

Comm'n on Human Rights v. Hudson Overlook, LLC

OATH Index No. 2094/04 (Jan. 20, 2005)

Respondents' motion to vacate their default is denied for insufficient showing of excusable neglect. On the merits, judge finds respondents have failed to provide a reasonable accommodation for a disabled tenant and recommends that respondents be required to reconfigure the exterior stairs at the front entrance of the building, install a suitable ramp, and replace or reconfigure the front entrance doors with accessible doors. Judge further recommends that respondents be assessed \$10,000 as compensatory damages to the complainant and \$5,000 as a civil penalty.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
**COMMISSION ON HUMAN RIGHTS EX REL.
EVELYN MARTIN**
Petitioner
- against -
HUDSON OVERLOOK, LLC AND SETH MILLER
Respondents

REPORT AND RECOMMENDATION

KARA J. MILLER, *Administrative Law Judge*

On March 12, 2004, complainant, Evelyn Martin, filed a verified complaint with the New York City Commission on Human Rights ("Commission") alleging that respondents, Hudson Overlook, LLC and Seth Miller, engaged in housing discrimination by denying her a reasonable accommodation for her disability in violation of sections 8-107(5)(a)(2) and 8-107(15)(a) of the New York City Administrative Code. Respondents did not file an answer in response.

Respondents failed to appear at both the preliminary conference held on July 19, 2004 and the hearing conducted before me on August 19, 2004. Upon respondents' failure to appear at the hearing, proper proof of service of the notice of the hearing was submitted (Pet. Ex. I). Such evidence established the jurisdictional prerequisite for finding respondents in default. The record was held open until October 1, 2004, to permit the Commission to submit a post-hearing brief (ALJ Ex. 3).

On October 25, 2004, respondents filed a motion to vacate their default and the Commission filed an affirmation in opposition on October 28, 2004 and a supplemental answer in opposition on November 1, 2004 (ALJ Exs. 4, 5, & 6). I denied the motion to vacate by letter dated November 8, 2004, in which I stated that I would explain my reasoning in this report and recommendation.

After evaluating the record this tribunal finds that respondents violated the Administrative Code by not providing a reasonable accommodation for complainant's disabilities and recommends that the Commission order the installation of a ramp and accessible doors, assess \$10,000 in damages and impose \$5,000 as a civil penalty.

MOTION TO VACATE DEFAULT

Section 1-14(a) of the Commission's rules provides that a respondent shall file a verified answer within 30 days of having been served with a complaint. 47 RCNY § 1-14. Pursuant to section 2-27(a) of OATH's rules of practice, a respondent who has failed to comply with section 1-14(a) of the Commission's rules, shall file an affidavit either asserting that respondent complied with the requirements set forth in section 1-14(a) or asserting reasons constituting good cause for failure to comply. If the respondent fails to file such an affidavit, the Administrative Law Judge shall find respondent in default of filing an answer and preclude further participation in the adjudication. 48 RCNY § 2-27. While the Commission's rules address what occurs when a party fails to file an answer to the complaint, OATH's rules of practice address what occurs when a party fails to appear at a hearing. Pursuant to section 1-45 of OATH's rules of practice, the administrative law judge, absent a finding of good cause, may proceed with the hearing in the absence of any missing party. 48 RCNY § 1-45.

In the present case, respondents failed to file an answer within the time permitted, and were informed by the Commission that as a result of this failure the allegations in the complaint are deemed admitted and that the Administrative Law Judge may enter a default (Pet. Ex. I). When respondents failed to appear at the hearing, the Commission submitted a copy of the notice of hearing and proof of service (Pet. Ex. I). Consequently, respondents were found to be in default with respect to not filing an answer to the complaint and not appearing at the hearing. In order to have the case re-opened so that they could present a defense on the merits, respondents were required to file a motion to vacate both their default on the answer and their default on the hearing under sections 2-27(b) and 1-45.

