No. 19-1263

IN THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
LUCAS COUNTY, OHIO

JERQUINA SANDERS,

Appellant,

v.

NORWICH APARTMENTS, II,

Appellee.

BRIEF OF AMICUS CURIAE

The Fair Housing Center and
The Ability Center of Greater Toledo

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Statement of Interest of the *Amici*

Amici, Toledo Fair Housing Center and The Ability Center of Greater Toledo, are Ohio non-profit agencies dedicated to protecting the Fair Housing rights of people with disabilities.[1] The interests of the *Amici* in this matter are set forth below.

A. *Amicus* Toledo Fair Housing Center

Amicus Toledo Fair Housing Center ("TFHC") has a strong and direct interest in, and long experience with, the Fair Housing Act and its implementing regulations—including reasonable accommodation requests pursuant to 24 C.F.R. § 100.204. TFHC is a non-profit civil rights agency dedicated to the elimination of housing discrimination, the promotion of housing choice, and the creation of inclusive communities of opportunity. To achieve its mission, TFHC engages in education and outreach, housing counseling, advocacy for anti-discriminatory housing policies, research and investigation, and enforcement actions. TFHC has an interest in making sure that the Fair Housing Act is applied correctly and that Norwich's arguments, as submitted to this Court, do not negatively impact the rights of other similarly situated parties.

B. *Amicus* the Ability Center of Greater Toledo

Amicus The Ability Center of Greater Toledo, Inc., (Ability Center) is a non-profit Center for Independent Living serving seven counties in northwest Ohio. The Ability Center's mission is to assist people with disabilities to live, work, and socialize within a fully accessible community. The Ability Center furthers its mission by providing programs that promote inclusive communities for people with disabilities including Assistance Dogs for Achieving Independence; Youth Services; Community Living; Home Accessibility Program; Information & Referral Program; and the Systems Advocacy Program. In addition

[1] This brief was authored entirely by attorneys for the *Amici* Toledo Fair Housing Center and The Ability Center of Greater Toledo. No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person – other than the *amici curiae*, its members, or its counsel – contributed money that was intended to fund preparing or submitting the final brief.

to serving people with disabilities, the majority of the Board of Directors and employees of the Ability Center are individuals with disabilities.

The goals of The Ability Center's Systems Advocacy Program include ensuring that people with disabilities have access to integrated, accessible, affordable housing. The Advocacy Program gives technical advice to people with disabilities on housing issues; ensures that new, multi-family housing in our region comply with the design & construction requirements of the Fair Housing Act; ensures that zoning and building laws do not prevent people with disabilities from accessing housing; and offers compliance reviews and engages in enforcement of the Fair Housing Act. The Ability Center is mandated to provide advocacy on behalf of people with disabilities under the Rehabilitation Act of 1973, Section 701 *et seq.*, Title 29, U.S. Code. In an effort to protect the rights of people with disabilities under the FHA and Americans with Disabilities Act, it has both filed lawsuits and acted as *amicus* on disability issues.[2] The Ability Center has decided to express interest in the instant case to ensure that the rights of people with disabilities in housing are respected and enforced.

[2] *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901 (6th Cir. 2004); *Belevender v. Magi Enters.*, 2007 U.S. Dist. LEXIS 13582 (N.D. Ohio Feb. 28, 2007); *Ability Ctr. of Greater Toledo v. Lumpkin*, 808 F. Supp. 2d 1003(N.D. Ohio 2011); *Horen v. Bd. of Edu. of Toledo Pub. Schs.*, 2010-Ohio-3631 (6th Dist. August 6, 2010); *State v. Speer*, 124 Ohio St. 3d 564 (2010); *Moody v. Gongloff*, 687 Fed. Appx. 496(6th Cir.2017); and *Ball v. DeWine*, 244 F.Supp.3d 662(S.D.Ohio 2017).

Assignment of Error

For purposes of this Brief, the *Amici* will speak only to one assignment of error:

I. NORWICH WRONGFULLY DENIED MS. SANDERS' REQUEST FOR A REASONABLE ACCOMMODATION.

Statement of the Issue Presented for Review

This statement of the issue presented for review relates to the assignment of error listed above.

ISSUE: Ms. Sanders, a tenant with disabilities, sent her landlord, Norwich, a reasonable accommodation request, pursuant to the Fair Housing Act, to avoid an eviction. Norwich denied the request because "we were already at court." Norwich now admits the request is valid under the Fair Housing Act in all respects, except that it claims Sanders failed to show the disability-related need for the accommodation. However, the accommodation request has an obvious disability-related need. Norwich further takes the position that it had no duty to evaluate the accommodation or request additional information to verify the need for the accommodation. May Norwich categorically deny the accommodation request and evict Ms. Sanders?

