

**COMMISSION AGENDA:**  
6.15.10 # 28

TO: The Honorable Chairman and Members of the Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Authority for County Attorney to Initiate Housing Discrimination Litigation On Behalf of *Joanne Bock-Ackerman in the Claim of Joanne Bock-Ackerman v. Countryside Pines Homeowners' Association, Inc.*  
HUD Case #04-09-1479-8; PC #09-040

DATE: June 15, 2010

RECOMMENDATION: IT IS RECOMMENDED THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY'S OFFICE TO INITIATE LITIGATION ON BEHALF OF JOANNE BOCK-ACKERMAN IN THE ABOVE-STYLED FAIR HOUSING COMPLAINT.

DISCUSSION: On August 20, 2009, Ms. Bock-Ackerman filed a complaint of unlawful housing discrimination with the U.S. Department of Housing and Urban Development (HUD). In accordance with the agreement between HUD and the Pinellas County Office of Human Rights (PCOHR), the complaint was forwarded to PCOHR for further handling and investigation.

Specifically, Ms. Bock-Ackerman alleged that Respondent, Countryside Pines Homeowners' Association, Inc., attempted to interfere with, coerce, or intimidate her in the operation of a small group home for disabled/handicapped persons. Among the actions alleged by Ms. Bock-Ackerman were letters from the Respondent, or its agents, demanding that she cease operating her group home, and letters demanding that she participate in pre-suit mediation or face a lawsuit.

Following an investigation, on May 27, 2010, the PCOHR notified the parties of its finding of reasonable cause to believe that Ms. Bock-Ackerman was the victim of housing discrimination, in violation of the relevant provisions of the *Fair Housing Act Amendments of 1988* and the *Pinellas County Code*. Attempts to conciliate the matter were unsuccessful.

In accordance with Section 70-146 of the *Pinellas County Code*, the County Attorney's Office is required to file a civil action on behalf of an aggrieved party, seeking appropriate relief following the issuance of a reasonable cause determination. Therefore, it is recommended that the Board of County Commissioners authorize the County Attorney's Office to initiate such civil action through the existing contract with Gulfcoast Legal Services, Inc.

A detailed memorandum is attached which sets forth the facts and applicable case law which led to the reasonable cause determination.

JLB/WCF/sr  
Attachment

## MEMORANDUM

**TO:** Leon Russell, Human Rights/EEO Officer

**FROM:** William C. Falkner, Senior Assistant County Attorney *WCF*

**RE:** Joanne Bock-Ackerman v. Countryside Pines Homeowners' Association  
Case No.: 04-09-1479-8; PC-09-040

**DATE:** May 11, 2010

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I have been asked to review the Final Investigative Report and supporting documentation regarding the above-styled fair housing complaint, and to render an opinion as to whether there is a legal basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination. Briefly, it is my legal opinion that there is a legal basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3617, and a similar provision located in Chapter 70 of the *Pinellas County Code*, Section 70-183.

### SUMMARY OF FACTS

On August 20, 2009, the Complainant, Joanne Bock-Ackerman, filed a charge of unlawful discrimination in housing with the U.S. Department of Housing and Urban Development (HUD). The focus of her charge was an alleged violation of 42 U.S.C. § 3617 of the *FHAA*, which prohibits interference, coercion, intimidation, or threats against a person in the exercise of their rights protected under the *FHAA*. In accordance with its work-sharing agreement with Pinellas County, HUD referred the complaint to the Pinellas County Office of Human Rights (PCOHR) for investigation and handling.

In her charge of discrimination, Ms. Bock-Ackerman alleged that she was harassed and intimidated by the Countryside Pines Homeowners' Association (HOA), Inc., due to her operating her residence as a small assisted living facility (ALF). The Complainant has owned the property at 2542 Countryside Pines Drive since 2006, when she inherited it. In 2007, the Complainant began converting her residence into a small ALF known as "Immaculate House at Countryside."