Section 2-27(b) provides that a respondent who has defaulted on the answer may move to vacate a default. To vacate a default a party must show (1) good cause for the conduct constituting the default, (2) good cause for the failure to oppose entry of the default in accordance with section 2-27(a), and (3) a meritorious defense to the petition. 48 RCNY § 2-27. Similarly, section 1-45 provides that respondent may move to vacate his default on the hearing. Although section 1-45 does not delineate the standard of review for a motion to vacate default, it has been established by a long line of our precedents. A motion to vacate a default on the hearing must include two showings: good cause for respondent's failure to appear and a meritorious defense to the petition. *E.g., Dep't of Correction v. Heyward*, OATH Index No. 2041/00 (July 18, 2000); *Transit Auth. v. O'Connell*, OATH Index No. 1076/91, mem. dec. (Nov. 8, 1991). While the standards of review differ slightly, they are in essence the same, with both requiring a showing of excusable neglect and a meritorious defense. In order to re-open this case, respondents must succeed on vacating their default on both the answer and the hearing.

Respondents filed a motion to vacate their default without distinguishing between their default on the answer and their default on the hearing. Respondents' motion asserted that they terminated Ms. Martin's tenancy on September 14, 2004 because she failed to renew her lease, and as such, she is not entitled to maintain her tenancy in the building, thereby making her ineligible for an accommodation. Respondents contended that it was their understanding that the proceeding would not be further prosecuted because Ms. Martin did not renew her lease. Respondents maintained that Ms. Martin's election not to renew her tenancy is both good cause for their failure to appear at the hearing and a meritorious defense to the complaint. Respondents did not explain their failure to answer the complaint or oppose the entry of the default. Therefore, respondents motion to vacate their default on the answer is denied.

Respondents' motion to vacate their default on the hearing is also denied based on the following reasons. In support of their motion to vacate, respondents attached a notice of termination of tenancy issued pursuant to the Rent Stabilization Code (ALJ Ex. 4). The notice is dated September 14, 2004, and indicates that on August 21, 2001, respondents offered to renew Ms. Martin's lease for a term of one or two years, at her option, to commence on December 1, 2001. The notice further sets forth that Ms. Martin did not sign the lease in violation of section 2523.5 of the Rent Stabilization Code, and as such she must vacate the premises before "October __, 2004".

The Commission's papers in opposition maintained that Ms. Martin moved into her apartment prior to July 1, 1971 and as such, her apartment is classified as rent controlled, not rent stabilized. Since the apartment is rent controlled, the Commission asserted that Ms. Martin is not required to sign a renewal lease (ALJ Ex. 6). Additionally, the Commission's papers set forth that on July 22, 2004, a letter was mailed to respondents notifying them that they failed to appear at the pre-trial conference held on July 19, 2004, and that a hearing was scheduled for August 19, 2004. Respondents received this letter on July 26, 2004, as evidenced by a signed return receipt (Pet. Ex. I). The Commission further maintained that on July 27, 2004, Michael Cohen, respondents' counsel, spoke with Gemini Nolan, a representative of the Commission. Mr. Cohen informed Ms. Nolan that he would speak to his clients and would either submit an answer to the complaint or a settlement proposal. Mr. Cohen never contacted the Commission again (ALJ Ex. 5).

Respondents must demonstrate excusable neglect and a meritorious defense in order to succeed in vacating a default. Respondents' assertion that they did not appear at the hearing because they terminated Ms. Martin's tenancy is insufficient. The hearing before me took place on August 19, 2004. Yet, remarkably, the notice of termination of tenancy is dated September 14, 2004, and is based on Ms. Martin's failure to sign a lease renewal in 2001. It appears that respondents were not motivated to terminate Ms. Martin's lease until 26 days after they defaulted in this proceeding.

Even if I were to accept counsel's argument that respondents failed to appear because the complainant's tenancy was terminated, it still does not constitute sufficient excusable neglect. Indeed, it is incomprehensible for an officer of the court to submit motion papers saying that he did not appear before a tribunal because he thought he did not have to, yet never attempt to confirm this with the tribunal or his adversary. I find respondents' reason for not appearing before this tribunal to be a calculated strategy rather than excusable neglect. Since respondents failed to demonstrate good cause for not appearing at the hearing, it is unnecessary for me to make a determination of whether respondents established a sufficient meritorious defense.

