

In true Montana spirit, the Chuckwagon...the newsletter to fill your fair housing appetite.



The Chuckwagon

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MONTANA FAIR HOUSING

Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive . . .

THE RILEY CASE:

United States/MFH/Newman vs. Jaclyn Katz and All Real Estate Services in MT

In August 2012, based on discussions with her health care providers, Kristen Newman acquired a dog named Riley to act as a service dog. Riley performs tasks that help Ms. Newman cope with the adverse effects of her disability.

In November 2012, Ms. Newman sought to rent an apartment and contacted Jaclyn Katz, a Bozeman real estate broker and sole owner of a property management company, All Real Estate Services in Montana. In her initial contacts, Ms. Newman advised Defendant Katz that she owned two dogs and one cat, and that Riley, born in May 2012, was a service animal, and was in training to perform special tasks to help Ms. Newman.

At that time, Katz and her company required a deposit of \$250 per dog and \$100 per cat. As a condition of renting an apartment, Defendants said they would only agree to rent to Kristen if she paid a \$1,000 deposit for her service dog Riley, with the excess refundable when Riley turned one year old, if Riley had not caused damage.

Katz was told about Kristen's disability and that Riley was a service dog. Katz did not, then or later, question whether Ms. Newman had a disability or whether Riley was her service animal, and did not request any documentation. Katz testified that she believed Kristen Newman.

In considering whether to finally rent the apartment,

Kristen told Katz that the law did not allow a landlord to charge a pet deposit for a service animal. Katz told Ms. Newman "her rules are the rules to be followed, not the law." Katz refused to rent to Newman without the \$1,000 deposit. When Newman expressed hesitancy about renting under those conditions, Katz threatened to sue her if she did not go through with the rental. In the end, Newman decided to pay the large deposit and move in, but felt coerced into doing so.

Kristen Newman moved into the unit on or about the first week of December. Almost a month later, she was finally shown the ARESM-Katz lease and rules. The option was either sign or face a 30-day notice in mid-winter. Under the "Lease-Rental Agreement" between Ms. Newman and ARESM, the rent was \$825 per month, plus a security deposit of \$825, plus an additional deposit of \$1,000 for Riley, identified as a service dog, and \$350 for the other animals.

The written "Lease-Rental Agreement" contained a provision in which Ms. Katz asserted the right to charge Ms. Newman \$100 for "wasting manager's time" and then listed ten examples of conduct that would give rise to such a penalty. Examples included failing to return Katz' phone calls within 24 hours and a \$100/hr charge for undefined "other abuses of manager's time."

Riley turned a year old in May of 2013. Defendants did not refund any of the \$1,000 deposit for Riley at that time.

During 2013, a dog trainer made regular visits to Ms. Newman's apartment to train Riley in her service functions.

On or about September 4, 2013, Ms. Katz sent notice raising the pet deposits to \$250 per cat, and to \$300 per dog. Ms. Newman's copy had a handwritten note, "Please call me about your younger dog."

On September 10, 2013, Ms. Newman sent a letter to Ms. Katz that she prepared with the assistance of Disability Rights Montana. The letter requested that Ms. Katz refund the entire \$1000 deposit for Riley after inspecting the apartment for damage. The letter also informed Ms. Katz that the law prohibited Katz from charging a deposit for

Riley because Riley was a service dog, and it included supporting materials describing the relevant provision of the law. The letter asked that the increased deposit for the other animals be deducted from the \$1,000 refund.

After receiving Kristen's letter, Katz left a voice mail message for Ms. Newman instructing her to call Ms. Katz back and warning that if Ms. Newman did not do so within 24 hours, she would be charged \$100. When Ms. Newman returned the call, Ms. Katz said she took the letter as "threatening her with the law" and if she felt threatened "she would evict" Kristen.

