



**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
OFFICE OF EQUAL OPPORTUNITY**

**NOTICE OF DETERMINATION OF REASONABLE GROUNDS**

**Office of Equal Opportunity**

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West Palm Beach, FL 33401

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**CASE NAME: Peklun v. Tierra Del Mar Condominium Association, Inc.**

**CASE NUMBERS: HUD No. 04-14-0025-8  
PBEO No. 1300330**

**Palm Beach County  
Board of County  
Commissioners**

Priscilla A. Taylor, Mayor

Paulette Burdick, Vice Mayor

Hal R. Valeche

Shelley Vana

Steven L. Abrams

Mary Lou Berger

Jess R. Santamaria

**County Administrator**

Robert Weisman

**I. JURISDICTION**

A complaint was filed with the Palm Beach County Office of Equal Opportunity on September 26, 2013 and dual-filed with HUD on October 21, 2013 alleging that the complainant was injured by a discriminatory act. It is alleged that the respondent was responsible for: failure to make reasonable accommodation. It is alleged that the respondent's acts were based on disability. The most recent act is alleged to have occurred on February 1, 2013, and is continuing. The property is located at: 1111 South Ocean Blvd., Unit 319, Boca Raton, FL 33432. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Palm Beach County Code Section 15-58(12) and Section 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The Respondent receives no federal funding.

**II. COMPLAINANT'S ALLEGATIONS**

I am a qualified individual with a disability and because of my disability I need an emotional support animal to help alleviate my disability. For well over a year, the association named above provided me with an accommodation after I provided the documentation needed. It was only when a new board was elected did the matter rise again. The association's action was to have its management company provide me an Emotional Support Animal (ESA) Application. I returned the application, but during the pendency of the application, the association disregarded the procedures it had in place and failed to process the ESA application in the fashion expressly stated in the procedures. In July 2013, the association filed an arbitration action with the Department of Business and Professional Regulation, Division of Condominiums to have the animal removed.

*An Equal Opportunity  
Proactive Action Employer*





As a result of the discriminatory treatment towards me, I am not able to freely fully enjoy my community and dwelling. I believe that I have been discriminated against because of my disability and I request full relief that I am entitled under the applicable fair housing laws.

### III. RESPONDENT'S DEFENSES

Tierra Del Mar denies all purported acts of discrimination in the Complaint for allegedly failing to provide a reasonable accommodation to Petitioner. Specifically, Respondent denies that it discriminated against Petitioner in any way, shape or form during and/or after his attempts to seek an accommodation.

Significantly, from the time Petitioner first requested the Association allow him to maintain a dog in his unit due to an alleged disability through today's date, Petitioner continues to have and maintain a dog in his unit. In other words, Petitioner did not seek the reasonable accommodation first prior to bringing a dog into the premises – which is not permitted in this "no pet policy" building.

Next, Respondent had previously made attempts to obtain documentation from Petitioner to assist it with making an informed decision regarding the pet request but no such documents have been provided.

Despite Petitioner's claims, Tierra Del Mar has no records indicating the Association held a duly called meeting to approve Petitioner's request for an accommodation, nor any documents to indicate Respondent approved Petitioner's request.

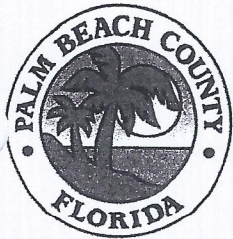
Second, Petitioner alleges that Respondent failed to process his February 28, 2013 Request for a Reasonable Accommodation. However, Respondent adamantly denies this contention because it in fact attempted to process Petitioner's ESA Application but due to incomplete information, non-definitive documentation and more importantly, the health, safety and welfare of other residents, Tierra Del Mar was left with no choice but to deny Petitioner's request via correspondence dated May 31, 2013.

### IV. FINDINGS AND CONCLUSION

#### Findings

The Complainant (Peklun) is the owner of the subject property, 1111 South Ocean Boulevard, Unit 319, Boca Raton, FL 33432, which is located in the Tierra Del Mar community that the Respondent operates and maintains. On July 26, 2011, Jean LeGrys, Property Manager with The Continental Group, Inc., sent the Complainant a Second Notice of Violation on behalf of





**Peklun v. Tierra Del Mar Condominium Association, Inc.**

**HUD File No.: 04-14-0025-8 / PBE0 No. 1300330**

**Notice of Determination**

**Page 3 of 7**

the Respondent. While this notice does not state the basis of the violation, on July 29, 2011, the Complainant replied to the Respondent with a hand written letter accompanied with a doctor's letter. The Complainant stated in his letter, "I am going thru a lot of medical problems. My doctor recommended a pet as help for emotional support and healing therapy." The Complainant's letter also listed his medical conditions as, "cardiac disease, gout disease, kidney failure, high blood pressure, etc." The Complainant's doctor's note from Dr. DiSilvestro dated May 12, 2011 provided to the Respondent further stated Peklun "suffers from cardiovascular disease, which predisposes him to anxiety and depression." Peklun's doctors state that he has physical impairments, specifically cardiac and pulmonary or heart failure; hypertension; chronic renal failure; sleep apnea; lower extremity edema, that substantially limit his ability to walk, breathe, and perform manual tasks.