Respondents' motion to vacate is denied.

ANALYSIS

Respondent Hudson Overlook, LLC ("Hudson") is the owner of the multiple dwelling at 736 Riverside Drive, and Seth Miller is an officer of Hudson (Pet. Ex. H). The building is situated on

the southeast corner of Riverside Drive and 151st Street in Manhattan. The main entrance to the building is on Riverside Drive and has three steps from the sidewalk to the entrance doors. There are no stairs from the front entrance to the passenger elevator in the lobby. There is an additional entrance on the side of the building on 151st Street. At this entrance, there are two exterior stairs leading from the sidewalk to the entrance door and a half of a flight of stairs inside the entrance way. In addition, the sidewalk at the 151st Street entrance is steeply inclined (Pet. Exs. B, C; Tr. 15-16, 33-36).

Ms. Martin has resided at 736 Riverside Drive in apartment 3M since 1959. She is a 79-year old woman whose right leg was amputated below the knee in 2001. Ms. Martin is currently confined to a wheelchair and is unable to negotiate the stairs in front of her building. Her access from the lobby of the building to her apartment is unimpeded, provided that the elevator is in operation. On November 12, 2003, Ms. Martin's physician, Dr. Alan Benvenisty, sent a letter to ARC Realty Management, the management company for Hudson's properties, explaining that Ms. Martin had her leg amputated and was unable to walk. Dr. Benvenisty requested that a ramp be installed to accommodate her wheelchair. No one ever responded to this request. Four months later, Ms. Martin contacted the Commission to file a complaint (Pet. Ex. A; Tr. 19-20).

Ms. Martin testified via speaker phone because the elevator in her building was inexplicably out of service for a few hours the morning of August 19, 2004, coinciding with her attempt to appear at the hearing to testify against respondents. Since she was prevented from attending the hearing in person, she was allowed to testify via speaker phone (Tr. 14-15). She is unable to exit the building on her own accord as she can neither negotiate the stairs at the front entrance of the building nor can she open the front doors by herself. When she has medical appointments the ambulette driver tilts the wheelchair back and bumps her down the stairs. In order for Ms. Martin to leave her building on other occasions she must rely on the kindness of her friend, Henry Jones. When she wants to go out, she calls Mr. Jones, who lives in Jamaica, New York, to ask if he can come to help her. It takes between 45 and 90 minutes, depending on traffic, for Mr. Jones to drive from Queens to Ms. Martin's home in Manhattan. Moreover, Mr. Jones is 82 years old and is unable to maneuver the wheelchair down the stairs on his own. As a result, Ms. Martin and Mr. Jones are dependent on strangers passing by who are willing to assist them (Tr. 16-18, 26-28).

Ms. Martin testified that she feels depressed and upset because she can not leave her building freely and likened her situation to being in jail. She explained that she lives across the street from Riverside Park and would like to be able to go to the park and sit with neighbors. Ms. Martin has also been upset about her grandchildren having to stay cooped up in the apartment with her, rather than go outside to the park when they come to visit. Ms. Martin also testified that she is embarrassed to have to ask strangers to help her down the stairs. Ms. Martin suffers from hypertension, which is aggravated when she gets upset about her situation (Tr. 18-19, 23-25).

Ronald McLearnie, an architect for the United Spinal Association, made a site visit to 736 Riverside Drive and evaluated the entrance to determine if it could be made accessible to a disabled person. Mr. McLearnie found that it was feasible to construct a concrete ramp at the front entrance. He proposed constructing a ramp running north along Riverside Drive that would be 14 feet in length with a minimum width between the handrails of 36 inches. Mr. McLearnie created proposed plans for the reconfiguration and estimated the cost to be approximately \$15,000. He further testified that in the alternative, it may be possible to install a pre-fabricated aluminum ramp for half of that cost, subject to the Department of Transportation's approval of having the ramp protrude six feet into the sidewalk. (Pet. Exs. B, C, D, E, F, & G ; Tr. 29-37).