Statement of the Case

Appellee Norwich Apartments (Norwich) served a 10-day Notice to Vacate on Ms. Jerquina Sanders (Ms. Sanders) on May 6, 2019 for non-payment of rent. Tr. 6/26/19 5:20-25; 6:1-4. Norwich Apartments then filed a Complaint for eviction on May 23, 2019 alleging non-payment of rent. Appellant Brief. A hearing was held before Magistrate Michalak on May 10, 2019. *Id.* The Magistrate took the matter under advisement and issued his decision on June 26, 2019, which was journalized on July 1, 2019. *Id.* In his decision, the Magistrate found "[Defendant] rent is $27/month. Rent was tendered late. [Defendant] argued rent must be waived [due to] Hardship. [Defendant] argued [Plaintiff] did not give notice to accepting late payments. [Defendant] argued [requested] reasonable accommodation." *Id.*

Ms. Sanders filed Objections to the Magistrate's Decision on July 15, 2019. *Id.* Judge Howe issued a Decision on July 23, 2019 granting all of Defendant's Objections ("First Order"). On August 3, 2019 the Court sua sponte vacated that July 23, 2019 Order "to consider response of Plaintiff." *Id.* On October 18, 2019, Judge Howe issued a Decision denying all of Defendant's Objections and entering judgment in favor of Plaintiff ("Second Order*"). Id.* Defendant then timely filed this notice of appeal on November 5, 2019. *Id.*

Statement of Facts

Appellant Jerquina Sanders (Ms. Sanders) is a person with disabilities including anxiety, depression, and a gastrointestinal issue that, while undiagnosed, has required medical testing and a biopsy of her stomach. Tr. 6/26/19 24:4-23. She is currently receiving treatment for her disabilities at A Renewed Mind and the University of Toledo Medical Center. *Id.* at 24: 1-23.

Ms. Sanders moved with her young daughter into Plaintiff Norwich Apartments (Norwich), a federally subsidized housing complex located at 5148 Norwich Road, Apartment 2C in Toledo, Ohio on May 18, 2018. *Id*. at 4:22-25; 5:1-6. As part of the application process for Norwich Apartments, Ms. Sanders was required to fill out a HUD form identifying her as a person with a disability. *Id.*at 15: 17-25, 16:1-7. The property manager for Norwich Apartments, Andrea Fernbaugh, testified at trial that she, "was aware there was a disability," at the time that Ms. Sanders moved into Norwich Apartments from that form, and that she was aware that Ms. Sanders was working with A Renewed Mind, an agency that provides mental health counseling. *Id.* Because Norwich is a subsidized housing complex, Ms. Sanders' rent totaled $27.00 per month. *Id.* at 9:15-16. In the time that Ms. Sanders lived at Norwich Apartments, she usually paid her $27.00 rent past the due date set in her lease, and, until the instant case, it was always accepted. *Id*. at 12:21-22.

In May 2019, Ms. Sanders experienced a depressive episode triggered by the medical testing and biopsy of her stomach required to diagnose her gastrointestinal issue on May 3, 2019. *Id.* at 34:19-25. During her depressive episode, the May rent for her apartment came due and Ms. Sanders was served with a 10- day notice on May 6, 2019. *Id.* at 7:10-17. Ms. Sanders reached out to her property manager, Ms. Fernbaugh on May 20, 2019 to offer to pay her rent in full once her depression had lifted. *Id.* However, Ms. Fernbaugh told her to hold on to her rent because a court action had already been initiated. *Id.* at 25:25 - 26:1; 22:19-22. At trial, Ms. Fernbaugh stated that Norwich has a policy that it does not accept rent once the ten-day notice has expired. *Id.* at 7:10-17. On May 23, 2019, Appellee Norwich filed a Complaint for non-payment of rent.

At that time, Ms. Sanders, through her attorney, sent a request for a reasonable accommodation to Norwich on June 12, 2019 because the eviction action was based on Ms. Sanders' offer to pay rent in full late due to her depressive episode. Defendant's Exhibit 3; Tr. 6/26/19 27:23-25. Ms. Sanders requested Norwich revoke the 10-Day Notice to Vacate issued May 6, 2019; that Norwich Apartments accept all past due rent; provide a copy of any notices to her caseworker at A Renewed Mind; and dismiss the pending eviction matter. *Id*. At trial, Ms. Fernbaugh testified she had seen the letter requesting accommodations for Ms. Sanders and was not aware of any response. Tr. 6/26/19 14:16-25. Ms. Sanders testified that she had received no response to her request for reasonable accommodation. *Id.* at 24:13-15. Ms. Fernbaugh indicated that no response was likely because "[w]e were already at court." Tr. 6/26/19 15:9-11.

Summary of Argument

The Fair Housing Act makes a "clear pronouncement of national commitment to end the unnecessary exclusion of people with disabilities from the mainstream." H.R. Rep. No. 100-711, at 18(1988). The requirement that housing providers make reasonable accommodations in policies where necessary for a person with a disability to access housing of their choice is important to this goal of inclusion. 42 U.S.C. § 3604(f)(3)(B). Thus, the requirement of "reasonable" accommodations means that "feasible, practical modifications" must be made, though "extreme infeasible modifications are not required." 53 Fed. Reg. 45003 to 04 (Nov. 7, 1988) (HUD commentary quoting remarks of Rep. Owens, 134 Cong. Rec. H4923 (1988)).

In this case, the weight of evidence presented at trial undoubtedly balances in favor of granting the accommodation request. As explained below, Ms. Sanders's rent was only $27.00 per month; the requested accommodation was, in part, to allow her to pay the full amount of rent that she owed thus leaving Norwich unharmed; and Norwich presented no evidence that this request was in any way unreasonable or somehow infeasible.