In a letter dated September 23, 2007, on letterhead reflecting "Countryside Pines HOA," Jerry Collis, who listed himself as the President of the HOA, advised the Complainant that she had broken one of the provisions in the Countryside Pines HOA Declaration of Covenants, Conditions, and Restrictions, by making changes to her house without getting

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the approval of her construction plans by the HOA's Board of Directors. Subsequently, in letters dated March 25, 2008 and December 12, 2008, a Lennard A. Leighton, who identified himself as the Vice President and CEO of Seaboard Arbors Management Services, Inc., acting on behalf of Countryside Pines HOA, demanded that the Complainant cease operating her ALF. The letters cited to language in the HOA's Declaration of Covenants, Conditions, and Restrictions, prohibiting members from using their property for business, commercial, or non-residential purposes.

The Complainant stated that the Countryside Pines HOA's President, Mr. Collis, personally knew her from a previous business association, and that he knew of her brother's disabling physical condition (Parkinson's disease). The Complainant's disabled brother and three other disabled adults reside in the Complainant's small ALF. The Complainant's residence was registered by and was issued a certificate for operation as an assisted living facility on February 8, 2008 from the Florida Agency for Healthcare Administration.

After she sought legal counsel regarding the above notices from Collis and the management services company, the Complainant continued to operate her small ALF out of her residence. Subsequently, in a letter dated May 5, 2009, an attorney representing the Countryside Pines HOA, Inc., wrote the Complainant demanding that she enter into a "pre-suit mediation." The letter alleged that the Complainant violated the Countryside Pines HOA Declaration of Covenants, Conditions, and Restrictions, and specifically cited Article XIII, USE RESTRICTIONS, Section 2, by operating an assisted living facility. The letter demanded the Complainant participate in a mediation regarding the disputed issue or face a lawsuit.

Later, on July 7, 2009, the same attorney, again stating he represented the Respondent, wrote the Complainant and made a settlement offer to the Complainant regarding the charge being investigated by PCOHR. The offer provided that in exchange for her withdrawal of her charge of discrimination and her relinquishment of any interest in a corporation known as CPR Homeowners' Association, Inc., the Respondent would forego its enforcement of the deed restriction violation cited in the previous correspondence discussed above.

The Complainant stated that she believes the Respondent HOA's President, Mr. Collis, initiated two "anonymous" complaints that were filed against her residence with the Pinellas County Code Enforcement Division in March and November of 2008. The complaints alleged that Ms. Bock-Ackerman was in violation of code requirements concerning the operation of an ALF within 500 ft. of single family residences and the

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requirement for a special exemption from the County Board of Adjustment to operate an ALF.

Although the Complaints filed with the County's Code Enforcement Division appeared to her to be "anonymous," the County's Code Enforcement Officer responsible for investigating the complaints told the PCOHR investigator that the November 2008 complaint was received in an e-mail from Mr. Collis, and that in that same e-mail he stated he knew about the March 2008 e-mail complaint. Both of the complaints were subsequently closed by the County's Code Enforcement Division which found no violations.

In the response filed by the Respondent through its attorney, Joseph R. Cianfrone, the Respondent accused the Complainant of making a complaint against an entity which does not exist. Additionally, the Respondent alleged that since the Complainant was owner of a corporation known as CPR Homeowners' Association, Inc., which in years past had been the entity responsible for the administration of Countryside Pines, she actually was filing a complaint against herself.

Also in correspondence from its attorney, the Respondent argued that it had taken no actions against the Complainant whatsoever, and that her complaint was premature and unfounded.<sup>1</sup>

#### **APPLICABLE LAW**

The allegations set forth in the Complainant's charges allege a violation of the *FHAA*, 42 U.S.C. § 3617, which reads, in pertinent part, as follows:

**"Sec. 3617 - Interference, coercion, or intimidation; enforcement by civil action.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any

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<sup>1</sup> One of the complicating and aggravating aspects of this complaint is that the attorney for the Respondent, Joseph Cianfrone, has previously been involved in a similar case involving the Complainant and another ALF she operated. The Complainant received an almost identical letter from the attorney on behalf of the Homeowners' Association in that case, another demand for pre-suit mediation, which resulted in her filing a fair housing complaint against that Homeowners' Association in 2008.