The Commission alleged that respondents have discriminated against Ms. Martin because of her disability. Section 8-102(16) of the Administrative Code, in pertinent part, defines disability as:

(a) . . . any physical, medical, mental or psychological impairment, or a history or record of such impairment.

(b) The term "physical, medical or mental, or psychological impairment" means:

(1) an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system.

Ms. Martin is confined to a wheelchair because her right leg was amputated below the knee. She suffers from a physical impairment as defined by section 8-102(16), and is therefore considered a person with a disability.

Section 8-107(5)(a)(2) of the Administrative Code provides that it is unlawful:

to discriminate against any person because of such person's . . . disability . . . in the terms, conditions and privileges of the sale, rental or lease of any . . . housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.

While section 8-107(5)(a)(2) prohibits discrimination, section 8-107(15)(a) imposes on landlords the duty to provide a reasonable accommodation for disabled tenants. Section 8-107(15)(a) in pertinent part provides:

[A]ny person prohibited by the provisions of this section from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to . . . enjoy the rights in question provided that the disability is known or should have been known to the covered entity.

See Torres v. Prince Management Corp., OATH Index No. 301/98 (Aug. 14, 1997), *aff'd*, Dec. & Ord. (Oct. 27, 1997), *aff'd*, NYLJ, July 29, 1998, at 22, col.5 (Sup. Ct. N.Y. Co.).

Respondents were informed of Ms. Martin's disability on November 12, 2003, when her doctor wrote to ARC Management explaining that due to the amputation of her leg, she was required to use a wheelchair. Her doctor requested that a ramp be installed to accommodate her. Based on the record before me, respondents totally ignored this request for an accommodation. They neither contacted complainant to discuss her needs nor provided her with an accommodation, which in this case is a ramp at the entrance of the building and entrance doors that she would be able to open while in her wheelchair. I find that respondents unlawfully discriminated against Ms. Martin by failing to provide her with a reasonable accommodation.

Section 8-120(a)(8) of the Administrative Code permits the Commission to award damages to complainants who suffer mental anguish because of discrimination. *See DaSilva v. New York City Racing Ass'n.*, Rec. Dec. & Ord. (Apr. 16, 1996), *aff'd* Dec. & Ord. (June 25, 1996) *aff'd sub. nom. N.Y. Racing Ass'n v. Comm'n on Human Rights*, N.Y.L.J. Jan. 10, 1997, at 25, col.4 (Sup. Ct. Queens Co.). Compensation for mental anguish may be awarded upon a sufficient showing of the

existence and extent of such injury, and the evidence must support a determination that "a reasonable person of average sensibilities could be fairly expected to suffer mental anguish from the incident." *Batavia Lodge No. 196 v. N.Y.S. Division of Human Rights*, 43 A.D.2d 807, 810, 350 N.Y.S.2d 273, 278 (4th Dept. 1973), *rev'd on other grounds*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974). Credible testimony by a complainant corroborated by reference to the circumstances can be sufficient to sustain an award for mental anguish. *New York City Transit Auth. v. N.Y.S. Division of Human Rights*, 78 N.Y.2d 207, 216, 573 N.Y.S.2d 49, 54 (1991).

Ms. Martin credibly testified that she is depressed about not being able to leave the building on her own accord. She explained that she would like to be able to go to the park across the street from her building to get fresh air and visit with neighbors or go to the store to buy something. Ms. Martin testified that she feels as though she is in jail because she does not have the ability to come and go as she wishes. She further expressed her embarrassment over having to ask strangers to assist Mr. Jones in carrying her wheelchair up and down the stairs. I find that a reasonable person of average sensibilities could be fairly expected to suffer mental anguish from not being able to leave her building on her own accord.

FINDINGS AND CONCLUSIONS

1. Respondents failed to file a verified answer to the complaint in accordance with section 1-14 of the Commission's rules.
2. Respondents were properly served with notice of the hearing scheduled on August 19, 2004.
3. Respondents failed to show sufficient excusable neglect to vacate their default.
4. Complainant is a person with a disability as defined in section 8-102(16) of the Administrative Code.
5. Petitioner proved that respondents have failed to provide Ms. Martin with a reasonable accommodation for her disability after receiving notice of and demand for such accommodation.

