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Advocating Emotional-Support Animals in No-Pets Housing

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Cheyenne is my best friend. Cheyenne is the only thing in life that brings me joy, loves me unconditionally. She's taught me how to be responsible. I've never lived on my own by myself ever in my life. I am a responsible person because of my dog. I know I have to walk her. I know I have to shop. I know I have to eat. I know I have to go places and because of Cheyenne, I can do it.

—A client of MFY Legal Services

Service animals have long been known to help people with disabilities live independently and enjoy equal access to public places. Historically discussions about service animals have focused on dogs that help people with physical disabilities, but emotional-support animals can have a strong therapeutic benefit for people with psychiatric disabilities.[1] An emotional-support animal can alleviate symptoms and ease the social isolation of people with mental illness. This relief can be accomplished without any specialized and potentially expensive training. Having an emotional-support animal is a simple, nonmedical intervention that can greatly increase the well-being of a person with a disability.

Despite the advantages to people with mental illness, the request for an emotional-support animal can be contentious in housing that prohibits pets. Although the need for an emotional-support animal is analogous to the need for a seeing-eye dog, requests for emotional-support animals are often more controversial. Because emotional-support animals do not require specialized training, some allege that the concept is abused by people who are with and without disabilities and who simply want a pet when the rules of their housing forbid having pets.[2] Landlords, condominium associations, and other housing providers may react with cynicism to a valid request that a no-pet rule be waived so that a tenant with a disability can have an emotional-support animal.

Here I review the Fair Housing Amendments Act of 1988 as it relates to reasonable accommodations for emotional-support animals. I discuss case law as well as guidance issued by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice. I conclude with practical tips for legal aid practitioners.

Terminology

Terms related to animals that assist people with disabilities are used in both legal and nonlegal contexts—"service animal," "assistance animal," "support animal," "emotional-support animal," and "companion animal." The terms are often used interchangeably, leading to confusion about the purpose of the animal and the rights of the person with a disability to have the animal in housing where animals are otherwise barred. Courts, laypeople, and experts do not all adhere to the same terminology, but, for clarity, I use "service animal" here to refer to animals, such as psychiatric service animals, that have received specialized training to perform tasks. I use "assistance animal" to refer to animals, such as emotional-support animals, that have not been trained to perform tasks.

Some of the confusion about service animals and assistance animals arises from the different standards that apply in public accommodations and in housing. In 2010 new Americans with Disabilities Act (ADA) regulations defined "service animal" narrowly as a dog that is individually trained to do work or tasks for a person with a disability. The new definition explicitly excludes emotional-support animals.[3] Nonetheless the preamble to the new definition expressly states that emotional-support animals may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the [Federal Housing Act]."[4] In 2011 and 2013 HUD also issued guidance in reiterating that nontrained assistance animals—emotional-support animals among them—may

1 See Pet Partners, Library: Health Benefits of Animals for Adults (Jan. 23, 2013) (bibliography of health benefits of companion animals).

2 Susan Stellin, *Do You Have a Doctor's Note?*, New York Times, Sept. 27, 2013.

3 28 C.F.R. § 35.104 (2013).

4 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 Fed. Reg. 56236, 56240 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36); Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56166 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35).

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be a reasonable accommodation under the Fair Housing Amendments Act.[5]

Most court cases on assistance animals involve emotional-support animals, which "do not need training to ameliorate the effects of a person's mental and emotional disabilities [and] by their very nature, and without training, may relieve depression and anxiety."[6] Defendants in Fair Housing Amendments Act claims may be landlords, condominium associations, and other owners or managers of housing. I use the term "housing providers" as a catchall for this group. And, although the Fair Housing Amendments Act uses the outdated "handicap" or "handicapped," I generally substitute "disability" and "person with a disability."

