

## Memorandum

From: Steven Bruce Attorney for Complainant [REDACTED]

Date: 9/25/2020

Re: [REDACTED] vs. JFK Towers AKA Mercy Towers

Case No: 201805-02254115

This memo will supplement complainant's memo of September 10, 2020.

### I. Facts

In 2017 [REDACTED] was involuntarily committed to three psychiatric wards, two at the Department of Veteran's Affairs in Palo Alto, admission dates July 1, 2017, and October 25, 2017, due to Major Depression, Suicidal Ideation, and other diagnoses, instituted by planning to jump off the Golden Gate Bridge. Another involuntary hospitalization happened at San Francisco General Psychiatric Lock-Up ward on May 30, 2017, due to Depression and Suicidal Ideation (see three documents sent concurrently herewith documenting these involuntary admissions into these three lock up psychiatric wards).

It should be noted that in addition to the Veteran's Administration Table of Contents, there are actual chart records, and for each and every visit with [REDACTED] primary psychotherapist, [REDACTED] there are detailed chart notes as opposed to just dates of psychotherapy. From looking over the documentation, in this case, it appears that neither the Landlord nor DFEH has read them or made any meaningful attempt to understand them.

Landlord had two 504/ADA Coordinators in Denver, Colorado, and was first notified on or about April 18, 2017.

In sum, there are decades of psychiatric records, including Post Traumatic Stress Disorder (PTSD), Schizoaffective Disorder, which is a combination of Psychosis and a Mood Disorder, Mild to Moderate Psychosis, and Major Depressive Episodes. [REDACTED] had decompensated around the time period in question, that is, in 2017 when she was given a Notice to Quit and was subsequently evicted on false premises; specifically, for not having filled out an Annual Income and Asset Recertification Statement as referred to in the lease which apparently was one

hundred and twenty-three pages long. It was NOT an annual form, it was a form approx. 7 months after the annual form. DFEH did not investigate this case not just to what Landlord was disingenuous about, but to what the disability was in order to determine what reasonable accommodations might have applied.

With regard to relocation by letter dated December 26, 2017, Mercy Housing stated they had an informal grievance hearing pursuant to an agreement to have both mediation and grievance hearings; however, at the meeting, there were eight landlord management employees and their attorney Mr. Torres in addition to [REDACTED]. At which time, they gave her a Notice to Quit, a document that is required before filing an Unlawful Retainer complaint in the San Francisco Superior Court. An offer to mediate is dated August 23, 2018 it is just three pages, it clearly was at counter purposes to give her a Notice to Quit to be followed by an eviction lawsuit under the guise of a grievance procedure or a mediation as there was no mediator there notwithstanding the fact that this is identified in paragraph three of the Agreement to Mediate form as a DFEH mediation which never happened.

Again, it should be noted that when an individual decompensates into a psychotic episode, meaning, detached from reality and normally undergoing delusions and or hallucinations more often audio than visual but can be both at the same time. In-between the three times in and around the summer of 2017, [REDACTED] was in crisis, and Landlord used that against her in adding various stressors, including not relocating her and evicting her. These stressors triggered decompensation and hospitalization in the lock-up psychiatric wards. There is another agreement to mediate dated August 23, 2018, also created by DFEH. It is unclear to the undersigned if this is referenced to the first one or a separate one.

There was an Affidavit of Non-Employed Status dated March 25, 2017. There is a document titled Tenant Income Certification Questionnaire dated March 27, 2017, filled out by [REDACTED].

In this case, there has been confusion and fraudulent misrepresentation on the part of Landlord and confirmed by DFEH; that is, [REDACTED] did, in fact, fill out the Annual Recertification of Assets and Income as required to live in a subsidized housing facility; however, as referred to in our memo of September 10, 2020, there was another supplemental one, not twelve months but seven months later. In support of this is a letter dated January 19, 2017, from the Mayor's Office of Housing and Community Development from Helen Hale, Director of Residential and Community Services, who states that she was at JFK Tower to remind tenants