6. Ms. Martin suffered mental anguish from not being able to exit and enter her apartment building on her own accord.

RECOMMENDATION

I recommend that respondents be found in violation of sections 8-107(5)(a)(2) and 8-107(15)(a). I further recommend that respondents be ordered to reconfigure the stairs and install a ramp at the front entrance of 736 Riverside Drive, that is in compliance with the New York City Building Code. In addition, respondents should be ordered to replace or reconfigure the current front entrance doors with doors that would enable a person in a wheelchair to open them readily.

The Commission requested an award of \$20,000 for Ms. Martin's mental anguish. Ms. Martin's uncontested credible testimony was sufficient to establish that she has suffered mental anguish from not being able to exit and enter her apartment building on her own accord. A comparison of similar cases in which a wheelchair-bound tenant suffered discrimination by a landlord who refused to install a ramp, demonstrated that the awards for damages varied based on the amount of mental anguish the complainant suffered. In *Torres v. Prince Management Corp.*, OATH Index No. 301/98 (Aug. 14, 1997), *aff'd* Dec. & Ord. (Oct. 27, 1997), *aff'd* N.Y.L.J., July 29, 1998, at 22, col.5 (Sup. Ct. N.Y.Co. 1984), the landlord refused to provide 24-hour access to the building from the only entrance that had an existing ramp. Furthermore, the ramp, which led to the basement, was too steep and in poor condition, making it difficult for the mother of two disabled children to negotiate it. The area was poorly lit, which raised both security and safety concerns. The discrimination occurred over a period of two years and caused mental anguish to both of the children and their mother. The Commission there awarded damages in the amounts of \$10,000 and \$20,000 to the two children and \$40,000 to the mother.

In *Comm'n on Human Rights v. 325 Cooperative, Inc.*, OATH Index No. 1423/98 (Jan. 12, 1999), *modified on damages*, Dec. & Ord. (Feb. 24, 1999), a wheelchair-bound complainant requested that her cooperative board install a ramp. The board postponed action and then rejected her request. After two difficult years of debating and fighting, the board finally agreed that instead of a ramp, it would install an exterior elevator to take the complainant to the moat below the sidewalk, which would permit her to enter and exit through the basement. The Administrative Law

Judge found that complainant suffered emotional anguish and was entitled to \$10,000 in damages. The Commission modified the penalty, increasing it to \$15,000.

Here, Ms. Martin, through her doctor, notified her landlord about her disability and requested a ramp on November 12, 2003. When no one responded to the request, Ms. Martin filed a complaint with the Commission on March 12, 2004, four months after she requested a reasonable accommodation. Ms. Martin's situation differs from those in *Torres* and *325 Cooperative, Inc.* with respect to the length of time she suffered the discrimination, the nature of her interaction with the respondents, and the degree of emotional distress. Specifically, the complainants in those earlier cases endured the unlawful discriminatory treatment far longer, and that treatment involved acts of commission, as well as omission. Moreover, the complainants in *Torres* and *325 Cooperative, Inc.* established a far greater degree of emotional distress. Thus, an award of \$20,000 seems inappropriate in light of our precedent. As such, I recommend that respondents be ordered to compensate Ms. Martin for her mental anguish in the amount of \$10,000.

Finally, section 8-126(a) of the Administrative Code provides that the Commission may, to vindicate the public interest, impose a civil penalty of not more than \$50,000 upon a party found to be engaging in unlawful discrimination. In the present case, the Commission requested a civil penalty in the amount of \$20,000, based upon evidence of unlawful discrimination, rude behavior with Commission staff on the telephone, and respondents' failure to answer the complaint and appear before this tribunal. A number of factors should be considered in assessing a civil penalty, including the nature of respondents' conduct, whether they knowingly violated the Administrative Code, the number of rental apartments owned and offered on the market by respondent, and prior findings of discrimination against them. *See Comm'n on Human Rights v. Park West Realty*, Rec. Dec. & Ord. (Sep. 26, 1995), *aff'd* Dec. & Ord. (Dec. 12, 1995).