Assistance Animals in Housing

"To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a [disability]"is illegal under the Fair Housing Amendments Act.[7] Discrimination may mean "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."[8] A reasonable accommodation case "is highly fact-specific, requiring case-by-case determination."[9]

To be entitled to a reasonable accommodation under the Fair Housing Amendments Act, one must show that (1) one is a person with a disability; (2) the accommodation is necessary in order for the person to have an equal opportunity to use and enjoy the dwelling; and (3) the accommodation is reasonable.[10] To prevail on a claim that a housing provider failed to make a reasonable accommodation, a plaintiff must further show that the housing provider knew or reasonably should have known about the disability and refused to grant the requested accommodation.[11]

WHO IS CONSIDERED A PERSON WITH A DISABILITY?

A person is considered to have a disability for the purposes of the Fair Housing Amendments Act if the person has "a physical or mental impairment which substantially limits one or more of such person's major life activities," has a record of such an impairment, or is regarded as having such an impairment.[12] Some major life activities are "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."[13] According to HUD and the Justice Department, people who receive Supplemental Security Income or Social Security Disability Insurance usually meet the definition of disability under the Fair Housing Amendments Act.[14]

WHEN IS AN ASSISTANCE ANIMAL NECESSARY AND REASONABLE?

Under the Fair Housing Amendments Act, refusing an accommodation that "may be necessary to afford ... equal opportunity to use and enjoy a dwelling" is discrimination.[15] Courts' applications of this requirement are so fact-specific that deriving clear rules about when an accommodation is necessary and reasonable can be difficult. However, many courts have followed the Seventh Circuit's statement in *Bronk v. Ineichen* that "necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability."[16] The person requesting the accommodation must show a direct and causal link between the proposed accommodation and the equal opportunity to be afforded.[17]

One who is able to meet the "necessary" prong is likely to meet the "reasonable" prong. As the court in *Bronk* stated, "a deaf individual's need for the accommodation

5 Memorandum from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to All Fair Housing and Equal Opportunity Regional Directors and Regional Counsel (Feb. 17, 2011) (New ADA Regulations and Assistance Animals as Reasonable Accommodations Under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973); U.S. Department of Housing and Urban Development, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (April 25, 2013).

6 Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834, 63836 (Oct. 27, 2008) (to be codified at 24 C.F.R. pt. 5).

7 Fair Housing Amendments Act, 42 U.S.C. § 3604(f)(1).

8 *Id.* § 3604(f)(3)(B).

9 *United States v. California Mobile Home Park Management Company*, 107 F.3d 1374, 1380 (9th Cir. 1997).

10 42 U.S.C. § 3604(f)(3)(B); *Astralis Condominium Association v. Secretary of U.S. Department of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010); *DuBois v. Association of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006); *Bryant Woods Inn Incorporated v. Howard County*, 124 F.3d 597, 603 (4th Cir. 1997); *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995).

11 *Astralis Condominium Association*, 620 F.3d at 67; *DuBois*, 453 F.3d at 1179.

12 42 U.S.C. § 3602(h).

13 24 C.F.R. § 100.201(b) (2013).

14 U.S. Department of Justice & U.S. Department of Housing and Urban Development, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act 13 n.10 (May 17, 2004) (citing *Cleveland v. Policy Management Systems Corporation*, 526 U.S. 795, 797 (1999)).

15 42 U.S.C. § 3604(f)(3)(B).

16 *Bronk*, 54 F.3d at 429. See *Bryant Woods Inn*, 124 F.3d at 604; *Fair Housing of the Dakotas Incorporated v. Goldmark Property Management Incorporated*, 778 F. Supp. 2d 1028, 1039 (D.N.D 2011); *Overlook Mutual Homes Incorporated v. Spencer*, 666 F. Supp. 2d 850, 856 (S.D. Ohio 2009), aff'd, 415 F. App'x 617 (6th Cir. 2011).