In addition, Norwich refused to even evaluate the accommodation request. Appellee argues that it was Ms. Sanders who failed to verify her disability to its satisfaction, though it never requested any such verification. Appellee Br. 18-22. Courts have consistently held that a housing provider's failure to engage in a dialogue about an accommodation request—by ignoring it, stonewalling, or flatly denying it without discussion—violates the Fair Housing Act. *See e.g. Jankowski Lee & Associates v. Cisneros*, 91 F.3d 891, 895, 19 A.D.D. 619 (7th Cir. 1996), as amended, (Aug. 26, 1996) ("If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.") Appellee's assertion now that Ms. Sanders never verified the need for the disability, after Appellee made no requests for such verification is simply untenable. Such a ruling in Appellee's favor would create a new and troubling standard, in conflict with authority interpreting the Fair Housing Act, and disrupt current practices in the housing industry.

Argument

I. The Appellee violated the Fair Housing Act when it categorically denied the Appellant's accommodation request, and it cannot proceed with the eviction.

Norwich's brief admits that Ms. Sanders meets all of the elements of an accommodation request, except one. Appellee Br. pg. 18. Norwich argues that the one element missing is a causal nexus requirement contained in the third element. Appellee Br. pgs. 18-22. In section "A" of this brief, the *Amici* first quickly discuss the undisputed elements, and then, in section "B" discuss the only element in dispute. Section "C" explains that, even if the disability-related need for the accommodation was not already apparent, Norwich made no attempt to evaluate or request further verification. Finally, section "D" points out that the real reason for denial of the accommodation request was, in the words of Norwich's property manager, because "we were already at court," which is not a legitimate basis for denial. *See* T.R. 15:11.

A. It is undisputed that the Appellant is a person with a disability, the Appellee knew this, the accommodation requested was reasonable, and the Appellee denied the accommodation request.

As a preliminary point, where an aggrieved person seeks recourse under the Fair Housing Act for a violation of this regulation, they need not prove intent to discriminate. "'Failure to reasonably accommodate' is an alternative theory of liability" that is "separate from intentional discrimination."[3]

[3] *Good Shepherd Manor Foundation, Inc. v. City of Momence*, 323 F.3d 557, 562, 60 Fed. R. Evid. Serv. 1616 (7th Cir. 2003); accord *Austin v. Town of Farmington*, 826 F.3d 622, 627 (2d Cir. 2016), cert. denied, 137 S. Ct. 398, 196 L. Ed. 2d 297 (2016) (noting that § 3604(f)(3)(B) does not require that the denial "be the result of a discriminatory animus toward the disabled"); *Hunter on behalf of A.H. v. District of Columbia*, 64 F. Supp. 3d 158, 179 (D. D.C. 2014) (holding that "'failure to accommodate' claims do not require proof of intentional discrimination" (citing *Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City*, 685 F.3d 917, 922–23 (10th Cir. 2012))); *Developmental Services of Nebraska v. City of Lincoln*, 504 F. Supp. 2d 726, 738 (D. Neb. 2007) ("evidence that the [defendant's] denials of these applications for reasonable accommodation were motivated by discriminatory animus is immaterial to [plaintiff's] reasonable accommodation claim"); *see also Edwards v. Gene Salter Properties*, 671 Fed. Appx. 407 (8th Cir. 2016) (upholding reasonable-accommodation claim, after rejecting intent and impact claims, by would-be tenants whose prospective landlord required job-income evidence such as pay stubs, which plaintiffs could not supply because their only source of income was government disability benefits); *Anderson v. City of Blue Ash*, 798 F.3d 338, 360–64 (6th Cir. 2015) (holding that plaintiffs' evidence concerning disabled child's need for home-based service animal was sufficient to support reasonable-accommodation, but not intentional-discrimination, claim under the Fair Housing Act); *Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 538–41 (6th Cir. 2014)

In this case, the Court need not consider whether Norwich, as a housing provider, intended to discriminate against any person on the basis of their disability. Rather, Ms. Sanders need only show that she met the required elements of a reasonable accommodation request.

The required elements of the reasonable accommodation request are as follows:

(1) The requester is a person with disabilities within the meaning of 42 U.S.C. § 3602(h);

(2) The housing provider knew or should reasonable be expected to have known of the disability;

(3) The requested accommodation was necessary to afford the person with a disability an equal opportunity to use and enjoy the dwelling;

(4) The accommodation was reasonable; and

(5) The housing provider refused to make the accommodation.

See Overlook Mut. Homes, Inc. v. Spencer, 415 F. App'x 617, 620 (6th Cir. 2011). Ms. Sanders meets each element.

First, it is undisputed that Ms. Sanders is a person with disabilities. *See* Tr. 6/26/19 24:4-9; Tr. 6/26/19 25:15-23; Tr. 6/26/19 24:10-21. Appellee admitted at trial that Ms. Sanders is a person with disabilities and thereby meets this element. Appellee Br. pg. 18.

Second, it is undisputed that Norwich knew or should reasonable expected to have known of the disability. Norwich knew of Ms. Sanders's disability at the time that she moved into Norwich Apartments, well in advance of her reasonable accommodation request. See Tr. 6/26/19 16:1-2; Tr. 6/26/19 15:17-19. Norwich admitted at trial that Ms. Sanders meets this element. Appellee Br. pg. 18.

Third, the requested accommodation was necessary. In its brief, Norwich's sole argument against Ms. Sanders's reasonable accommodation request is that she did not establish a nexus required for the third element. Therefore, the Amici dedicates section "B." of this brief, further below, to this element.