Peklun has an emotional support animal, a nine (9) pound Morkie named Julia that assists him on a daily basis. Peklun indicated that he has sleep apnea and Julia helps him to wake up and keeps his depression and stress away.

In a letter dated August 31, 2011 through their attorney, the Respondent acknowledged they did receive Peklun's reasonable accommodation request and doctor's letter. The Respondent's attorney indicated that the Respondent required additional medical documentation, to which the Complainant provided. Board members at this time, Wendy Casey, former Board President, and Burt Howard, former Board Vice-President, along with Alexander Curcio, former Director, all confirmed during separate interviews during the investigation that the Board granted Peklun his reasonable accommodation request to have Julia as his emotional support animal at the advice of the Respondent's attorney. While no official Board meeting or vote took place, Peklun and their Board of Directors, in which included at the time Board Member and now Board President Maria Verduce ("Verduce"), came to an understanding that Peklun's animal, Julia, was a reasonable accommodation and the Board made an exception to their "No Pet" policy.

Respondent changed property management companies from The Continental Group, Inc. to the Royale Management Services, Inc. ("Royale Management"). On November 27, 2012, Royal Management sent the Complainant a notice of violation for an unauthorized pet and they also informed the Board of Directors that Frank Speciale (Speciale), a unit owner in the Tierra Del Mar community, threatened legal action against the Board for not enforcing the Declaration of Condominium and removing Peklun's dog. At that time, Board President Casey informed Royal Management that in 2011 the Respondent granted Complainant's request





for a reasonable accommodation for an emotional support animal and it was in the community legitimately, despite Speciale's objections.

Although Verduce indicated during the investigation that the Complainant was never provided a verbal or written approval for the animal from the Respondent, an email exchange obtained during the investigation supports that Verduce stated the Board, wanted to "re-confirm that he (Peklun) needs this medically necessary dog" and that this process, "should be confirmed yearly."

On February 21, 2013, Royale Management, on behalf of the Respondent's Board, sent Peklun a letter with its application for a reasonable accommodation. This application included the Respondent's Association's policy and procedure for reasonable accommodations. Specifically, an applicant must complete the Association's Request for a Reasonable Accommodation form and the applicant must provide completed copies of the Affidavit of Treating Physicians, Acknowledgement of Policy and Service Animal and Emotional Support Animal forms. The Respondent's policy states, "(the) Association will consider all requests for a reasonable accommodations no matter how the request is made; however, use of the supplied forms will expedite the process." Once an applicant's forms and information is received, the management company forwards them to the Board of Directors within 10 days of receipt of the application. A Board Member may ask for additional information if he/she feels the application and information supplied is not complete. If additional information is required by the Board, the applicant will be advised in writing. On or about March 2013, the Complainant provided the Respondent his completed application for a reasonable accommodation request as they requested him to do. Among the documents Peklun provided were affidavits from Dr. Paul Murry and Dr. John DiSilvestro.

According to Dr. Paul Murry, "There is a danger of respiratory arrest and respiratory failure compounding his [Peklun] other medication conditions" and "for this reason, he requires 24 hour monitoring. His pet dog has been trained to detect respiratory arrest in him and to stimulate arousal to present dangerous consequences. His pet is identified as a certified service animal."

Dr. John A. DiSilvestro stated, "I prescribed an emotional support animal and/or service animal as part of patient's medical treatment." Dr. DiSilvestro further stated, "The (emotional support animal/service animal/reasonable animal) is medically necessary and will assist Patient [Peklun] in alleviation of stress which would greatly exacerbate his medical conditions."





animal on the property prior to approval from the Respondent. The Respondent failed to follow their reasonable accommodation policy by requiring Peklun to apply through the process again and by failing to notify him in writing of missing documentation when it was needed. The Respondent failed to fully engage in the interactive process and either knew or were reasonably expected to know of the Complainant's disability.

After establishing that the Complainant is disabled and the Respondent knew or should have known of Complainant's disability, the Complainant must demonstrate that the Complainant's requested accommodation is necessary. Julia ameliorates many of the effects of Complainant's medical conditions including hypertension, chronic renal failure, anxiety, depression and sleep apnea. Complainant indicated that when he has shortness of breath, she wakes him up. He indicated that Julia is his companion and they take walks together in the evening. She assists him and is very important to his support system. Thus, the animal is a necessary, reasonable accommodation.