17 *Bryant Woods Inn*, 124 F.3d at 604; *California Mobile Home Park Management*, 107 F.3d at 1381.

afforded by a hearing dog is, we think, *per se* reasonable" when balanced against a landlord's economic and aesthetic concerns.[18] One instance where an assistance animal might be necessary but not reasonable is where the animal has behavior problems, such as loud barking, aggressive behavior, noxious odors, or urinating or defecating in public areas of the building. An animal with a behavior problem could be found, depending on the severity of the problem, to be an undue burden or direct threat to the health and safety of other residents (discussed below). A court could find that accommodating the assistance animal was not reasonable, as in *Woodside Village v. Hertzmark*.[19] The tenant in that case had schizophrenia and learning disabilities. Despite the housing authority's repeated attempts to accommodate him, including arranging for assistance from a dog trainer and purchasing a "pooper scooper," collar, and leash, the tenant was unable to care for and control his dog. To require the housing authority to waive its pet rules that dogs be walked in certain areas and their waste be picked up by their owners was not reasonable, the court held.

Although reasonable accommodation requests are fact-specific, the case law illustrates the importance of giving details of the nexus between the accommodation and the person's disability. For example, one court denied a housing provider's summary judgment motion where a plaintiff had introduced evidence that a dog helped remedy her anxiety and difficulty sleeping. The person's treating physician

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stated that if her dog were removed, she "'would get very agitated, distraught, become difficult to ... take care of.'"[20] In another case, a tenant with mental illness survived a motion for summary judgment because he had offered affidavits from his treating physician, his social worker, and a certified pet-assisted therapist that described his mental illness and his treatment and had stated that having a cat allowed him to use and enjoy his apartment by "helping him cope with the daily manifestations of his mental illness."[21]

Similarly a state appellate court upheld an administrative determination that married condominium owners who both had disabilities had been discriminated against when they were not allowed to have a dog as an accommodation. The court held that the condominium owners had introduced "abundant evidence ... that [their] disabilities interfered with the use and enjoyment of their home, and that having a dog improved this situation"[22] The husband testified that having the dog forced him to leave the apartment for walks and rides. The wife testified that the dog improved her mood. A physician testified that the husband's affect was brighter and he was more social after getting the dog. The court held that this testimony was sufficient to establish a causal link between the condominium's no-pet policy and the interference with the pair's ability to use and enjoy their home.[23]

By contrast, courts have found that a person seeking a reasonable accommodation did not offer sufficient evidence of the necessity of the accommodation where the request and supporting documentation were vague or conclusory. For example, after a condominium owner acquired a dog, she asked her therapist to sign a letter that she had prepared so she could keep the dog. She subsequently had a physician sign a similar letter. Neither letter explained her medical condition or the service the dog would provide. At a bench trial,

18 *Bronk*, 54 F.3d at 429.

19 *Woodside Village v. Hertzmark*, No. 9204-65092, 1993 WL 268293 (Conn. Super. Ct. June 22, 1993). See Stevens v. Hollywood Towers and Condominium Association, 836 F. Supp. 2d 800, 809–10 (N.D. Ill. 2011) (condominium association may be able to restrict support dog's access to common areas unless plaintiff could prove that she was required to have animal with her at all times, could not have him in carrier, and was prevented from entering or leaving building by restrictions).

20 *Falin v. Condominium Association of La Mer Estates Incorporated*, No. 11-61903-CIV, 2012 WL 1910021, at *4 (S.D. Fla. May 28, 2012).

21 Crossroads Apartments Associates v. LeBoo, 152 Misc. 2d 830, 835 (Rochester, N.Y., City Ct. 1991).

22 Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission, 18 Cal. Rptr. 3d 669, 679 (Cal. Ct. App. 2004).