They arranged a walk-through inspection for later in September. Kristen arranged for a representative from Disability Rights Montana to be present. After inspecting the apartment, Ms. Katz refused to return the full \$1,000 deposit paid for Riley and said Kristen had to pay the usual pet deposit for her service dog. Objections by Kristen and the Disability Rights representative were ignored, with Katz dismissing the issue by saying a "dog is a dog" and that "no dog is going to live in one of my apartments without a deposit." The remarks echoed the ARESM lease and rules that state "ONLY animals for which Manager is holding a DEPOSIT are allowed anywhere on the property, i.e., interior, exterior, in a car, etc.," with a promise to seize any animal in violation of that rule. Katz threatened to evict Newman if she failed to pay a \$300 deposit for Riley. Kristen went forward and paid the deposit, specifically noting that Katz was charging Kristen for her service dog.

As a result of the continuing conduct of Katz and her company, Kristen decided she had to move, and to do so by the end of November. Newman gave Defendants' notice on October 28, 2013.

In September 2013, after Katz' hostile response to Kristen's letter providing fair housing information, Newman contacted Montana Fair Housing seeking advice, counseling, assistance and aid in exercising her fair housing rights and in dealing with Defendants. On October 31, 2013, Ms. Newman made a written request, with the concurrence of her health care providers, for a reasonable accommodation asking that all communications from Katz go through an intermediary, Pam Bean, the executive director of Montana Fair Housing. Kristen faxed the request to Ms. Katz on that date.

Katz responded the same day and left a voice mail stating she was going to "disregard" the accommodation request, telling Kristen to contact her, and reminding Kristen of the 24-hour rule in the lease. Katz then did a followup message to Kristen the next day, again telling her to contact her and referencing once again the 24-hour rule.

On November 1, 2013, Montana Fair Housing faxed a letter to Ms. Katz reiterating the request for accommodation and insisting that Katz direct any communications concerning Kristen to Pam Bean. When

Bean and Katz connected by phone on November 4, Katz warned that it was her practice to charge \$100 to accommodate tenants, indicating she would charge Newman and/or Montana Fair Housing \$100 per hour for time she spent accommodating Kristen's request to use an intermediary.

In December of 2013 both Newman and MFH filed complaints of housing discrimination with the Department of Housing and Urban Development (HUD). HUD investigated the allegations, determined the evidence showed reasonable cause to believe there were violations of fair housing laws by Katz and ARESM, and ultimately charged Defendants with unlawful housing discrimination. Defendants then elected to move the case to federal court.

The United States filed its complaint against Katz and ARESM in October 2014. MFH and Newman filed their complaint in intervention in January 2015, adding claims that Defendants' practices also violated the Montana Human Rights Act.

In May 2015, Defendants filed a counter claim against MFH and Newman attempting to collect "Penalties For Wasting Managers' Time At A Rate Of \$100" per hour for filing the complaints of housing discrimination. The Court dismissed the counterclaim in September 2015, finding it was legally baseless.

In May 2017, following a seven-day trial, a jury issued verdicts stating Defendants violated the Federal Fair Housing Act and the Montana Human Rights Act by failing to make a reasonable accommodation. They deliberated over a two-day period. The jury awarded Newman \$11,043.50 and MFH \$6,300.00 in compensatory damages. Newman and MFH also were awarded over \$6,000 to reimburse them for specific court costs.

In addition, the jury awarded Newman \$20,000 in punitive damages because Katz acted with "reckless disregard" of her obligations under federal law. Evidence presented at trial showed that Katz had personally attended a state-approved session on fair housing laws. During this training, Katz was advised landlords and property managers were not allowed to charge for a service animal needed as an accommodation for a person with a disability. Katz attended that training well before ever renting to Newman.

An appeal to the United States Ninth Circuit Court was filed, and as a result of that action, mediation occurred in November. Mediation efforts resulted in Katz and ARESM agreeing to pay plaintiffs \$192,500 in settlement of all claims, the implementation and distribution of a nondiscrimination policy that includes a policy for requesting and reviewing requests for reasonable accommodations and modifications, and revision of the condominium by-laws to include a nondiscrimination statement.

The Court had previously denied Defendants' motion for fees and costs, as well as their motion for a new trial.