Despite having a sufficient amount of information to grant Peklun's reasonable accommodation for a second time, the Respondent continued to request additional information, issued violation notices and filed an arbitration action against Peklun to have the animal removed. Thus, it is undisputed that the Respondent's denied the Complainant's request for a reasonable accommodation.

Based on the foregoing, there are reasonable grounds to believe that the Respondent discriminated against the Complainant on the basis of his disability.

#### **V. NOTICE AND INVITATION TO CONCILIATE**

With the issuance of the foregoing Determination of Reasonable Grounds, the Office of Equal Opportunity invites the parties to join with us in an effort to conciliate the issues raised by the Complaint of discrimination and to resolve the violation found. You will be contacted by a representative of the Office of Equal Opportunity to commence the conciliation process. The period will expire thirty (30) days after the date of service of this Notice of Determination of Reasonable Grounds.

#### **VI. ADDITIONAL INFORMATION**

Notwithstanding this determination by OEO, the County's Fair Housing Ordinance provides that the Complainant may file a civil action in a court of competent jurisdiction within two years after the alleged discriminatory





**Peklun v. Tierra Del Mar Condominium Association, Inc.**  
**HUD File No.: 04-14-0025-8 / PBEO No. 1300330**  
**Notice of Determination**  
**Page 7 of 7**

housing practice. Also, the Fair Housing Act provides that the Complainant may file a civil action in an appropriate federal district court or state court within two (2) years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending.

A copy of the final investigative report and other documents from the file may be obtained from: Pamela Guerrier, Director, Palm Beach County Office of Equal Opportunity, 301 N. Olive Avenue, 10<sup>th</sup> Floor, West Palm Beach, FL 33401.

Dated this 5 day of May, 2014.

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Pamela Guerrier, Director  
Palm Beach County  
Office of Equal Opportunity

**Copies to:**

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This is a draft of a letter which I am going to attach as a summary of the major points I cover in the 14 exhibits. I plan to take it to the OEO office Monday June 30 try see Pamela Gurrier, Director ,she signed the findings and he works for her.

TDM UNIT OWNERS FORUM  
1111 South Ocean Blvd. #523  
Boca Raton, FL 33432

We are submitting this information to you because we believe it is evidence which has an impact on OEO's findings of discrimination in the Peklun vs TDM case

1. The TDM Board of Directors did not legally grant Sergey Peklun a reasonable accommodation?

Florida law does not allow for board meetings, discussion, polling or any type or collaboration or discussion by email or in any way except through a properly called board meeting. Notice of meeting must be posted and all meetings except those covering litigation pending, litigation in progress or privileged communication with legal counsel, must also be opened to all unit owners, with a quorum present in person or by phone before business can take place. Formal minutes must be kept of all board meetings.

Exhibit 14 (G) Wendy Casey said "This was not discussed at a Board Meeting so there are not minutes". Exhibit 14 (H) Investigator said "The Board granted Peklun his reasonable accommodation to have Julia as his "emotional support animal" The Board did not grant Peklun his reason accommodation because :

- 1 There was no board meeting posted meeting posted listing the dog as an agenda item.
2. There was no discussion
3. There was not vote by the members of the board
4. There was no approval nor an Approval Certificate issued
5. There no minutes (as was confirmed in Wendy, ETAL dated March 29, 2014

2. The dog was never certified as a service dog. The dog was identified as a "SERVICE DOG" by owner Sergey Peklun on July 29, 2011; Wendy Casey on August 28, 2011; Sergey Peklun on February 28 2013: Sergey Peklun on February 28, 2013; Dr. Paul Murry on February 28, 203 and Wendy Casey on March 30, 2104. See Exhibit # 6

The dog was later identified as an Emotional Support Animal" when the Mr. Peklun could not prove that the dog had been trained and certified as a "Service Dog"

3. Segrey Peklun did not submit a complete application to the TDM Board of Directors.

Exhibit 14 (A) On May 13, 2013, Mr. Wallis, Peklun's Attorney was informed that some parts were missing from the application. Part two of Dr. Murry statement was missing. Also that a animal certification that the dog had been trained and certified as a service dog was missing. This certification was never provided by Mr. Peklun.



4. No specific information was submitted by Mr. Peklun about his treatment for sleep apnea syndrome. No letters from a psychologist/psychiatrist was included in his application concerning his mental health.

We urge you to reopen the investigation and review the attached information and rescind the findings and conclusion of discrimination.

Sincerely,

Mel Cottone  
Chairman of TDM UNIT OWNERS FORUM\*

\*The forum is a group of TDM UNIT OWNERS and is no way associated with the TDM Board of Directors or the TDM Condo Association.