23 *Id.* at 681.

her therapist was found to be not credible, and the judge ruled that the condominium owner had not proven that a reasonable accommodation was necessary.[24]

A person seeking temporary shelter that could accommodate his dog likewise failed to give adequate documentation of necessity. He offered only a doctor's letter stating that separation from his dog would "adversely affect his mental health and result in a deterioration of his emotional condition."[25] The court held that the absence of objective findings to support the conclusory statement defeated the plaintiff's claim.[26] In a similar case a tenant submitted only an ambiguous and general statement that depressed people might benefit from having a dog and notes from the tenant's medical records documenting the tenant's anxiety about losing his dog. The court held that the documentation was not sufficient to show that the dog was necessary for the tenant to use and enjoy his apartment.[27] In another case the tenant submitted statements that he needed an assistance animal with no further explanation of the tenant's disability or how the animal would alleviate his symptoms. The court held that such vague statements could not raise a genuine issue of fact and granted summary judgment to the housing provider.[28]

WHEN MAY A HOUSING PROVIDER REQUEST ADDITIONAL INFORMATION?

The cases discussed above illustrate what evidence and information are required to show that a person is entitled to a reasonable accommodation. If a person offers vague or insufficient information, a housing provider is allowed to request additional information that "(1) is necessary to verify that the person meets the Act's definition of disability ..., (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation."[29] Housing providers must be able to conduct a "meaningful review" of the requested accommodation.[30] A person who fails to respond to reasonable requests for additional information cannot prove that the housing provider knew or should have known of the need for an accommodation and thus cannot prove a violation of the Fair Housing Amendments Act.[31]

However, a housing provider who makes intrusive and excessive requests for information after a tenant has submitted documentation supporting the tenant's requests can be held to have constructively denied the accommodation.[32] For example, a court held that a condominium owner supplied sufficient information when he submitted from a doctor three letters explaining that he had posttraumatic stress disorder, that he was limited in his ability to work and engage in social interactions, and that his dog ameliorated "difficult to manage day to day psychiatric symptoms."[33] The court held that the condominium association constructively denied the plaintiff's request when it responded with intrusive and unnecessary demands for more information, such as information about his treatment, medications, number of weekly counseling sessions, and details about how the diagnosis was made.[34]

Some courts have held that if a person requests an accommodation without adequate supporting information, the housing provider cannot deny the accommodation. Instead the provider has a duty to request more information or "open a dialogue."[35] For example, in *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission*, the court held that the housing provider "could not simply sit back and deny a request for reasonable accommodation because it did not think sufficient information had been presented or because it did not think the [condominium owners] had spoken the 'magic words' required...."[36]

WHAT ARE A HOUSING PROVIDER'S DEFENSES?

Once a person with a disability has demonstrated that an accommodation is both reasonable and necessary, a housing provider is required to grant a request for a reasonable accommodation unless granting it would be an undue hardship or burden.[37] One court states that "a modification to a rule *must* be made unless it causes some undue burden."[38]

Under the Fair Housing Amendments Act, a housing provider may refuse an accommodation if it would "constitute a direct threat to the health or safety of other individuals."[39] According to HUD, interpretations of the direct-threat provision

24 *Hudson Troy Towers Apartment Corporation v. Malfetti*, No. A-1637-10T2 (N.J. Super. Ct. App. Div. Oct. 9, 2012).

25 *In re Durkee v. Staszak*, 636 N.Y.S.2d 880, 882 (N.Y. App. Div. 1996).

26 *Id.*

27 *Landmark Properties v. Olivo*, 783 N.Y.S.2d 745 (N.Y. App. Term 2004).

28 *Lucas v. Riverside Park Condominiums Unit Owners Association*, 776 N.W.2d 801, 811 (N.D. 2010).

29 U.S. Department of Justice & U.S. Department of Housing and Urban Development, *supra* note 14, at 13.

30 *Hawn v Shoreline Towers Phase I Condominium Association Incorporated*, 347 F. App'x 464, 468 (11th Cir. 2009); *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1258 (D. Haw. 2003).

31 *Hawn*, 347 F. App'x at 468; *Prindable*, 304 F. Supp. 2d at 1260; *Lucas*, 776 N.W.2d at 811.

32 *Bhogaita v. Altamonte Heights Condominium Association*, No. 6:11-cv-1637-Orl-31DAB (M.D. Fla. Dec. 17, 2012).

