

IN THE MATTER OF THE ARBITRATION BETWEEN  
SHELDON PARK TENANTS AND  
ALLEGHENY COUNTY HOUSING AUTHORITY  
CASE NUMBER 55-E115-0070-89

ARBITRATOR:  
ALEXANDER BLACK, ESQUIRE

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## STATEMENT OF FACTS

On or about September 15, 1988, claimants received a notice from management of the Sheldon Park project that all pets must be removed from their property within thirty days. Tenants were notified that failure to do so would be considered a direct violation of their dwelling Lease (hereinafter Lease) and that further legal measures would follow. On or about October 14, 1988, claimants received a "Notice of Lease Termination" indicating that they had failed to comply with the terms of their Lease and the "rules" of the Allegheny County Housing Authority (hereinafter ACHA) in that they had kept pets on the premises. The notice stated that tenants could arrange for an informal grievance discussion and included a provision threatening eviction.

Prior to receipt of these notices, claimants had, for many years, possessed common household pets on their premises. No prior attempts had ever been made to enforce alleged "no pet" rules at Sheldon Park. Tenants had been permitted to move on to the premises with pets, replace pets when they died, or to obtain pets after moving in. Tenants were never given any "rules" prohibiting pets and no "rules" prohibiting pets were ever posted at the Sheldon Park rental office.

Over the years, tenants relied on their pets for security purposes and for support and companionship. They relied justifiably on the policy at Sheldon Park allowing pets at that project site.

With the recent change in policy of ACHA, claimants have been damaged.

## PROCEDURAL HISTORY

Claimants incorporate by reference the procedural history provided at Hearing on October 2, 1989 as it set forth at length herein.

### POINT ONE

THE ACHA HAS FAILED TO FULFILL A CONDITION OF ITS OWN LEASE BY FAILING TO PROMULGATE "RULES OF HOUSING AUTHORITY PROHIBITING TENANT TO HAVE ANIMALS SUCH AS DOGS, CATS IN THEIR APARTMENTS OR ON THE PROJECTS " AND, THUS, IS PRECLUDED FROM ENFORCING A NO-PETS POLICY AGAINST ITS TENANTS.

The plain language of the ACHA Lease (Exhibit C-9), Paragraph B(7)(h), provides, in pertinent part: "Tenant agrees... to comply with rules of housing authority prohibiting tenant to have animals such as dogs, cats in their apartments or on the projects, to remove same with or without notice." Said paragraph or clause could easily have provided: "Tenant agrees... not to keep any pets whatsoever. All animals, except support animals --guide dogs, for example --are prohibited." But the language of the ACHA Lease does not expressly prohibit pets because said Lease is uniformly used throughout the forty-three projects of the ACHA, according to testimony of Director of Housing Operations Kristina Cliff~ Some of the said projects, she testified, such as, specifically, housing devoted primarily to the elderly, do permit pets. Hence, a uniform Lease clearly cannot prohibit pets, but must refer Tenant to external "rules of housing authority prohibiting... animals..." which would apply at appropriate projects. Therefore, Respondent's argument that the Lease constitutes such a prohibition is without merit --  
belied by the fact that the Lease is used in projects that permit pets as well as in those that purportedly do not.

But, argues Respondent ACHA, the pet prohibition rules are in the Allegheny County Housing Authority from A to Z Handbook for Residents, which, by ACHA witnesses' own description, is merely a simplified version of what the Handbook's author might have thought the Lease meant. See Exhibit R-2. The ACHA was not able to document when, if ever, any of the tenants who are claimants in this matter received a copy of same. There was no showing that the Board of Directors had authorized or approved the Handbook or even knew of its existence. The Lease, however, requires that the "rules" be approved by the

ACHA Board of Directors. The clear language of the Lease characterizes the pet prohibition rules as "rules of housing authority..." (emphasis added) rather than just "rules prohibiting". Thus, the drafter of the Lease intended, it is submitted, that specific rules should be drawn up and/or reviewed by the Board of Directors and adopted by numbered and dated Resolution.<sup>1</sup> In contradistinction to the Handbook, the Grievance Procedure (incorporated by reference into the Lease) and the Lease were duly approved by the Board of Directors by, respectively, Resolution No. 76-8 and Resolution No. 76-9 on March 18, 1976. See Exhibit C-II and C-9.