to complete their Tax Credit Certification forms with Mercy Housing. These tax credit forms are provided concurrently herewith. Ms. Hale stated that this is not the same form as the Annual Rectification form and that this process may feel similar to the San Francisco Housing Authority Recertification, but they are not the same. At all relevant times herein, Landlord and DFEH referred to [REDACTED] as not being compliant with that provision of the lease requiring this Annual Recertification Form. This is not true since there was a transfer of ownership under the Rental Assistance Demonstration (RAD) Program, which initiated a second form within seven months of the last form and needless to say, for an individual with severe mental impairments this caused confusion, which resulted in not providing an essential accommodation and resulting in an eviction. In other words, the landlord and DFEH findings that the Landlord's allegations were true in effect means they were using [REDACTED] disability against her. More specifically, the lease does say Annual Recertification, but it was only seven months prior to the recertification in question that the annual recertification was completed. There was no lease violation. Page 53 of 123 of RAD § 3.16 Options for Persons with Disabilities which state Management has a legal obligation to provide reasonable accommodations which is a change in rules, policies, practice or service which allow [REDACTED] equal opportunity to use and enjoy her apartment. Accommodation do not have to be the ones requested. Dr. Pierce, licensed clinical psychologist diagnosed [REDACTED] with psychosis in addition to PTSD in a letter resent to DFEH with this memo dated 10/9/2018. Four months earlier on 4/24/2018 Niralli D'Costa, MFT wrote to whom it may concern and confirms Complainant brought up the issue of rape trauma with Management in March of 2017 as part of her request for relocation as a reasonable accommodation the denial of which led to several hospitalizations (letter attached with all other documents submitted concurrently herewith).

Tax credits were filled out and provided on forms dated June 27, 2017 (six pages long)

## **II. Relocation**

[REDACTED] agrees with Landlord that she is covered by the federal uniform relocation act (42 U.S.C.S. § 4622(a)(1)) as a displaced person; e.g., made homeless by retaliatory eviction based on a false statement by Landlord and adopted by DFEH in that state agency closure letter; that the annual recertification was not filled out. It was not the annual income and resource certification it was a new but similar form mischaracterized as the annual one referenced in the lease. In fact, it was just 7 months after the annual form and was required due to a change in

title. The lease of complainant should have been modified based on her disability to allow much more time or could have been modified , if there Landlord permitted a good faith interactive process, to use the fact the VA benefits do not change every 7 months and reflect same in this non-annual form as a reasonable accommodation; however for reasons unknown to Complainant DFEH chose not to investigate facts related to the disability (see DFEH closure letter.) Her treating psychotherapist and other VA mental health records were either sent to Mercy housing or always available. Expected an unrepresented individual with her disabilities to have objective insight into all reasonable accommodation is unrealistic. This is the only way to ascertain what accommodations are reasonable. Neither Management or DFEH in its initial "investigation" had any analysis of [REDACTED] function limitation resulting from her PTSD and psychosis to come to legal; conclusions about her need for quiet surrounding (PTSD) or the correct assistance to allow her to fill out a supplemental form (income/assets.) There was no mention of this requirement in any document by Management or DFEH.

The Relocation Act provides that any person "displaced" from his home or place of business by a federal or federally funded project is entitled to relocation benefits, including reimbursement for the "actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property." 42 U. S. C. § 4622(a)(1).

See generally Norfolk Redevelopment & Hous. Auth. v. Chesapeake & Potomac Tel. Co., 464 U.S. 30, 104 S. Ct. 304 (1983.) In Alexander v. United States Dep't of Hous. & Urban Dev., 441 U.S. 39, 99 S. Ct. 1572 (1979) the court states in part "... section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Act), 42 U.S.C.S. § 4601(6), defines a "displaced person" ... Relocation benefits are available under the Act for individuals and businesses that satisfy either the "acquisition" or "written order" clause of this definition. 42 U.S.C.S. § 4601(6), encompasses only those persons ordered to vacate in connection with the actual or proposed acquisition of property for a federal program. The clause embodies two causal requirements. First, the written order to vacate must result directly from an actual or contemplated property acquisition. Second, that acquisition must be "for," or intended to further, a federal program or project. This is the case here.

"... defines a "displaced person" as any person who moves as a result of the acquisition of real property, or as a result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a federal

agency....” *Id.* See Landlord letter regarding this dated November 30, 2016 addressed to [REDACTED] “...The Act's declared purpose was to afford "persons affected by the acquisition of real property in Federal and federally assisted programs . . . fair and equitable treatment on a basis as nearly uniform as practicable; *Id* at 50. California’s relocation law is the California Relocation Assistance Law, Government Code section 7260 *et seq.* provides in substance that a public entity which acquires real property for public use shall compensate a displaced person for relocation expenses and certain other losses. (Gov. Code, § 7262.) fn. 1

There was a title change, new construction and Landlord was on clear notice that these events were triggers which would lead to decompensation of her psychosis and PTSD which, in fact lead to three hospitalizations in lock-up psych wards and intensive psychotherapy by her VA psychotherapist, [REDACTED], LCSW. See letter of [REDACTED] psychotherapist to Mercy Housing dated 4/24/18 AND her psychotherapy charts also available to Landlord and DFEH. (letter and charts attached herewith.)

### **III. Analysis and Rational**

Applicable law consists of *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S. Ct. 1776 (1995) which gives the Fair Housing Act (42 USC § 3601 *et seq.*) broad authority to impose reas. accommodations under the Fair Housing amendments of 1988 and equally applies to California’s FEHA. *Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* 121 Cal. App. 4th 1578 (2004). A lease provision does not trump reas. acc. whether it says no pets or an income & resource “supplemental” certification.