33 *Id.*

34 *Id.*

35 *Auburn Woods I Homeowners Association*, 18 Cal. Rptr. 3d at 683 (citing *Jankowski Lee and Associates v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996)). See *Lucas*, 776 N.W.2d at 811.

36 *Auburn Woods I Homeowners Association*, 18 Cal. Rptr. 3d at 684.

37 *Shapiro v. Cadman Towers Incorporated*, 51 F.3d 328, 335 (2d Cir. 1995).

38 *Green v. Housing Authority of Clackamas County*, 994 F. Supp. 1253, 1256 (D. Or. 1998).

39 42 U.S.C. § 3604(f)(9).

must comport with the Supreme Court decision in *School Board of Nassau County v. Arline*.[40] Under the *Arline* standard, even if a person in question did pose a threat, the person would be eligible for the housing if that threat could be eliminated by a reasonable accommodation.[41]

According to HUD and the Justice Department, a housing provider may rely on the direct-threat exemption only if it has considered the following factors: "(1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat."[42] HUD discussed the direct-threat exemption as it applies to assistance animals during its rulemaking process for HUD-assisted housing for people who are elderly or have disabilities.[43] HUD reaffirmed the applicability of the three-part inquiry; a housing provider may exclude an assistive animal only when it poses a direct threat "*and* its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated," HUD further stated.[44] When evaluating a recent history of overt or allegedly threatening acts, the provider "must take into account whether the assistance animal's owner has taken any action that has reduced or eliminated the risk" such as obtaining specific training or equipment for the animal.[45] Courts applying the direct-threat exemption have held that it does not apply unless the housing provider can show that no reasonable accommodation will eliminate the threat.[46]

MFY Legal Services successfully challenged a public housing provider's attempt to force a client to give up her emotional-support animal, a pit bull, after the dog nipped a neighbor. A New York state court held that forcing the tenant to give up her dog was "unnecessarily harsh" and "fails to accommodate petitioner's need for a dog that has become her companion to provide her emotional support."[47] The court ordered that the tenant could keep her emotional-support animal as long as she kept a muzzle and leash on the dog.[48]

MUST AN ASSISTANCE ANIMAL BE TRAINED TO PERFORM SPECIFIC TASKS?

The question of whether an animal must be trained to be a reasonable accommodation under the Fair Housing Amendments Act is an evolving area of law. The Act and its implementing regulations do not require that an animal supporting a person with a disability have received specialized training. Similarly the Act and its regulations do not contain the terms "service animal" or "assistance animal" and therefore do not supply definitions.[49] Although the Fair Housing Amendments Act does not define when an animal can be a reasonable accommodation, some early animal cases held that an animal must have had individualized training to perform disability-related tasks to be a reasonable accommodation.[50] Two early cases that found a requirement for training under the Fair Housing Amendments Act involved hearing dogs.[51] Although both cases held that the hearing dogs at issue needed to be trained to assist their owners, neither court was presented with an animal that was alleged to ameliorate the effects of a disability without training and did not analyze or decide that particular issue.[52]

The trend in the past 10 years has been solidly against requiring assistance-animal training under the Fair Housing Amendments Act.

One of the most frequently cited cases to impose a training requirement is a 2003 district court opinion, *Prindable v. Association of Apartment Owners of 2987 Kalakaua*, which held that an emotional-support animal must have training to be a reasonable accommodation under the Fair Housing Amendments Act.[53] However, when that case was appealed, the Ninth Circuit specifically declined to take up the question of training and dismissed the case because the accommodation had never actually been denied.[54]

The trend in the past 10 years has been solidly against requiring assistance-animal training under the Fair Housing Amend-

40 *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987); Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3232, 3247 (Jan. 23, 1989); Implementation of the Fair Housing Amendments Act of 1988, 53 Fed. Reg. 44992, 45001–2 (proposed Nov. 7, 1988).

41 *School Board of Nassau County*, 480 U.S. at 288–89.