This was the first decision in the United States addressing charges for a request for a reasonable accommodation for a service animal.

Montana Fair Housing, et. al. vs. Blackstone Properties, LLC., Crowley, & Powell

In January of 2017, MFH and an individual complainant filed an administrative complaint with the Department of Housing and Urban Development against Blackstone Properties, John Crowley and Karen Powell.

The individual complainant had requested a reasonable accommodation for a dog to assist her with her disability-related needs. The resident of the Blackstone Apartments in Helena had submitted multiple requests that were denied before MFH contacted the Respondents on September 30, 2016.

The Respondents again denied the request after reviewing information provided by MFH, indicating the request was a fundamental alteration of policies and an undue burden because of the allergies of two other residents. According to Respondents, approving the animal would mean the Respondents would be required to complete additional daily cleaning of common hallways and the elevator, and would pose a "direct threat" to the health of the other tenants that could not be reduced or eliminated.

Respondents allegedly indicated in previous denials that they had had a bad experience related to a tenant with a dog who did not take the animal outside to use the bathroom. Respondents suggested the tenant get a cat instead of a dog, but the complainant is allergic to cats and also needed assistance for physical limitations a cat could not provide. Respondents then offered the resident a unit in another building that allows dogs. That building was much further away from the resident's employment location and needed services (creating a hardship for the resident as the household does not have a vehicle). The alternative unit offered was also allegedly not as well maintained as the resident's current unit and building.

After filing of the complaints, HUD initiated an investigation and ultimately the complaints were conciliated in January 2018. Respondents agreed to implement and distribute a nondiscrimination policy including provisions addressing requests for reasonable accommodations and modifications for persons with disabilities, attend training on federal and state nondiscrimination laws, post fair housing materials in common areas, distribute information on fair housing to current residents and applicants, cease any efforts bringing actions against the resident, and pay to MFH and the individual complainant \$7,500.

US Department of Housing & Urban Development, et. al. v. Richmond Housing Authority in Richmond, California

According to an announcement sent from the Washington, DC Headquarters in January, the U.S. Department of Housing and Urban Development reached a conciliation agreement with the Richmond Housing Authority (RHA) in Richmond, California, settling allegations that it discriminated against a resident with disabilities.

The agreement followed filing of a complaint in March 2017, by a resident with a disability alleging that the Richmond Housing Authority failed to renew his Housing Choice Voucher before it expired. The announcement added that, "According to the complaint, the resident submitted a request to have their voucher renewed before it expired, but the housing authority thought that he did not want the voucher renewed. The complaint alleged the Bay Area Legal Aid, a HUD Fair Housing Initiatives Program agency, sent several letters and emails to the housing authority requesting that it reinstate the voucher as a reasonable accommodation, since any miscommunication may have been due to the resident's disability, but the housing authority refused. As a result, the resident was forced to place his belongings in storage and live in homeless shelters and with relatives."

According to the agreement, the Richmond Housing Authority paid the resident \$5,833 covering the costs the residence incurred for storage fees, and the household received a Housing Choice Voucher. Housing Authority staff are also required to attend training on fair housing.

Discrimination in housing occurs when a housing provider makes a decision about a consumer's eligibility for services based on the consumer's protected class status.

A housing provider cannot deny a household services nor place different terms and conditions on that household **BECAUSE OF** membership in a protected class.

Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment and protections for victims of Domestic Violence), Familial Status (presence of children under the age of 18 or pregnancy), and/or Disability (Mental or Physical, including requests for reasonable accommodations and reasonable modifications). Fair Housing laws require owners, developers, architects, and contractors to design and construct multi-family housing of four or more units to be adaptable and accessible for persons using a wheelchair for mobility, if constructed for first occupancy after March of 1991.

In the state of Montana, in addition to the federally protected classes, it is a violation of the state's Human Rights Act to discriminate in housing related transactions based on marital status, age, and/or creed. Local ordinances in Montana also prohibit discrimination against additional protected class members.

*For More Information about Discrimination in Housing, or to File a Complaint, contact **Montana Fair Housing** at:*

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