Section 966.5 of the Code of Federal Regulations states, in pertinent part, "...rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to applicants and tenants on request." See Exhibit R-1. Respondent failed to establish that the Handbook --and/or any rules-- were ever posted in the Sheldon Park office.

Respondent ACHA conceded at the Hearing that Section 966.5 of the CFR applied to the ACHA and its projects. Thus the ACHA violated Section 966.5 of the CFR as well as Section B(7)(h) and (j) of its own Lease.

At the hearing before Arbitrator Alexander Black, Esquire, Harry M. Montgomery, Jr., ACHA Counsel, when asked to produce a copy of the housing authority rules, stated this would come out in testimony. However, during five hours of direct and cross examination and introduction of evidence, the ACHA failed to produce any "rules... prohibiting... animals ". ACHA witnesses testified that the rules were "in the Lease". The Lease refers to "rules of housing authority". This circuitous logic evidences only a failure to develop rules.

Any assertion by the ACHA that its notices, letters or any oral representations constitute "rules" must also fail since such cannot be consistent, or deemed official. Ad hoc prohibitions dreamed up by employees; unsigned, informal publications, and varied interpretations by project managers cannot serve as "rules of housing authority".

As set forth herein, it is a condition of the Lease that the ACHA formulate official rules expressing its pet policy; as it has never done so, the tenants' duty to comply with same has never arisen.

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<sup>1</sup> To the extent that said language may, arguendo, be considered ambiguous, any ambiguity must be construed against the drafter of the instrument, i.e. the ACHA, in this case.



## POINT TWO

THE ACHA HAS VIOLATED THE PENNSYLVANIA HUMAN RELATIONS ACT, 43 P. S. SECTION 952 ET SEQ. AND THE PUBLIC POLICY OF THIS STATE BY DISCRIMINATING AGAINST THOSE TENANTCLAIMANTS WHO USE A "SUPPORT ANIMAL" DUE TO A PHYSICAL HANDICAP.

Section 955 (h)(1) of the Pennsylvania Human Relations Act provides, in pertinent part: "It shall be an unlawful discriminatory practice... for any person to... refuse to lease any housing accommodation... to any person due to ...use of a support animal because of a physical handicap of the user " Public policy as to support animals is laid out in Section 952 (a): "The practice or policy of discrimination against individuals... by reason of their... use of support animals because of a physical handicap of the user... is a matter of concern of the Commonwealth " The statute continues: "It is hereby declared to be the public policy of this Commonwealth to foster' the... use of support animals because of a physical handicap of the user... .and to secure housing accommodation " II. at 952(b).

Several claimants fall squarely within the protection of this legislation. Cerebral palsy stricken claimant Susan Bash testified that rather than give up her support animal, "Doby" , she would leave Sheldon Park; but she also testified that she could not afford any comparable accommodation elsewhere. Recognizing such a dilemma, the Act finds, as follows: "The denial of equal... housing... because of such discrimination... compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded... thereby threatening the peace, safety and general welfare of the Commonwealth and its inhabitants." ~. at Section 952(a). No definition of "handicap" is provided in the Pennsylvania Human Relations Act. However, the "Fair Housing Amendments Act of 1988, amending Section 802 of the Fair Housing Act provides a standard which has been widely adopted at Section 5(b)(h) as follows: "Handicap' means with respect to a person (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment.. ." (emphasis added) Fair Housing Amendments Act of 1988, Pub.L.No. 100-430, Section 5, 102 Stat. 1619 (amending 42 U.S.C. Section 3602 (1968». Clinical depression, for example, could constitute "a mental impairment which substantially limits one or more of such person's major life activities." Id. Where the owner of an animal is handicapped and emotionally dependent on said animal, "a refusal to make reasonable accommodations in rules, policies, practices... when such accommodations may

be necessary to afford such person equal opportunity to use and enjoy a dwelling " would constitute discrimination on the part of ACHA. Fair Housing Amendments Act of 1988, Pub.L.No. 100-430, Section 6(3)(B), 102 Stat. 1621 (amending 42 U.S.C. Section 3604 (1968)).