In addition to ignoring [REDACTED] severe mental illness and decompensation in three separate psychiatric lock-up wards in 2017 and the surrounding time periods, the attorney for Mercy Housing misrepresented that she had not filled out the Annual Recertification of Income and Asset form as required by the lease. The lease required an annual form, which was filled out. As stated before and is now being stated again, this was a supplemental form, not a year later, and this is explained in writing by the city and county of San Francisco by Ms. Hale. It was alleged that [REDACTED] created a nuisance to staff (see letter of Barbara Crain dated December 6, 2017 filed concurrently herewith) and that she was an ongoing nuisance; however, in housing law a nuisance is when a tenant interferes with the peaceful and quiet enjoyment of other tenants not when based on a tenant’s

psychiatric disability when requesting Reasonable Accommodations and the landlord claims they are being harassed (see Barbara Crain's letter dated December 6, 2017). This letter does advise that she may have a formal hearing and give reasons why she disagrees with this decision. The decision is legally and factually wrong and is part of a reprisal for ██████ requesting reasonable accommodations. Relocation was requested as a reas. Accommodation and pursuant to Management's notice of 11/30/2016.

There was indeed water and other habitability problems, which caused ██████ to move from the ninth floor to an apartment in the middle of the building and then to apartment #302 due to water leakage. A memo from Mercy Housing dated June 14, 2017, states management will paint the ceiling because of discoloration caused by a leak. Apparently, Landlord's Electrolux stove were defective and caused fires and injuries. In any case ██████ was not involved in cause any fire or water problem. Rather Management retaliated against her by claiming she was a nuisance to them and did not complete the supplemental income and resource form within Landlord's time frame which could easily have been resolved in different reasonable accommodations stated herein. For Electrolux lawsuit see *Reichardt vs. Electrolux Home Products*, Case no. 1:17-CV-219 U. S. District Court For The Eastern District of Wisconsin (class action complaint, product liability (2017)

A letter dated October 8, 2018, was sent by ██████ falsely stating that they are unaware of water leaks, elevator problems, or electrical wiring hazards caused by construction. They do admit that they denied complainant's Reasonable Accommodation request for relocation but did grant one which purports to allow complainant to understand communications by giving them in advance in writing or by email; however, when taking into account the fact that the severity of ██████ disability resulted in three separate involuntary hospitalizations, these accommodations were not reasonable under these circumstances. It should also be noted that others were given relocation per Mercy Housing's written notice of 11/30/2016, reportedly based on water leaks which would mean that, on balance, Landlord determined that ██████ life and death situation for which she was hospitalized three times in the middle of 2017 was not as important as somebody who underwent a temporary inconvenience of water in their apartment as also did ██████. In fact, this does not make sense due to the severity of ██████ psychiatric disability.

██████ request for relocation was pursuant to Mercy's policy of relocation during a more than two-year construction project; however, the fact that anxiety

disorders such as PTSD are often triggered by noise was not taken into account but should have been.

Landlord was involved in [REDACTED] suicidal ideation. Management told her to call police (see management memo) which was inappropriate. It is management who needed to call police or otherwise remedy these safety situations. When Landlord mischaracterizes complainant's request for Reasonable Accommodation by stating that complainant complained of having habitability issues including drug and other trafficking, unreasonable noise both from within the building and from construction next door which lasted from two years to two and a half years, and came to a conclusion that it was appropriate to relocate residents offsite due to water intrusions, but not appropriate to relocate [REDACTED] who had to be hospitalized three times to save her life (from jumping off the Golden Gate bridge.)

This should not be minimized, as has been the case though the present. Landlord went on to say if she really needed to qualify for residency in another building, unlike the other tenants, she would have to fill out a new application at the leasing office at 55 Laguna Street, SF; in other words, start from scratch and go to the end of the line. Landlord further inappropriately states that a retaliatory eviction is not available to a tenant that has violated terms of the lease or has committed acts that constitute a nuisance. This is incorrect on both counts; as stated above, UDs can be based on nuisance only if they are acts that interfere with other tenant's rights to quiet and peaceful enjoyment, not management, and there was no lease violation because the annual recertification form was filled out. They did not bother to explain to [REDACTED] that because of a title change, there was a second form that she was being asked to fill out while the Landlord knew the severity of her disability, being in a psychiatric lock up twice at the VA, and once at San Francisco General Hospital during the same period of time is not of minor significance. The medical records were available and still are available, and not paying attention to them is not a legal option for any landlord. The date of this memo from [REDACTED] is October 8, 2018, and is stated to be a summary of Landlord's response relating to fires, the construction, sewage problems, elevators problems, water problems, and a response to a transfer out of the building made to [REDACTED] on May 31, 2017. Nowhere in this lengthy three-page response does Landlord acknowledge the severity of [REDACTED] mental disability; in fact, it is entirely omitted as has happened throughout this case.