The record is devoid of information with respect to whether respondents knowingly violated the Administrative Code, the number of rental apartments owned and offered on the market, and prior findings of discrimination against them. I am, however, able to assess the nature of respondents' conduct, which consisted of them ignoring Ms. Martin's request for a reasonable accommodation, failing to answer the complaint, failing to appear before this tribunal, and an attempt to terminate her tenancy when they were found in default in this hearing. Although the

Commission asserted that being rude to Commission employees is another factor to consider when assessing civil penalties, I disagree. A civil penalty created to vindicate the public interest is not designed to address personal indignation over discourteous behavior to Commission staff.

It is clear that respondents have unlawfully discriminated against Ms. Martin by ignoring her request for an accommodation and failing to install a ramp. Yet, I find their failure to appear at trial and their behavior after trial to be as troubling as their unlawful discrimination. After being found in default, respondents, issued a notice to terminate complainant's tenancy based on Ms. Martin's failure to sign her lease three years earlier. It is fair to conclude that this attempt to terminate Ms. Martin's tenancy was in retaliation for her filing a complaint with the Commission.

Furthermore, respondents' inaction and subsequent refusal to participate in the process was evidence of their disregard for the public policies expressed by the Human Rights Law. Respondents not only have an obligation not to engage in unlawful discrimination, but also to acknowledge and address complainant's requests for a reasonable accommodation. It is in the public interest to have individuals respond and participate in a process designed to cure discriminatory practices in the City of New York.

While I find it appropriate to assess a civil penalty, the Commission's request for \$20,000 is inordinate based on the circumstances presented. Nonetheless, the penalty imposed should be sufficient to make it clear to respondents that their disregard for the Human Rights Law will not be tolerated. Accordingly, I recommend imposition of a civil penalty in the amount of \$5,000.

Kara J. Miller
Administrative Law Judge

January 20, 2005

SUBMITTED TO:

PATRICIA GATLING
Commissioner

APPEARANCES:

AVERY S. MEHLMAN, ESQ.
GEMINI NOLAN, ESQ.
Attorneys for Petitioner

GREEN & COHEN, P.C.
Attorneys for Respondent
BY: MICHAEL R. COHEN, ESQ.

Commission on Human Rights' Decision, March 23, 2005

DECISION AND ORDER

On March 12, 2004, the petitioner filed a Verified Complaint with the New York City Commission on Human Rights (hereafter referred to as the "Commission") alleging violations of the Administrative Code of the City of New York. The complaint alleged that the petitioner (who had her right leg amputated below the knee and requires the assistance of a wheelchair for mobility) requested a reasonable accommodation from the respondent housing provider and the respondent failed to provide the accommodation.

The respondent also failed to submit an answer to the Verified Complaint or otherwise cooperate with the Commission's investigation, resulting in the case being referred to the Office of Administrative Trials and Hearings. Despite notice of the dates for a pre-trial conference and a trial, including telephone conversations with the Commission's staff attorney assigned to the matter, the respondent failed to appear at either.

On August 19, 2004, Administrative Law Judge Kara Miller heard testimony presented by the Commission on behalf of the petitioner. The individuals who testified included, the petitioner (who was required to testify via telephone due to the sudden inoperability of her building's elevator on the morning she was to appear), an elderly friend of the petitioner, Mr. Henry Jones, who would drive from Queens to assist the petitioner in and out of her building (Mr. Jones is in his 80s and would have to ask a passing stranger to assist in bringing the wheelchair up and down the stairs), and Mr. Ronald McLearn, an architect associated with the United Spinal Association. Mr. McLearn

testified that the cost of building a ramp at the front entrance of the petitioner's building would be approximately \$15,000.

Administrative Law Judge Kara Miller issued a Report and Recommendation on January 20, 2005. The Report and Recommendation provided a detailed analysis regarding the respondent's default in this matter, both in their failure to answer the complaint and their failure to appear at the hearing. The Commission agrees that the respondent had knowledge of all the proceedings in this matter, failed to state good cause for their lack of appearance, and completely failed to establish a meritorious defense. ALJ Miller's denial of the respondent's motion to vacate was justified based upon the record.