(making the same point in a reasonable-modification case under § 3604(f)(3)(A) and noting that reasonable modification and reasonable-accommodation plaintiffs must prove essentially the same elements).

Fourth, it is undisputed that the requested accommodation was reasonable. The Sixth Circuit evaluates reasonableness on a case-by-case basis balancing the benefits and burdens of the request. *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1043 (6th Cir. 2001). An accommodation that "permits handicapped tenants to experience the full benefit of tenancy must be made unless the accommodation imposes an undue financial or administrative burden on a [defendant] or requires a fundamental alteration in the nature of its program."[4] In this case, Norwich would have born little burden to accommodate Ms. Sanders's basic request to avoid being evicted. The request was simply that Appellee accept all past due rent, provide a copy of any notices to her caseworker at A Renewed Mind, and dismiss the pending eviction matter. Defendant's Exhibit 3; Tr. 6/26/19 27:23-25. Courts generally agree that landlords and other targets of reasonable accommodation requests may have to "shoulder certain costs…so long as they are not unduly burdensome."[5] Sanders' request was obviously reasonable under the circumstances, and Appellee admits the same. Appellee Br. pg. 18.

Fifth, Norwich refused the requested accommodation. Tr. 6/26/19 14:16-25; Tr. 6/26/`9 24:13-15; Tr. 6/26/19 15:9-11. Appellee admitted at trial that Ms. Sanders meets this element. Appellee Br. pg. 18.

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[4] *HUD v. Ocean Sands, Inc.*, 1993 WL 343530, Fair Housing—Fair Lending Rptr. ¶ 25,055, at p. 25,538 (HUD ALJ), aff'd in pertinent part and remanded in part with respect to relief, Fair Housing—Fair Lending Rptr. ¶ 25,056 (HUD Secretary), additional relief awarded, 1993 WL 471296, Fair Housing—Fair Lending Rptr. ¶ 25,061 (HUD ALJ 1993).

[5] *U.S. v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1416, 6 A.D.D. 175 (9th Cir. 1994) (dealing with whether a mobile home park would have to waive its daily and monthly guest fees for a disabled tenant who required regular visits from a home health care aide). Other decisions dealing with a landlord's having to incur costs in response to a tenant's accommodation request under § 3604(f)(3)(B) include *Giebeler v. M & B Associates*, 343 F.3d 1143, 1152–53 (9th Cir. 2003); *U.S. v. California Mobile Home Park Management Co.*, 107 F.3d 1374, 20 A.D.D. 658, 36 Fed. R. Serv. 3d 1176 (9th Cir. 1997) (follow-up to the original California Mobile Home Park decision); *Montano v. Bonnie Brae Convalescent Hosp., Inc.*, 79 F. Supp. 3d 1120, 1127 (C.D. Cal. 2015); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 334–35, 9 A.D.D. 547, 148 A.L.R. Fed. 709 (2d Cir. 1995); *Samuelson v. Mid-Atlantic Realty Co., Inc.*, 947 F. Supp. 756, 761–62, 20 A.D.D. 385 (D. Del. 1996); *Congdon v. Strine*, 854 F. Supp. 355, 362–63, 5 A.D.D. 480 (E.D. Pa. 1994); *see also McGary v. City of Portland*, 386 F.3d 1259 (9th Cir. 2004) (defendant's assessment of service charges or fees against disabled homeowner may be sufficient to violate § 3604(f)(3)(B)); *Dadian v. Village of Wilmette*, 269 F.3d 831, 838–39, 12 A.D. Cas. (BNA) 609 (7th Cir. 2001) (disabled homeowners prevail under § 3604(f)(3)(B) despite showing that their requested accommodation would result in some costs to the defendant); *Hayden Lake Recreational Water and Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965, 982 (D. Idaho 2011) (defendant's refusal to lower water-and-sewer rates assessed against home for disabled persons may violate § 3604(f)(3)(B)).

B. The Appellant meets the "necessary" element.

The third element of a reasonable accommodation request requires that the person with a disability show that the requested accommodation was "necessary" to afford a disabled person equal opportunity to use and enjoy a dwelling.[6] Ms. Sanders meets this element. The requested accommodation was directly related to her disability. She testified that she had temporary difficulty paying rent due to her mental health disability. Tr. 6/26/19 26:22-24. The accommodation request asked that she be allowed to pay her rent when her mental state allowed in order to accommodate her mental health disability and that Norwich dismiss the eviction action filed against her. Defendant's Exhibit 3; Tr. 6/26/19 27:23-25. Ms. Sanders would be unable to use and enjoy her dwelling unit if she were evicted. Likewise, if her mental health disability sometimes prevents her from paying rent on time, and she is unable to request an accommodation on that basis, her disability would likely prevent her use and enjoyment of stable housing. If anything meets the "necessary" standard, surely avoiding eviction must.

