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PRACTICE FOCUS: COMMUNITY ASSOCIATION LAW



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Community associations reviewing a resident's need for an emotional support animal must be careful not to request disability-related documents that go beyond what is required, writes Alessandra Stivelman of Eisinger Brown Lewis Frankel & Chaiet. **A8**

Be Cautious with Accommodation Requests

Under the federal and Florida fair housing acts, community associations are required to make reasonable accommodations to its rules, policies, practices or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. Community associations are often asked to make a reasonable accommodation to allow a resident to maintain an emotional support animal in the community, in violation of the association's pet policy. When confronted with these requests, many associations are uncertain about how to verify the resident's need for the reasonable accommodation.

Generally, if the resident's disability and need for the animal is evident, the association is not permitted to request additional information. If the disability is evident, but the need for the animal is not, the association is authorized to request only the specific information necessary to evaluate the disability related need.

But in situations where neither the disability nor the need for the animal are evident, the association may request disability-related information that first verifies the condition that substantially limits one or more of the person's major life activities; second, describes the need for the requested accommodation; and finally, demonstrates the relationship between the resident's disability and the need for the reasonable accommodation.

In 2009, the United States Court for the Northern District of Florida in *Hawn v. Shoreline Towers Phase I Condominium Association, Inc.* found that in order to show that a

disabled person needs the assistance of a service animal, "it is reasonable to require the opinion of a physician who is knowledgeable about the subject disability and the manner in which a service dog can ameliorate the effects of the disability."

But until recently, courts have not provided much additional guidance on the nature of information a community association can demand when evaluating a person's need for an emotional support animal. Accordingly, many associations relied on the Hawn case in requesting a doctor's letter but went beyond a reasonable inquiry by also requesting considerably detailed information regarding the resident's disability, treatment and the animal's training.

Now a recent ruling by the Middle District of Florida in the case of Bhogaita v. Altamonte Heights Condominium Association, Inc. provides helpful guidance to community associations regarding how much information is justified for a reasonable inquiry.

The case involves a U.S. Air Force veteran who allegedly suffers from post-traumatic stress disorder resulting in chronic anxiety and depression. Several years after moving into his condominium unit, he acquired a dog who weighed more than 25 pounds, in violation of the association's rules.

In response to a notice from the association demanding that the dog be removed, Bhogaita provided the association with a note from his treating medical professional, explaining that, due to mental illness, he had certain limitations as to social interactions and coping with stress and anxiety, and required the assistance of an emotional support animal.

The association advised Bhogaita that the letter needed to name the dog specifically. Accordingly, Bhogaita submitted a revised letter from his treating medical professional which specifically stated that the emotional support animal prescribed was Bhogaita's dog, Kane, as Bhogaita has a therapeutic relationship with his specific dog.

Not satisfied, the association requested more information, which resulted in a third letter from the doctor. Still not satisfied, the association continued its requests for even more information.

In partially granting Bhogaita's motion for summary judgment in regard to whether the association constructively denied the requested accommodation, the court reiterated that a housing provider may request reliable disability-related information that is necessary to verify that the person meets the Fair Housing Act's definition of disability, describes the need for the accommodation, and shows the nexus between the person's disability and the need for the requested accommodation.

This inquiry, however, must not be highly intrusive, and in most cases, an individual's medical records or detailed information about the nature of the person's disability is not necessary. The court found that the three letters provided to the association explained that Bhogaita has a mental illness, is limited in his ability to work with people and has difficulty with social interactions of any kind, and has a therapeutic relationship with his dog who serves to ameliorate otherwise difficult to manage day-to-day psychiatric symptoms.

Since the evidence provided was sufficient, the association's additional letter requesting details related to the dog's professional training, Bhogaita's treatment, medications, and number of counseling sessions attended per week, details regarding how the diagnosis was made, and prescribed treatment moving forward, clearly went beyond the scope of a "reasonable inquiry."

Accordingly, the court specifically found that by persisting in its intrusive quest for more — and largely irrelevant — information the association constructively denied Bhogaita's request for a reasonable accommodation.

As Bhogaita demonstrates, community associations must exercise caution when handling requests for reasonable accommodations under the fair housing act, whether for emotional support animals or any other reasonable accommodation request.

While an association does have a right to conduct a meaningful review when asked to grant exemptions to the association's rules and policy, it needs to be careful not to request details which go beyond that required to obtain the necessary information.

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