The Administrative Law Judge recommended that the Commission direct the respondent to make the front entrance to 736 Riverside Drive accessible, pay the petitioner \$10,000 in compensatory damages, and pay a fine in the amount of \$5,000. The Commission believes that the findings and recommendations completely appropriate and adopts them.

The credible testimony established that Ms. Martin is disabled, in that the lower half of her right leg was amputated requiring that she use a wheelchair for mobility. Ms. Martin testified about how she is essentially trapped in her apartment since there are three steps at the entrance of her building, which prevent her from entering and exiting without assistance. She testified that she requested that the respondent build a ramp in front of the building and included medical documentation; however, the respondent ignored her request. She testified that the respondent's failure to provide her with an accommodation has had a negative impact on her life since she is unable to exit her building to sit in Riverside Park and talk with her neighbors and is unable to bring her grandchildren to the park so they can play. Instead her grandchildren are also trapped in the apartment during their weekly visits. Ms. Martin testified that she has a friend (Mr. Jones) who will drive to Manhattan from Queens and assist her. Her friend, however, is elderly and is unable to negotiate the three stairs without additional assistance, requiring that he ask a stranger passing by for help. Ms. Martin testified that this creates additional tension and embarrassment for her.

Mr. Henry Jones corroborated Ms. Martin's testimony with regard to his assistance getting her in and out of the building, that he would drive from Queens when she called (sometimes taking as much as an hour and a half to arrive), and that he would have to ask passing strangers for assistance since he was unable to lift Ms. Martin up and down the stairs on his own.

In addition, the Commission called an architect, Mr. Ronald McLearie, who is an employee of the United Spinal Association. Mr. McLearie testified that he and other members of the staff at the United Spinal Association examined the feasibility of building a ramp at the front entrance of 736 Riverside Drive. In his opinion, a concrete ramp could be built for approximately \$15,000. During his testimony Mr. McLearie referenced a ramp constructed at an adjoining building. All

witnesses indicated that the only obstruction to accessibility at this building were the three steps at the main entrance on Riverside Drive. Ms. Martin also testified with regard to the amount of force necessary to open the front doors; neither the testimony of Mr. McLearn nor the Report and Recommendation make specific reference to the doors.

As indicated above, after hearing the testimony, reviewing the record and applicable law, as well as prior Commission decisions; Administrative Law Judge Miller recommended that the Commission Order the respondent to make the front entrance at 736 Riverside Drive accessible, pay the complainant \$10,000 in compensatory damages for her pain and suffering as the result of being trapped in her apartment, and to pay a fine in the amount of \$5,000 to the City. The rationale for the fine relates to the respondent's failure to acknowledge or respond to the petitioner's request for an accommodation and their failure to respond to the Commission's complaint or to cooperate with the investigation.

The New York City Human Rights Law requires that the provider of a housing accommodation make reasonable modifications to the property to allow a disabled individual to enjoy the benefits of the accommodation. Factors to be considered when determining the reasonableness of an accommodation include the need for the accommodation, its feasibility, and the cost compared to the solvency of the owner. The testimony of Ms. Martin and Mr. Jones establish the need, the testimony of Mr. McLearn established the feasibility and absent any evidence that making the entrance to 736 Riverside Drive accessible would create an undue hardship on the respondent; it is hereby

ORDERED, that the respondent make the entrance to 735 Riverside Drive accessible, pay Ms. Martin \$10,000 in compensatory damages, and pay a fine in the amount of \$5,000 to the City of New York.

Failure to abide by this Order may result in penalties authorized by section 8-124 of the Administrative Code of the City of New York.

Dated: New York, New York

March 23, 2005

SO ORDERED:
New York City Commission on Human Rights

RABBI HASKEL LOOKSTEIN, *Commissioner*, Commission on Human Rights

DR. EDISON O. JACKSON, *Commissioner*, Commission on Human Rights

REVEREND DR. CALVIN BUTTS, *Commissioner*, Commissioner on Human Rights