as a service animal or support animal just because of the size or breed, but can limit based on specific issues with the animal's conduct because it poses a direct threat or a fundamental alteration. *Id.*

Respondent acknowledges it will consider each occupant or prospective occupant's situation and accommodation request individually to determine if the requested accommodation is reasonable. The parties acknowledge that if the disability is not known or obvious, Respondent may make a reasonable inquiry and request documentation from a health care provider that verifies the occupant/prospective occupant's disability, without seeking or collecting information regarding the nature of the disability. In addition, Respondent may make reasonable inquiry and request documentation from a health care provider that verifies the occupant or prospective occupant's need for the accommodation, i.e., the relationship between the person's disability and the need for the requested accommodation.

Assistance animals cannot be subjected to monthly pet fees since they are not considered pets under the FHA and ICRA. Iowa Code § 216.8B(2). Housing providers cannot require special tags, equipment, certification or special identification of assistance animals.

Apart from the variance agreed to in this agreement, Respondent retains the ability to neutrally enforce its ordinances against Complainant's assistance animals in the same manner as it does against all animals within city limits.

Voluntary and Full Settlement

6. The parties acknowledge this Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
7. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.
8. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
9. Respondent agrees the Commission may review compliance with this Agreement. As part of such review, Respondent agrees the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

Disclosure

10. Because, pursuant to Iowa Code § 216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code § 22.13.

Release

11. Complainant hereby waives, releases, and covenants not to sue Respondent with respect to any matters which were, or might have been alleged as charges filed with the Iowa Civil Rights Commission, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.
12. The Iowa Civil Rights Commission agrees to dismiss Shelby County case number CVCV020211, Iowa Civil Rights Commission ex rel D.S. v. City of Earling within seven days after the issuance of the Closing Letter by the Iowa Civil Rights Commission.

Relief in the Public Interest

13. Respondent's Mayor Janice Gaul and City Clerk Lori Ahart will receive training on the requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. Respondent further agrees subsequent city clerks will receive training on the required of the Iowa Civil Rights Act and Federal Fair Housing Act regarding requests for reasonable accommodation by individuals with disabilities. The training will include an overview of fair housing laws, but will emphasize the law regarding how to handle requests for reasonable accommodations from individuals with a disability. The training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondent also agrees to send documentation to the Commission verifying the fair housing training has been completed within ten (10) days of completing the training.

Relief for Complainant

14. Respondent agrees to grant Complainant's request for a variance to the animal control ordinance as a reasonable accommodation for his disability. Specifically, Respondent agrees Complainant's assistance animals, Moonshine, a pitbull, and Brigette, a pit bull, shall not be subject to the animal control ordinance in that they are allowed to be present within Earling's city limits. Respondent shall allow Complainant to register Moonshine and Brigette with the city. Complainant affirmatively states he has voluntarily constructed a six-foot fence around his yard. Complainant further acknowledges he retains all liability for damages caused by his assistance animals.

Reporting and Record-Keeping

15. Respondent shall forward to the Commission objective evidence of the successful completion of fair housing training in the form of a Certificate or a letter from the entity conducting the training within ten (10) days of the completion of the training, as evidence of compliance with Term 13 of this Agreement.

All required documentation of compliance must be submitted via email or U.S. Mail to:

Amy Quail
Iowa Civil Rights Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
amy.quail@iowa.gov
Telephone: 515-725-1082

City of Earling, RESPONDENT

Date

David Shurter, COMPLAINANT

Date

Elizabeth Johnson, EXECUTIVE DIRECTOR
IOWA CIVIL RIGHTS COMMISSION

Date