The unrebutted testimony of five claimants (1) as to the nature of their handicaps, (2) that said handicaps were a matter of record and, (3) that those afflicted were regarded as having such a handicap/impairment was as follows:

1. Susan Bash testified she had cerebral palsy which. interfered with her mobility.

2. Linda Meckley testified, on behalf of her daughter, Jennifer, a minor, that Jennifer suffers from epilepsy. A neurologist's diagnosis verifying the child's emotional dependence on the dog was introduced into evidence; as well as Mrs. Meckley's testimony and handwritten description of the child's dependence on the small dog. See Exhibit R-8. Epilepsy is a recognized handicap within the Pennsylvania Human Relations Act. Drennon v. Philadelphia General Hospital, 428 F. Supp. 809 (D.C. 1977).

3. Georgia Borkowski testified on behalf of her son, Leon Paul Johnston, a minor, that he suffers from Polymyositis. She testified that his dog, a toy cockapoo, was purchased on the recommendation of personnel at a local mental health facility. She also testified that her son, who had refused to speak, began talking to the dog and the dog is a source of consolation to him. Arbitral notice may be taken of the attached photocopy of a section of The Merck Manual,<sup>2</sup> a widely recognized medical reference book, which explains the critical nature of polymyositis, an autoimmune illness, characterized by failure of the leg and trunk muscles. Mrs. Borkowski testified that her son's legs "give way under him". Autoimmune illnesses are, almost by definition, severely aggravated by stress, and the arbitrator is respectfully requested to note the "prognosis" section in the attached photocopy.

4. Vivian Williams testified she suffers from depression, mental impairment and that she has had brain surgery. She testified that her prescriptions cause deep sleep and her dog alerts her to telephone, doorbell, or any approach to the door. She also testified that she cannot afford to live anyplace else. See 43 P.S. 952(a).

5. Thelma Slike testified she has lived at Sheldon Park for twenty-seven years and was a resident when ACHA took it over. It is on record that Ms. Slike is clinically depressed, and on prescription medication. She relies on her dog to help her emotional stability.

The Pennsylvania Human Relations Act and the Fair Housing Act, as amended, entitle the five (5) named claimants herein to retain their support animals.<sup>2</sup>

### POINT THREE

SECTION B(7)(h) OF THE TENANTS' LEASE OSTENSIBLY PROHIBITING POSSESSION OF PETS CONSTITUTES AN "ADHESION CONTRACT" THE PROVISIONS OF WHICH MUST OR SHOULD BE DECLARED NULL AND VOID DUE TO THEIR VIOLATION OF PUBLIC POLICY AND THE LACK OF BARGAINING POWER OF TENANTS IN RELATION TO THAT OF THE ACHA.

An adhesion contract is an agreement wherein one of the parties, in order to gain a benefit he desires, agrees to adhere to other provisions of the contract which are unfair to him and against public policy. If the trier of fact determines that an adhesion contract exists, it may strike the unfair portion of the agreement. See, e.g. Fontana et ux. v. Miller et ux., 116 P.L.J. 422 (1968).

1. The Lease is an adhesion contract as to the handicapped.

As to the five claimants discussed in the foregoing section, the Lease clearly is an adhesion contract because the putative no-pet provision is unfair to those handicapped by physical or mental impairment, and thus, whose need for a support animal is protected by legislation. Moreover, the state has set down a public policy prohibiting such a provision, which is violative of the public policy protecting the civil rights of a class of individuals who use support animals because of a physical handicap, and who reside in public housing. Said clause should, therefore, be stricken or not enforced. 43 P.S. 952 et. seq.