### **III. Specific Answers to DFEH, Questions of September 10, 2020**

1. There are two witnesses to relocation issues. One is [REDACTED] (physicist) in apartment #601. Her email address is [REDACTED]. She is a witness to Reasonable Accommodation and is a witness to other events; e.g., fires, water and electrical issues. [REDACTED]
2. The other witness in apartment #306 is [REDACTED], who can be reached at [REDACTED]. She was relocated to Trinity Apartments for six months due to fire, water contamination and electrical issues.
3. The construction lasted approx. two and one-half years.
4. The lease recertification was done pursuant to the lease. It appears Landlord is calling a supplemental certification, which looks like the other one due to a change in title an annual lease recertification.
5. Transgender discrimination practice: withdrawn as an allegation in this complaint because independent contractor, construction workers apparently were primary culprits and it is unclear what management's control was of them
6. More records from the VA Palo Alto and San Francisco General Hospital due to the Suicidal Ideation may be available but due to a difficulty in getting records due to this time of Covid-19. [REDACTED] easily had over one hundred crises during the construction, which caused her mental health to deteriorate and underwent decompensation.

#### **IV Conclusion**

There was no good faith investigation by DFEH. I sent a statutory definition of undue burden because DFEH stated that complainant's request to be relocated as others were was an undue hardship. Clearly, the agency did not know what undue hardship meant. I was also told three times in a conference on September 10, 2020, that offering someone to leave the building and be homeless and perhaps finding someone else's house in which to crash was a reasonable accommodation. Neither Management or DFEH stated without paying rent which would still not be a reasonable accommodation. This could not be further from the truth, while other people were being relocated to other apartments. In other words, they were not rendered homeless. I will not speculate how DFEH employees assigned to cases do not know what "reasonable accommodation" or "undue hardship" mean. This is both unprofessional and legally insufficient and could have resulted from inadequate training or limited English proficiency or other reasons.

Modify the lease by inserting that recertification can be filed in a different manner such as noting [REDACTED] income and assets are unchanged in from last years with 1 exception – that her VA benefit check increased by a approx. 2.9% COLA based



on DOL/BLS COLA and/or having a real psychotherapist (LCSW or MFT) or paralegal assist her over a 45 day period may or may not work. Clearly and by case law a treating health care provider like [REDACTED] even [REDACTED] can shed light on these issues. It is rare when a psychotic individual has enough insight into her own limitation to, on her own, know what accommodations are best. Management and DFEH did not do any kind of medical-legal analysis which is the basis for our conclusion that both did not do a legally sufficient job on complainant's request for reas. acc. To evict someone under the false pretense given in this case and mis-characterize psychosis and PTSD as the basis for her crisis as a non-discriminatory reason for not filling out the long supplemental form while harassing her about a deadline in her state of mind is both outrageous and overly hostel. The habitability problems and reas. acc. request was/ and continues to be the basis for the retaliatory eviction under the circumstances outlined herein. A finding otherwise means there was no reas. acc. analysis for these psychiatric disabilities. It was an unlawful disingenuous cover up of faulty stoves, fires and plumbing and reasonable accommodation analysis for both PTSD and psychosis. See SF Building Inspector report on same (not attached). It has been investigated.

People With Disabilities Foundation, has two employment training DVDs available for purchase on our website [www.pwdf.org](http://www.pwdf.org) for a nominal price. The first "Understanding Employees and Job Applicants with Psychiatric Disabilities" and the second "Accommodating Employees and Job Applicants with Psychiatric Disabilities in the Workplace," The United States Equal Opportunity Commission did participate in the 2008 training. We also have free of charge one three-hour seminar on housing available on our website, *Housing Issues for People with Psychiatric and/or Developmental Disabilities*. In addition, available free of charge is a one-hour training entitled "Housing Issues for People with Psychiatric and/or Developmental Disabilities" on CD that can be ordered through our website.

Although we will not speculate as to whether is it due to a lack of training or other reason but it can and should be rectified as soon as possible as Landlord did not mention complainant's disability much less understand it. DFEH closure letter misstates law and fact in material ways. I say this without prejudice to [REDACTED] but what has happened here is a lack of investigation using the correct standards. Apparently, this letter goes to an investigator who in turn sends it to an attorney, and as stated herein. Whether the problem is with upper DFEH management or not, the goal should be to rectify the situation without spending too much time as to how something like this could have happened. There are not any findings as to what [REDACTED] disability is and what the resulting functional limitations are, which has to be taken into account when coming up with good