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other person in the exercise or enjoyment of, any right granted or protected by Sec. 803, 804, 805, or 806 of this title.”

A similar provision is contained at Chapter 70 of the *Pinellas County Code*, § 70-183, which reads as follows:

**“Sec. 70-183. Interference, coercion, or intimidation.**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this subdivision.”

**ANALYSIS**

To establish a claim of interference, coercion, or intimidation under the *FHAA*, a Complainant must provide proof of the following elements:

- (1) That the Complainant was engaged in an activity protected by the Act;
- (2) That the Respondent took some adverse action against the Complainant; and
- (3) That a causal connection existed between the protected activity and Respondent's adverse action.

*Walker v. City of Lakewood*, 272 F. 3d 1114, 1128 (9<sup>th</sup> Cir. 2001), *cert. denied*, 122 S. Ct. 1607 (2002); *Hall v. Lowder Realty Co., Inc.*, 160 F. Supp. 2d 1299, 1322 (N.D. Ala. 2001).

The Complainant stated that she was engaged in an activity protected by the *FHAA* and Chapter 70 of the *Pinellas County Code* by her operation of a small group home/ALF. Case law has recognized that the operation of a group home is a protected activity under the *FHAA*, *U.S. v. Wagner*, 940 F. Supp. 972, 978 (N.D. Tex. 1996). Additionally, courts

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have found that use of deed restrictions to interfere with the operation of group homes for the disabled violates the *FHAA*, *Id.* at 979.<sup>2</sup>

Based upon the above, and since the Respondent has not challenged the Complainant's position that she was engaged in a protected activity, it is my legal opinion that the Complainant satisfied the first required element for her prima facie complaint.

The second required prima facie element is a showing that the Respondent took some adverse action against the Complainant. The Respondent has argued, through correspondence from its attorney, that it took no action against the Complainant. However, the evidence in the investigative file reflects otherwise.

For example, on May 5, 2009, the Respondent, through its attorney, sent a letter via certified mail demanding that the Complainant engage in mandatory pre-suit mediation related to its contention that the Complainant's operation of her ALF constituted a "commercial business" in violation of the Countryside Pines Declaration of Covenants, Conditions, and Restrictions. That letter plainly stated that the Complainant's failure to participate in the mediation process would result in a lawsuit being filed against her.

Additionally, the same attorney, on July 7, 2009, sent the Complainant a letter stating that the Respondent would not pursue enforcement of its deed restriction prohibiting "commercial uses" of her property if she would withdraw her housing complaint filed with the PCOHR, and relinquish her interest in CPR Homeowners Association, Inc.

It is my legal opinion that the above letters, particularly the letter dated May 5, 2009, demanding that the Complainant participate in pre-suit mediation, satisfy the requirement of an adverse action. The Respondent's contentions to the contrary are at best disingenuous, and border on outright misrepresentation.

Clearly, the Complainant felt threatened, as would any other reasonable person under her circumstances, by the Respondent's letter to her demanding that she participate in pre-suit mediation. The letter resulted in the Complainant seeking legal counsel in order to ascertain and protect her legal interests. Also, the Complainant perceived a serious threat

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<sup>2</sup> Interestingly, the legislative history of the *FHAA* reflects that Congress specifically intended the Act to prohibit special restrictive covenants or other terms and conditions that would exclude, among other things, congregate living arrangements for persons with handicaps, *U.S. V. Scott*, 788 F. Supp. 1555, 1561 (D. Kan. 1992). It is also worth noting that in 2002 the Florida Second District Court of Appeal held that an attempt to enforce a deed restriction to block operation of a community group home was an unlawful discriminatory act, *Dornback v. Holley*, 854 So. 2d 211, 213 (2<sup>nd</sup> DCA 2002).

