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## Courts weigh emotional support animals against homeowner rules

By Jed Frankel and Alessandra Stivelman



Community associations often receive requests to make exceptions to their pet policies for service animals or emotional-support animals. Residents ask the association to allow a pet otherwise prohibited or allow a pet larger than permitted by the governing documents.

Many residents believe that simply providing a registered service dog certificate is all they need to do to qualify an emotional support animal. But some associations make determinations without an understanding of what constitutes a reasonable accommodation. Some even seek to enforce blanket pet bans — often in violation of Federal and Florida Fair Housing Acts.

### No dogs allowed

The recent case of *Sun Harbor Homeowners' Ass'n v. Bonura* illustrates the requirements of the service animal provisions under the Federal Fair Housing Act that apply to community associations. Section 3604(f)(3)(B) of the act prohibits the denial of a reasonable accommodation that is necessary to ensure an equal opportunity for a disabled person to use and enjoy his dwelling.

In this case, the homeowner's fiancé brought a dog into their home in violation of the association's no-dogs-allowed policy. When confronted by the association, the owner denied that a dog was residing in home. Thereafter, the homeowner had an attorney respond to the association that the dog was a registered service dog needed to assist his fiancé with an unspecified disability, for which the owner demanded an accommodation.

The association responded that the owner needed to have a request for an accommodation placed on the association's agenda for the next scheduled board meeting. The owner did not make such a request until after litigation had already ensued.

After mediation attempts were unsuccessful, the association filed suit against the owner seeking a declaration that the dog violated the association's covenants and an injunction requiring its removal. The owner counterclaimed alleging that the association's actions violated the Florida and Federal Fair Housing Acts since his fiancé suffered from a disability and that the dog, an emotional therapy animal, was a reasonable accommodation.

The trial court held the owner's fiancé was a handicapped person as defined in the Federal Fair Housing Act and was therefore entitled to keep the dog for emotional support. The association appealed.

Florida's Fourth District Court of Appeal reversed the trial court's ruling, finding that the testimony at trial failed to establish that the owner's fiancé was handicapped under the Federal Fair Housing Act, that the association had knowledge of the nature or extent of the handicap, and that the association refused a reasonable accommodation after being given an opportunity to conduct a meaningful review.

Accordingly, the court held that the owner failed to prove a case of disability discrimination under the Federal Fair Housing Act. The court made its ruling only on the federal act, but noted that the result would be the same for a claim under the corresponding Florida act.

### **Making a case**

*Sun Harbor* shows that to prevail on a Section 3604(f)(3)(B) claim, a person must establish four things: First, that he is disabled or handicapped within the meaning of the Fair Housing Act; second, that he requested a reasonable accommodation; that such accommodation was necessary to afford him an opportunity to use and enjoy his dwelling, and finally that the association refused to make the requested accommodation.

The association successfully defended itself in front of the Fourth DCA because the plaintiff failed to prove her disability at trial.

While some may see this decision as a victory for community associations confronting issues raised by emotional-support animals, this was a case where the plaintiff failed to prove a disability, which is a required step in bringing a claim under the federal act. Community associations must take requests for accommodations seriously and act within the bounds of the law, as illustrated in other cases.

### **Intrusive investigation**

In *Bhogaita v. Altamonte Heights Condominium Ass'n*, a case pending in the U.S. District Court for the Middle District of Florida, a U.S. Air Force veteran allegedly suffering from post traumatic stress disorder, chronic anxiety and depression filed a suit for constructive denial of his request for maintaining a dog in his unit, which weighed more than 25 pounds, a violation of the association's rules. The unit owner claimed the association delayed making a decision and sought detailed information "beyond what [the association] needed to know in order to make a determination on the matter."

In response to the association's demands to remove the dog from the premises, the unit owner provided two letters from his treating medical professional, which explained that, due to mental illness, he had certain limitations as to social interactions and coping with stress and anxiety.

The doctor's letters prescribed the unit owner's dog as an emotional support animal, since he had a therapeutic relationship with this specific dog. The letters also explained that the dog would help alleviate his conditions and enhance the man's ability to live independently and enjoy the dwelling unit.

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

While an ultimate decision in this case has not been reached, the court denied the association's motion to dismiss finding that by persisting in its intrusive quest for more — largely irrelevant — information, the association constructively denied the unit owner's request for reasonable accommodation and gave him a basis to file suit for relief.

After receiving a request for a reasonable accommodation — including one for a service animal or emotional-support animal — a community association must ensure that any investigation is conducted in a proper manner.

While the association is obviously entitled to confirm basic information that was lacking in *Sun Harbor*, it should be careful not engage in conduct that goes beyond that required to obtain the necessary information or that otherwise may be improperly intrusive.

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