2. The Lease is an adhesion contract as to those with special needs for security.

Debbie Hatajik testified that she was an abused wife who fled with her three children to The Hope Center, a refuge for abused women. She is afraid for herself and her children and keeps a German Shepherd to warn and protect them. She testified there is nowhere else she can move due to income limitations. Mrs. Hatajik testified she has a Protection from Abuse Order but neither local police nor the ACHA can protect Debbie and her children twenty-four hours a day. A dog can.

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<sup>2</sup> The Merck Manual (R. Berkow, M.D. ed. 1977).

Helen Zabowski, a frail senior citizen, testified that there were three attempted break-ins at her residence. Her cocker spaniel both warned her and scared off the intruders. One reason people keep animals is to provide security. To the extent an individual has a documented need for additional security, his or her animal could be considered a "support animal" or a "security animal."

The no-pets clause should be stricken or not enforced as to tenants with "security animals".

3. The Lease, because of the "no pets" clause, is an adhesion contract as to the rest of the claimants.

The landlord at this development realizes that this is public housing and that many of the tenants would have nowhere to go if they were evicted. Armed with this superior bargaining power, the landlord has included provisions in the Lease to which the tenants had no real power or meaningful opportunity to object. The "no pets" clause is such a provision. Although it is contained in every lease agreement, it is not the product of mutual assent. Rather, it is a provision which many tenants, because of their economic situations, must blindly concede in order to receive a lease agreement. Because the lease agreement is a contract of adhesion, the "no pets" clause, which was only assented to through a disparity in bargaining power, should be stricken from the contract.

#### POINT FOUR

THE ACHA, BY VIRTUE OF ITS LONG-STANDING POLICY IN ALLOWING PETS ON THE PREMISES OF SHELDON PARK AND IN THE RENTAL UNITS THEREON, AND KNOWINGLY PERMITTING THE TENANTS WITH PETS TO MOVE INTO SAID PREMISES, DESPITE THE TERMS OF THE ACHA LEASE, IS EQUITABLY ESTOPPED FROM PROHIBITING TENANT CLAIMANTS, WHO RELIED JUSTIFIABLY ON SAID POLICY AND PERMISSION, TO CONTINUE TO POSSESS HOUSEHOLD PETS IN THEIR RENTAL UNITS.

The key to the present dispute is that ACHA has never developed official pet rules and policy. It has, however, practiced a long-standing policy, through (1) its authorized agents and actions, and (2) its own inaction, of permitting pets at Sheldon Park..

Respondent argued that it did not slumber on its rights, offering as evidence of said position only letters of warning, mailed to a different project site (See Exhibit E-9), or to individuals who are not parties to the instant grievance. See Exhibit R-5. Twelve named individuals, representing ten ~residential units

bring this grievance. As to these named claimants, the ACHA could produce not one letter that could be admitted into evidence, except for the 1988 notices which gave rise to this dispute. See Exhibits C-1, C-2.

The ACHA knew about the pets at Sheldon Park. There is the testimony of Director of Housing Operations Kristina Cliff:

Q. "You don't know what dog belongs to what resident or what?"

A. "We usually know if a dog is supported by a household."

That the ACHA enforced its pet prohibition at some projects was attested to by Margaret Blannon, site manager at McKees Rocks Terrace, and by Eugene Reaves, Manager of Cochrandale, West Mifflin Manor and Dumplin Hall. But the ACHA did not enforce said prohibition at Sheldon' Park. According to the testimony of Housing Director Kristina Cliff:

Q. "Did you ever start eviction actions against people who had cats or dogs?"

A. "Yes. At Morgan [and] McKees Rocks Terrace. These projects are almost pet-free."

The ACHA offered the, following evidence of enforcement at Sheldon Park: a letter dated April 16, 1984 addressed to "Dear Resident" with no inside address or name on the letter and no proof of mailing (See Exhibit R-3); copies of a form letter dated May 29, 1979, addressed to persons not a party to this grievance, with no evidence introduced to show that the letters had actually been mailed, and no evidence that the addressees ever lived at Sheldon Park (See Exhibit R-5); some form notices dealing with eviction: one set having a handwritten notation "Old Notices", the other set having a handwritten notation "New Notices". These notices are unaddressed, undated and unsigned. See Exhibit R-6.