Norwich attempts to show that Ms. Sanders falls short under the "necessary" element by arguing that Ms. Sanders's testimony at trial was insufficient because she had not provided verification of her need

[6] The Appellee suggests that the third element is established with a causal nexus evaluation. The standard is more accurately stated as may be "necessary" to afford a disabled person equal opportunity to use and enjoy a dwelling. *Dadian v. Village of Wilmette*, 269 F.3d 831, 838, 12 A.D. Cas. (BNA) 609 (7th Cir. 2001) (quoting *Bronk v. Ineichen*, 54 F.3d 425, 429, 10 A.D.D. 143 (7th Cir. 1995)); *see also Vorchheimer v. Philadelphian Owners Association*, 903 F.3d 100, 105–11 (3d Cir. 2018) (holding that, for a requested accommodation to be "necessary" under § 3604(f)(3)(B), it must be required to achieve equal housing opportunity in light of the alternatives offered); *Anderson v. City of Blue Ash*, 798 F.3d 338, 361 (6th Cir. 2015) ("Equal use and enjoyment of a dwelling are achieved when an accommodation ameliorates the effects of the disability such that the disabled individual can use and enjoy his or her residence as a non-disabled person could."); *Bhogaita v. Altamonte Heights Condominium Ass'n, Inc.*, 765 F.3d 1277, 1288–89 (11th Cir. 2014) (opining that, for purposes of § 3604(f)(3)(B), "a 'necessary' accommodation is one that alleviates the effects of a disability" and "the necessity determination … asks whether the requested accommodation ameliorates the disability's effects"); *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1226 (11th Cir. 2008) (§ 3604(f)(3)(B) "plainly requires the plaintiffs to show that the accommodation they requested actually alleviates the effects of a handicap"); *Giebeler v. M & B Associates*, 343 F.3d 1143, 1155 (9th Cir. 2003) (describing the "necessary" element in § 3604(f)(3)(B) cases as a question of causation in which plaintiffs "must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice") (quoting *Smith & Lee Associates, Inc. v. City of Taylor, Mich.*, 102 F.3d 781, 795, 19 A.D.D. 853, 1996 FED App. 0385P (6th Cir. 1996)); *Oxford House, Inc. v. Browning*, 266 F. Supp. 3d 896, 916– 18 (M.D. La. 2017) ("necessity" element satisfied by group home's residents who lacked the financial means to install the fire-safety devices demanded by defendant and were therefore faced with having to forego the therapeutic benefits of continuing to live in plaintiff's home); *Trovato v. City of Manchester*, N.H., 992 F. Supp. 493, 497, 7 A.D. Cas. (BNA) 926 (D.N.H. 1997) ("necessity" element satisfied where mobility-impaired plaintiffs demonstrated that "they would derive great benefit from a parking space in their front yard and the lack thereof has adversely affected their 'use or enjoyment' of their home").

for the accommodation. Appellee Br. pgs. 18-21. Yet Norwich already had knowledge of Ms. Sanders' disabilities and rejected the accommodation request without requesting any additional verification.

The process of verifications and the exchange of information necessary to evaluate an accommodation request is explained in a Joint Statement from the U.S. Department of Housing and Urban Development and the U.S. Department of Justice. In a question and answer format, the guidance explains what kinds of verifications a housing provider may request where a disability is already known:

> What kinds of information, if any, may a housing provider request from a person with an obvious or **known disability** who is requesting a reasonable accommodation?
>
> A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and **if the need for the requested accommodation is also readily apparent or known**, **then the provider may not request any additional information about** the requester's disability or **the disability-related need for the accommodation**.
>
> If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.
>
> ***
>
> Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

U.S. Department of Housing and Urban Development and the U.S. Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), *available at* https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (emphasis added).

In this case, Norwich's property manager admitted that she had knowledge of Ms. Sanders' disabilities. Tr 6/26/19 16:1-2; Tr. 6/26/19 15:17. Therefore, any need for further verification would be limited to verification of the disability-related need for the accommodation itself. But the disability-related need for the accommodation required no further evaluation. Clearly, if her disability prevented her, temporarily, from paying her monthly rent of $27, then it would be appropriately accommodated by simply

allowing her to pay. For this very basic and obviously reasonable accommodation, further verification seems altogether unnecessary. Appellee makes no attempt to dispute this and instead fully admits the reasonableness of the request. Appellee Br. Pg. 18.

Appellee's argument may be better understood as challenging the third element, not by disputing the need for the accommodation, but by implying that Ms. Sanders is *falsely* claiming that her disability is what caused her to fall behind on her rent. Specifically, Appellee claims that other witnesses contradicted her testimony, in alleging that Ms. Sanders told them that she forgot to pay her rent. Appellee Br. 18-22.

This argument confuses both the law and the facts of the case. Factually, it is far from clear that one witness's testimony that Ms. Sanders forgot to pay rent in any way contradicts Ms. Sanders's detailed testimony and accommodation request explaining that her mental illness caused her to fall behind in rent.

Furthermore, even if Norwich in good faith truly believed that Ms. Sanders's claim about the relationship between her rental payment and her disability was false, it could have requested additional information to evaluate the request. Indeed, if a housing provider could simply determine that it believes a tenant with disabilities is lying about the need for a request, categorically deny the request, and then evict the tenant, it would set a dangerous new standard for reasonable accommodations under the Fair Housing Act. In Norwich's suggested system, housing providers would simply claim that the need for an accommodation is false, deny it, and then evict. As explained in the following section, this is not the standard that courts interpreting the Fair Housing Act have established for reasonable accommodations.

C. Even if Appellee needed additional verification, it failed to evaluate the accommodation or request any verification.

1. Norwich was required to evaluate the reasonable accommodation request through dialogue with Ms. Sanders before denying it.

