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June 9, 2020

Stephen M. Dane, Esq.
Dane Law LLC
312 Louisiana Ave.
Perrysburg, OH 43551

Re: Carillon House Condominium
Animal Policies
Demand for Attorney's Fees and Costs

Dear Mr. Dane:

As you know, I represent The Carillon House Association, Inc. ("Association"). I am writing in response to your May 21, 2020 letter.

The Association's Board of Directors denies that it has done anything that violates its obligation to grant accommodations to disabled residents in the community. As we have previously discussed, the main dispute between the parties was the Association's rules that limit the areas of the property where animals may be taken. Specifically, Miami Valley Fair Housing Center, Inc. ("MVFHC") has taken the position that "the Board cannot regulate Service Animals or ESAs the way they do pets" and "Disabled individuals do not have to request an accommodation to use common areas of the property." As I pointed out during our prior conversations and email exchanges, these statements are somewhat inconsistent with the law that I am aware of in this area.

For example, I pointed out to you that the United States District Court for the Northern District of Illinois has stated:

> … the Court agrees with Defendants that they were not required to capitulate to Plaintiffs' request for "unrestricted access," for the dog … Plaintiffs will have to provide evidence to show that [she] was disabled, that she needed the dog to treat her

disability, and that her disability made it necessary for her to travel through the complex by the path of her choosing. *Stevens v. Hollywood Towers & Condo. Ass'n*, 836 F. Supp. 2d 800, 806 and 810 (ND Ill. 2011); *See also v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F.Supp.2d 1245, 1257 (D. Haw. 2003).

After providing this information, I specifically requested that you or MVFHC provide legal support for their statement that housing providers may not ever limit the areas of the property where a disabled resident may take their emotional support or service animal. To date, I have not received any citation to a statute, regulation, or case law contradicting the statements from the courts above.

Similarly, I asked for legal authority supporting the statement that disabled residents do not have to ask for an accommodation to take an emotional support or service animal to areas of the property where pets / animals are otherwise prohibited. I made this request since this position appears to be directly contrary to the statements from HUD and DOJ in their 2004 Joint Statement on accommodation requests which states:

> *Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?*
>
> *No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made.* (Joint Statement May 17, 2004, Question No, 14)

I have not received a citation to any legal authority which suggests that a disabled resident must be granted an accommodation to the community rules without asking for an accommodation related to their needs.

Based on the information above, the Association denies that it has engaged in any conduct that violations the Federal or State of Ohio's Fair Housing Laws protecting disabled residents.

Assuming, *arguendo*, the Association may have violated the Fair Housing Laws, MVFHC is not entitled to the recovery of attorney's fees and other costs incurred in this matter. 42 USC § 3613 (C)(2) states:

> *In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.*

MVFHC is not a "prevailing party" since the Association accepted MVFHC's offer to resolve this dispute by revising its rules as proposed by MVFHC. The United States Supreme Court has held:

> *Congress has employed the legal term of art "prevailing party" in numerous statutes authorizing awards of attorney's fees. A "prevailing party" is one who has been awarded some relief by a court. Both judgments on the merits and court-ordered*

> *consent decrees create a material alteration of the parties' legal relationship and thus permit an award. The "catalyst theory," however, allows an award where there is no judicially sanctioned change in the parties' legal relationship. A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change. Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001) (Syllabus) (internal citations omitted).

At least one Ohio Court has reached similar conclusion when interpreting the Ohio version of the Fair Housing laws. *Ohio Civil Rights Comm'n v. Lyons*, 3rd Dist. No. 8-16-05, 2016-Ohio-7174, ¶31 (interpreting Ohio Revised Code § 4112.051 (D)). Since this matter was resolved by voluntary settlement between the parties, MVFHC is not a prevailing party that may be entitled to recovery of attorney's fees and costs.

In conclusion, the Association denies that it has committed any discriminatory act which constitutes a violation of the Fair Housing Laws. Moreover, MVFHC is not a prevailing party that is entitled to recovery of any attorney's fees or other damages. While the Association is not under any further obligation in this matter, the Association will offer to have its current Board President attend one Fair Housing class with HOA Leader (https://www.hoaleader.com/) in exchange for a full and finally release of any further claims by MVFHC related to this matter.

Please review the Association's offer with your client and let me know if they are willing to resolve this matter.

Sincerely yours,

Garrett Humes

GARRETT B. HUMES

GBH:raf
cc: Apple Property Management
Board President