By contrast, there is abundant testimony from Sheldon Park claimants as to the long-standing ACHA "policy" of non- enforcement of any "no-pet rules" at that site.

Georgia Borkowski testified she moved in with her son's support animal, in 1982, and the manager said: "I didn't hear you have a dog." Helen Zabowski testified that the manager knew she had a dog and that "There were three attempted break-ins --each time my dog warned me and scared them off". Mary Alcorn, who is elderly, infirm and lives alone, testified that she had lived at Sheldon Park forty-seven years, long before ACHA owned it, and that she got her first pet "ten years ago". Vivian Williams testified she got a pet six years ago. "Karl Magnetta was manager," Ms. Williams testified. "He knew I had the dog after I

got it." Deborah Hatajik testified that, when she first moved in, "Mrs. Waldren [Viola Waldren] just walked away when I told her about my dog". Linda Meckley testified, when she moved in seven years ago, she told then project manager Karl Magnetta about her daughter's small support dog. She testified: "He told me, 'I didn't hear what you just said to me!'" . Thelma Slike testified she lived at Sheldon Park when ACHA bought it from Soffer Realty in the early 1960's and that she has had three dogs over the course of her twenty-seven years there . She testified that "the rental office saw my dog when I went to pay the rent". Genevieve Rowles testified: "Mr. Lamprowsi was manager when I moved in eight years :ago. I told him I had a dog and a cat. He said nothing. Now I just I've a cat." Susan Bash testified: "Karl Magnetta saw our two dogs when we moved in six years ago."

As the above testimony shows, the landlord ACHA has known for many years that Sheldon Park tenants own pets, but only in the fall of 1988 took steps to enforce the alleged "no-pet" provision. See Exhibit C-1, C-2. Rather, for over twenty years, it has had a tacit policy of allowing tenants to retain pets. Now that tenants have relied on a course of dealing or conduct., i.e. silence or non-enforcement, the ACHA seeks to reverse its position, thereby inflicting injury in the form of loss of pets to whom claimants are bonded; potential eviction; potential loss of employment, in some cases, if forced to move; and severe emotional distress over these issues. See United States v. Ravitz, 93 F. Supp. 913 (E.D. Pa. 1950).

#### POINT FIVE

THE ACHA BY VIRTUE OF ITS LONG-STANDING POLICY IN ALLOWING PETS ON THE PREMISES AS AFQRESAID HAS WAIVED. ITS LEASEHOLD PROVISION OSTENSIBLY PROHIBITING HOUSEHOLD PETS IN RENTAL UNITS AT SHELDON PARK.

In United States v. Ravitz, Id., the Court estopped a landlord from enforcing a provision in the lease which he had waived by his conduct during the previous seven years. In the present dispute, Landlord ACHA has known, for two decades, that many tenants at Sheldon Park have had pets. In that time, the ACHA has not sought to enforce the "no pets" clause. It has, by its acquiescence, effectively waived said clause and is, therefore, without power to enforce same.

POINT SIX

THE AUTHORITY IS BARRED FROM ENFORCING ITS NO-PET PROVISION BY  
THE DOCTRINE OF LACHES.

Laches occurs when a party has delayed the assertion of his claim unreasonably so as to result in a prejudice to the other party because of the delay. Where this is so, equity will deny relief to the party guilty of laches.

The present dispute has both elements of laches; unreasonable delay by the plaintiff and prejudice to the defendant.