Additional information to evaluate the accommodation request was not necessary as explained above. But even if Appellee felt that additional information was needed, it was incumbent upon Norwich to dialogue with Ms. Sanders to request such information. *See e.g. Jankowski Lee & Associates v. Cisneros*, 91 F.3d 891, 895, 19 A.D.D. 619 (7th Cir. 1996), as amended, (Aug. 26, 1996) ("If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.").

Indeed, neither the statutory language in the Fair Housing Act nor its implementing regulations expressly require an "interactive process" per se for resolving requests for reasonable accommodations, but, courts often hold that the Act's statutory scheme inherently imposes a requirement to evaluate, and where appropriate verify, a reasonable accommodation request.[7]

Consistent with other circuits and the authority cited above, the Sixth Circuit essentially concludes the same in *Groner v. Golden Gate Gardens Apts.*, 250 F.3d 1039, 1047, 2001 U.S. App. LEXIS 10794, *19-20, 2001 FED App. 0174P (6th Cir.), 12-13. In *Groner*, the plaintiff sued a landlord after the landlord pursued eviction of a person with mental disabilities. *Id*. The landlord had made previous efforts to

[7] *Id*; *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1123 (D.C. 2005); *Jacobs v. Concord Vill. Condo. X Ass'n, Inc.*, No. 04–60017–CIV, 2004 WL 741384, at *2, 2004 U.S. Dist. LEXIS 4876, at *5 (D.Fla. Feb. 17, 2004) (same); *Armant v. Chat–Ro Co., L.L.C.*, No. 00–1402, 2000 WL 1092838, at *2, 2000 U.S. Dist. LEXIS 11386, at *6 (E.D.La. Aug. 1, 2000) (quoting *Jankowski Lee & Assocs*. and further holding that once apprised of possible handicap, landlord has duty to inquire or investigate further); *Auburn Woods I Homeowners Ass'n. v. Fair Employment & Hous. Comm'n.*, (2004) 121 Cal.App.4th 1578, 1598 [18 Cal.Rptr.3d 669, 683] (quoting *Jankowski Lee & Assocs*. and further holding that obligation to "open a dialogue" with party requesting reasonable accommodation is part of interactive process in which each party seeks and shares information); *Cornwell & Taylor LLP v. Moore*, 2000 WL 1887528, at *4, 2000 Minn.App. LEXIS 1317, at *11 (Minn.App.Div. Dec. 22, 2000) (quoting *Jankowski Lee & Assocs*.); *Cobble Hill Apts. Co*., 1999 Mass.App. Div. at 169 (the fact that tenant's reasonable accommodation request is neither specific nor suitable "does not relieve landlord from making one, particularly when tenant is handicapped by mental disability"). *Compare Andover Hous. Auth. v. Shkolnik*, 443 Mass. 300, 820 N.E.2d 815 (2005) (housing authority did not violate "reasonable accommodation" requirement when evicting excessively noisy tenant, because housing authority had "made every effort to engage in an interactive process for ascertaining and accommodating [tenant's] condition" while tenants "impeded the authority's efforts to engage in a full interactive dialogue" by denying "that there was an ongoing and excessive noise problem").

accommodate the disability. *Id*. Shortly before the eviction, the plaintiff also asked for a face-to-face meeting as a reasonable accommodation to try to resolve the issues that had led to the potential eviction. *Id*. The defendant denied the request for the meeting and pursued eviction. *Id*. The Court ruled in favor of the defendant, acknowledging that there is no language in the Act expressly requiring an "interactive process"—stating "there is no such language in the Fair Housing Act or in the relevant sections of the Department of Housing and Urban Development's implementing regulations that would impose such a duty on landlords and tenants." *Id*. But in doing so, it first emphasized that the parties had "already been in close contact for months" and that previous efforts to accommodate the plaintiff's disability had proven unsuccessful. *Id*.

Indeed, it was *after* "previous efforts to accommodate [the plaintiff]'s disability had proven unsuccessful" that the *Groner* Court did "agree with the district court's conclusion that such inaction did not establish bad faith on the part of [the defendant], even though we do not condone [the defendant's] failure to respond to [the plaintiff]'s eleventh-hour efforts." *Id*. Thus, through *Groner*, the Sixth Circuit, consistent with other authority, strongly implies that if the defendant-landlord had not made previous attempts to accommodate the disability before evicting, it would be acting in "bad faith." The obvious implication, here, is that a landlord, such as Norwich, would face liability under the Fair Housing Act if it fails to evaluate the reasonable accommodation request before pursuing eviction.

The U.S. Department of Housing and Urban Development also takes this position. *See HUD v. Jankowski Lee & Assocs.*, HUDALJ 05–93–0517–1 (June 30, 1995) (once informed of possibility that tenant may need accommodation, landlord has responsibility to explore that need and suggest accommodations). The HUD–DOJ Joint Statement explicitly calls for an "interactive process" in which the landlord and tenant "discuss the [tenant's] disability-related need for the requested accommodation and

possible alternative accommodations," in the hope of negotiating "an effective accommodation for the [tenant] that does not pose an undue financial and administrative burden for the [landlord]."[8]

Furthermore, when courts apply the reasonable accommodation provision of the Fair Housing Act, it is their established practice to rely on the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, 12102, and the Rehabilitation Act (RA), 29 U.S.C. § 794, both of which mandate an interactive process through which employers and employees explore what accommodations are reasonable.[9]

Norwich argues that it was under no obligation at all to request additional information before flatly denying the requested accommodation, and that Ms. Sanders provides "no support" for the assertion that it may have had such an obligation. Appellee Br. pg. 20. To the contrary, as set forth through the authority provided above, it is well established that the housing provider must interact with the person requesting an accommodation to evaluate the request through dialogue with the tenant rather than categorically denying it.