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to her ability to continue operating her ALF. Additionally, the Complainant properly viewed the Respondent's second letter as an implied threat to continue pursuing its enforcement of the deed restrictions against her unless she agreed to its stated settlement terms.

Furthermore, several actions taken by the Respondent prior to the letters mentioned above support a finding that the Respondent took adverse action against the Complainant. For example, in September 2007, the Respondent's President, Jerry Collis, wrote the Complainant a letter charging her with violating the HOA's Declaration of Covenants, Conditions, and Restrictions by engaging in construction connected to her use of her property as a group home, without first getting approval by the Association's Board of Directors.<sup>3</sup> In March 2008, the Vice President/CEO of what was then evidently the HOA's management company wrote the Complainant a letter asking her to immediately stop using her home as an ALF. The same individual sent the Complainant a certified letter in December 2008 demanding that she cease operating her ALF or face legal action. Finally, the Respondent's President, Mr. Collis, evidently filed a complaint with the Pinellas County Code Enforcement Division, via e-mail, alleging that the Complainant's ALF was operating in violation of the County's zoning ordinance. That complaint, as well as an earlier "anonymous" similar complaint, were both closed by the Code Enforcement Division without a finding of a violation.

The determination of whether the Respondent took adverse action against the Complainant requires consideration of the Respondent's position that no such corporation as the Countryside Pines HOA existed. The correspondence from the Respondent's attorney posited that the CPR Homeowners Association was actually the entity responsible for the administration of Countryside Pines community, and that that entity was administratively dissolved years ago for failure to file an annual report. The Respondent further argued that since the Complainant formed another corporation by the same name, CPR Homeowners Association, in 2008, and since the Complainant is a Director of that newly formed CPR Homeowners Association, the Complainant actually was making her complaint against herself.

However, the argument made by the Respondent through the attorney's letter is incongruous, and actually suggests deception. Although he postulated that Countryside Pines HOA did not exist, the attorney made it abundantly clear in his correspondence that

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<sup>3</sup> The Complainant alleged that at the time the HOA sent her this letter, it had no architectural review board and had no published standards of architectural control. Additionally, the Complainant had its building permits openly displayed on her property, and her conversion of her garage had been approved by the County Building Department.

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he represented (and continues to do so) this "non-existent" corporation. Incredibly, he provided copies of his correspondence to this "non-existent" client, and he demanded that the Complainant participate in pre-suit mediation with this "non-existent" client.

Considering all of the above, it is my legal opinion that the Respondent took sufficient adverse action against the Complainant to satisfy the second requirement for her prima facie complaint.

The final required element for the Complainant's prima facie case is a causal connection between the Complainant's protected activity and the Respondent's adverse actions. The undisputed facts in the case appear to satisfy this required element.

It is undisputed that the Complainant operated, and still does, a small ALF out of her residence. As previously discussed, the Complainant's operation of the ALF for disabled persons is protected by the *FHAA*. The Respondent's adverse actions, including the letter demanding that the Complainant participate in pre-suit mediation, and the letter offering to forego its pursuit of enforcement of its deed restrictions against the Complainant if she took certain actions, including the withdrawal of her housing complaint, were plainly and directly connected to the Complainant's operation of her small ALF. Therefore, the Complainant has established a prima facie complaint of interference, coercion, or intimidation in the exercise of her rights under the *FHAA*.<sup>4</sup>

In light of all the foregoing, it is my legal opinion that there is a legally sufficient basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination in violation of 42 U.S.C. § 3617 of the *FHAA*, and a similar provision found at § 70-183, of the *Pinellas County Code*.

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<sup>4</sup> Although not listed in the Complainant's charge, case law suggests that the Respondent's attempts at enforcement of its deed restriction to block the operation of Complainant's group home may also be a violation of 42 USC § 3604(f)(3)(B), which prohibits refusals to make a reasonable accommodation where it is needed to enable disabled persons to enjoy their dwellings (see *Advocacy Center For Persons With Disabilities v. Woodlands Estates Association, Inc.*, 192 F.Supp.2d 1344 (M.D.Fla.2002)).