As described herein, the ACHA has not enforced Paragraph B (7)(h) --the no "animals such as dogs, cats" clause of its Lease as to the tenants living at Sheldon Park. In the Fall of 1988, the ACHA sought enforcement of said clause against the tenants at Sheldon Park. See Exhibits C-1, C-2. But under the ACHA's "policy" of non-enforcement, for over twenty years, people moved in with pets, obtained pets, and became bonded to said pets; they settled in at Sheldon Park, rather than some other facility, and some got jobs which they could not keep if they moved. Georgia Borkowski is a school crossing guard and moving from this area would cost her her job. Those who have no jobs due to age or poor health could not afford to move. Furthermore, time has created strong bonds to their pets. Claimants would suffer and do suffer extreme emotional distress and anxiety over the potential loss of their pets, the threat of eviction, the risk of being without a security animal, and the fear of losing a job. The unreasonable delay by ACHA has thus resulted in a prejudice to tenants because of said delay.

For the reasons explained herein the Doctrine of Laches does bar the Authority from enforcing its lease language against the named tenant claimants due to its unreasonable delay in seeking enforcement of the no-pet provision.

POINT SEVEN

THE ACTION OF THE ACHA IS ARBITRARY, CAPRICIOUS AND/OR  
UNREASONABLE IN THAT IT HAS FAILED AND/OR REFUSED TO  
PROMULGATE REASONABLE RULES FOR POSSESSION OF COMMON  
HOUSEHOLD PETS.

It is arbitrary and capricious and/or unreasonable that the ACHA should use for decades a Lease referring to rules that do not exist and then try to enforce these rules at Sheldon Park in 1988. Director of Housing Operations Kristina Cliff testified as follows:

Q. When were [pet] rules first promulgated?

A. I don't know.

Q. Who was Executive Director when [pet] rules were first promulgated?

A. I don't know.

Q. What year were [pet] rules first promulgated?

A. I don't know.

#### POINT EIGHT

THE ACTION OF THE ACHA IN PROMULGATING A COUNTYWIDE NO- PET "POLICY" AND APPLYING SAID COUNTYWIDE POLICY AT SHELDON PARK WITHOUT ANY ASSERTION OR SHOWING OF NEED FOR ~Ar.1E AT SHELDON PARK IS ARBITRARY, CAPRICIOUS AND/OR UNREASONABLE.

ACHA witnesses testified there are forty-three projects administered by the ACHA, a number of which are physically very different from Sheldon Park. Some are high-rise structures. But testimony has shown that Sheldon Park units are two-story units, each unit having its own yard space. Don Yoho testified that there was plenty of green space and woods suitable for walking dogs. Greg Lewis testified that each unit has its own yard and that there are grassy areas and a woods nearby. Testimony from Susan Bash, Greg Lewis and others showed that units are large enough to accommodate a pet or two, as they are two-story, two bedroom units, with a small yard. Yet ACHA seeks to impose the same prohibition on Sheldon Park that it applies to projects countywide. Because it has no pet policy setting forth limits on the number and size of common household pets per unit, the ACHA argued that its project units were too small for pets. On cross examination, Kristina Cliff testified as follows:

Q. What kind of pets are they too small for?

A. I don't know.

Q. What size apartment is big enough for a pet?

A. I don't know.



The ACHA will undoubtedly point to the unsubstantiated accusation by Luther Crawley in which he claimed to have fallen when afraid of a dog. This alleged event occurred conveniently just prior to the formal hearing. There was no corroboration to Luther's story. However, Luther Crawley's testimony was more than amply rebutted by Thelma Slike, who testified that Crawley never fell and that her dog never came within five feet of him. Moreover, Crawley testified that his "injury" --which he asserted was to his hand --was not apparent to him until hours later when he was working at another unit, casting further doubt upon his credibility.

Grievants have demonstrated that the ACHA's countywide prohibition is arbitrary, capricious and unreasonable when applied to residents of Sheldon Park, generally, and to the claimants for whom this grievance is made and, therefore, should not be enforced.

CONCLUSION

For the reasons set forth above, claimants respectfully submit that they have an unrestricted right to keep common household pets in their premises at Sheldon Park. Claimants submit further that the ACHA is estopped from enforcing its "no- pet" Lease provision for as long as claimants possess their current pets.

Respectfully submitted,

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DATED: November 2, 1989