[8] U.S. Department of Housing and Urban Development and the U.S. Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), *available at* https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (emphasis added).

[9] *See* 29 C.F.R. § 1630.2(o)(3) (1995); 29 C.F.R. pt. 1630 Appendix (1996); 29 U.S.C. § 794(d); *Giebeler*, 343 F.3d at 1156–57 (stating that court ordinarily applies RA case law in applying reasonable accommodation provisions of Fair Housing Act and also generally applies RA and ADA case law "interchangeably"); *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 561 (7th Cir.2003) (holding that Fair Housing Act requirements for showing failure to reasonably accommodate are same as those under ADA); *Erdman v. City of Fort Atkinson*, 84 F.3d 960, 962 (7th Cir.1996) ("reasonable accommodation" requirement of Fair Housing Act is most often interpreted by analogy to same phrase in RA).

2. In similar circumstances, Courts have concluded that landlords must interact to evaluate accommodation requests before evicting.

A number of Courts have already determined that the landlord cannot proceed with an eviction until *after* it has made reasonable efforts to evaluate the accommodation request with the tenant in similar circumstances. The following cases are illustrative. First, in *Roe v. Sugar River Mills Associates*, the Court held that owners and managers of a large apartment complex could not evict a mentally ill tenant based on his threatening behavior toward other tenants until "*after* defendants have made reasonable efforts to accommodate his handicap." 820 F. Supp. 636, 639–40, 2 A.D.D. 868 (D.N.H. 1993) (emphasis added).

Second, as described above in section "B.1," the Sixth Circuit, in *Groner*, essentially concluded the same by strongly implying that if the landlord had not already met with the tenant and made efforts to accommodate, it would have acted in "bad faith" by failing to respond to an accommodation request to avoid the eviction. *Groner v. Golden Gate Gardens Apts.*, 250 F.3d 1039, 1047, 2001 U.S. App. LEXIS 10794, *19-20, 2001 FED App. 0174P (6th Cir.).

Third, in *Hunt v. Aimco Props.*, the 11th Circuit found a landlord liable under the Fair Housing Act after it "failed even to consider" a reasonable accommodation request and instead threatened eviction and pursued removal of the tenant through refusing to renew the lease agreement. L.P., 814 F.3d 1213, 1218, 2016 U.S. App. LEXIS 2788, *2, 26 Fla. L. Weekly Fed. C 37. Reversing the lower court, the 11th Circuit found:

> "These allegations sufficiently support the claim that [landlord] ***failed even to consider***, much less make, the reasonable accommodation of permitting the [plaintiff] to remain in their apartment while [the plaintiff] made arrangements for [their child with disabilities] to be placed in offsite care to avoid future incidents or misunderstandings. The [plaintiff] stated a claim for failure to make a reasonable accommodation.

Id. at L.P., 814 F.3d 1213, 1227, 2016 U.S. App. LEXIS 2788, *25, 26 Fla. L. Weekly Fed. C 37 (emphasis added).

Fourth, in *Sinisgallo v. Town of Islip Hous. Auth.*, the Court determined that tenants with disabilities were entitled to a preliminary injunction against proceedings by a public housing authority to evict the tenants as direct threats to others, since the tenants were likely to succeed on the merits of their claims under

the Fair Housing Act, after one tenant assaulted a neighbor due to his mental impairment, but the authority refused to consider a probationary period as a reasonable accommodation. 865 F. Supp. 2d 307, 313, 2012 U.S. Dist. LEXIS 72123, *1.

Fifth, in *Roe v. Housing Auth.*, a tenant with a disability sought a reasonable accommodation to avoid an eviction by a landlord public housing authority. 909 F. Supp. 814, 822-823, 1995 U.S. Dist. LEXIS 19487, *24. The landlord refused to consider or attempt to accommodate the tenant. *Id*. The Tenant brought suit under the Fair Housing Act. *Id*. The Court held:

> "assuming [the tenant] is handicapped or disabled, ***before*** he may lawfully be evicted **[the landlord] must demonstrate that no 'reasonable accommodation' will eliminate or acceptably minimize any risk [the tenant] poses** to other residents at [the housing complex].

Id (emphasis added).

The cases and other authority listed above demonstrate a clear and consistent system, under which, landlords must make good faith efforts to evaluate accommodation requests, and make attempts to accommodate, before evicting. In this case, the landlord has essentially admitted that it failed to do this and took the position that it had no such duty. Appellee Br. pg. 18-21. It cannot proceed with the eviction.

D. The stated reason that Appellee denied the accommodation request was because "we were already at Court" which is not a legitimate basis.

Appellee had no legitimate basis to deny Ms. Sanders's accommodation request as explained above. The real reason for denial of the accommodation request was explained at trial by Appellee's property manager when asked about Norwich's response to the accommodation request:

> Q But the request for accommodation: Are you aware if there was any response, by Norwich Apartments, to this request?
> A I would doubt it. We were already at court. So, no.

T.R. 15:9-11. Appellee failed to respond, thus denying Ms. Sanders's accommodation request, because "we were already at court." Being "already at court" is not a legitimate basis to deny a reasonable accommodation request.[10]

[10] The overwhelming authority cited in section I.B.2., above, confirms that accommodation requests may be made to prevent an eviction.

II. A ruling in favor of the Appellee would have a chilling effect on civil rights for people with disabilities.

To provide factual context for the importance of this matter, as of 2017, 59.4% of housing civil rights complaints received by the Department of Housing and Urban Development Fair Housing and Equal Opportunity (FHAP) were on the basis of disability.[11] 41.1% of all complaints before FHAP in 2017 involved the failure to make reasonable accommodations, the second most common issue raised in FHAP Complaints.[12] The number one call that The Ability Center of Greater Toledo receives involves a lack of available housing for people with disabilities. There is currently a shortage of affordable, accessible housing available in our region.[13]

The policy intentions behind passage of the Fair Housing Act confirm that the law was enacted with the specific goal of protecting the rights of such persons with disabilities to live in a residence of their choice in the community. *Giebeler v. M&B Assoc.,* 343 F.3d 1143(9th Cir. 2003). For people with disabilities, those rights must include the right to request reasonable accommodations where necessary to access a dwelling of their choice. 42 U.S.C. 3604(f)(3)(B)(2016). When passing the amended version of the Fair Housing Act, which added disability as a class, the House Judiciary Committee explained that a housing provider's practices are not defensible simply because they have become a tradition; reasonable accommodations require changes to traditional rules and practices if necessary to permit a person with a disability an equal opportunity to use and enjoy a dwelling.[14]

Manifestations of a disability may cause some tenants to temporarily fall behind in rent, as occurred in this case. People with disabilities may be reliant on in-home care to get out of bed in the morning; they may have frequent stays in a hospital or respite facility; and those with mental health disabilities may have

[11] Office of Fair Housing and Equal Opportunity, Annual Report to Congress, FY 2017 at 14, available at https://www.hud.gov/sites/dfiles/FHEO/images/FHEO_Annual_Report_2017-508c.pdf (accessed 3/3/2020).
[12] Id. at 16.
[13] See Calee Kirby, *Low-income public housing waitlist temporarily closed in the Toledo metro area: Community Leaders said there were too many people on the list and not enough houses*, WTOL (Feb. 24, 2020), available at https://www.wtol.com/article/news/local/low-income-public-housing-wait-list-temporarily-closed/512-dc9d3684-6103-4621-9024-fa56deb1c42a (accessed 3/3/2020).
[14] H.R.Rep.No.711, 100th Cong. 2d Session, reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

bouts of depression where their disability keeps them from engaging in activities of daily living for periods of time. Of course, these issues may cause some tenants to fall behind in rental payments temporarily. But if such manifestations of disability cause the tenant to be evicted, then people with disabilities lose the stability, safety, and economic boost that stable housing provides. They simply cannot enjoy equal access to housing as intended by the Fair Housing Act. This is why HUD Guidance specifically calls for housing providers to be flexible in adjusting its policies for collecting rental payments, by, for example, "adjusting a rent payment schedule to accommodate when an individual receives payment assistance."[15]

This understanding of the Fair Housing Act, and the reasonable accommodation requirements, is currently incorporated into the practices of the housing industry. Based on their work and services, The Ability Center and The Fair Housing Center know that the practice of housing providers and property managers is to evaluate and attempt to accommodate tenants before proceeding with an eviction. If this Court were to rule in favor of Norwich it would disrupt current practices and effectively allow property managers in this region to ignore accommodation requests, inconsistent with the authority provided in section I., above. A failure to find that the lower Court erred in allowing Norwich to evict Ms. Sanders after she made a valid reasonable accommodation request, and after Norwich took the position that it need not even dialogue to evaluate that request, would have a powerful chilling effect on civil rights for persons with disabilities.

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[15] HUD.gov, Reasonable Accommodations and Modifications, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications#_Examples_1(accessed 3/3/2020); *see* also HUD Notice PIH 2010-11(HA)(2010 HUD PIH LEXIS 104*4)(April 13, 2010)(HUD permits housing authorities to change rent payment standards based on a reasonable accommodation request by a person with a disability such as a room for a live-in aid or medical equipment); *Fair Hous. Rights Ctr. V. Morgan Props. Mgmt. Co., LLC,* 2018 U.S.Dist. LEXIS 108905 (E.D. Penn. June 29, 2018)(Defendant property manager denied summary judgment where tenants requested reasonable accommodations of Defendant's policy that it would not adjust rent payment due dates02-16- based on receipt of SSDI income or any other disability); *HUD v. Milton James*, FHEO No. 02-16-4255-8 (Jan. 22, 2020), available at https://www.hud.gov/sites/dfiles/FHEO/documents/20charMilton%20James.pdf (accessed 3/4/2020)(HUD ALJ found that Respondent Apartment Owner discriminated against Complainant, in part, by failing to grant a reasonable accommodation for her rental due date when payments were being made by a third party non-profit organization).

Conclusion and Request for Relief

For the foregoing reasons, *Amici* requests that this Court find that the lower Court erred in determining that Appellee could proceed with the subject eviction after categorically denying Appellant's accommodation request and thereby preclude Appellee from proceeding with the eviction.

Respectfully submitted,

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Certification of Service

This is to certify that a copy of the foregoing was sent via email on this 9th day of March, 2020, to:

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