42 U.S. Department of Justice & U.S. Department of Housing and Urban Development, *supra* note 14, at 4.

43 Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. at 63836–37.

44 *Id.* at 63837 (emphasis added).

45 *Id.*

46 *Roe v. Housing Authority of Boulder*, 909 F. Supp. 814, 822–23 (D. Colo. 1995); *Roe v. Sugar River Mills Associates*, 820 F. Supp. 636, 640 (D.N.H. 1993).

47 *In re Kovalevich v. Rhea*, No. 402392/2010 (N.Y. Sup. Ct. 2013).

48 *Id.*

49 42 U.S.C. §§ 3601–3619; 24 C.F.R. §§ 100.1–100.400.

50 *Bronk*, 54 F.3d 425; *Assenberg v. Anacortes Housing Authority*, No. C05-1836RSL (W.D. Wash. May 25, 2006), aff'd, 268 F. App'x 643 (9th Cir. 2008); *Green*, 994 F. Supp. 1253; *Oras v. Housing Authority of Bayonne*, 861 A.2d 194 (N.J. Super. Ct. App. Div. 2004); *Timberlane Mobile Home Park v. Washington State Human Rights Commission*, 95 P.3d 1288 (Wash. Ct. App. 2004); *In re Kenna Homes Cooperative Corporation*, 557 S.E.2d 787 (W. Va. 2001).

51 *Bronk*, 54 F.3d 425; *Green*, 994 F. Supp. 1253.

52 *Id.*

53 *Prindable*, 304 F. Supp. 2d at 1256.

54 *DuBois*, 453 F.3d at 1179 n.2.

ments Act.[55] An early case to recognize that not all reasonable accommodation requests regarding animals should be analyzed as trained service animals was *Janush v. Charities Housing Development Corporation*. The plaintiff in *Janush* was a woman who had a mental illness and was seeking permission to keep her two birds and two cats as assistance animals. While acknowledging that service animals must be trained, the court held that "defendants have not established that there is no duty to reasonably accommodate *non-service* animals."[56] Similarly, in a case where two tenants with disabilities introduced evidence that their dog alleviated their depression and improved their concentration, sleep, and interpersonal relationships, the court held that "it is clear that, under the right circumstances, allowing a pet despite a no-pets policy may constitute a reasonable accommodation."[57]

In *Overlook Mutual Homes v. Spencer* the court directly addressed prior decisions regarding a training requirement for animals in the Fair Housing Amendments Act. First, the court reasoned that the ADA, which contains a training requirement, deals with public access and public accommodations, whereas the Fair Housing Amendments Act is focused on the much more private setting of housing. The different purposes of the two statutes support a finding that the laws encompass different requirements for animals. The court cited with approval agency interpretations by HUD and the Justice Department, the agencies that enforce the Fair Housing Amendments Act. HUD regulations governing HUD-assisted housing for the elderly and people with disabilities allow tenants to have "animals that are used to assist, support, or provide service to persons with disabilities."[58] The comments accompanying the regulation clarify that the rule includes support and therapy animals, such as those providing emotional support.[59] HUD has also stated that it "does not agree that the definition of the term 'service animal' contained in the Department of Justice regulations implementing the ADA should be applied to the Fair Housing Act."[60]

The significant benefit to people with psychiatric disabilities that emotional-support animals can give is increasingly being accepted by courts and government agencies.

One significant development on the question of whether training of animals is required was a 2012 decision by the same district court that decided *Prindable*. The decision in *Association of Apartment Owners of Liliuokalani Gardens v. Taylor* contains an exhaustive recitation of the arguments both for and against finding that the Fair Housing Amendments Act includes a training requirement. The court ultimately rejected the arguments in favor of requiring training and stated that "the law has changed since *Prindable* was decided in 2003 by increasing acceptance of 'assistance animals' as possible 'reasonable accommodations.'"[61]

Of note, a court recently highlighted that the training requirement can result in discrimination based on the type of a disability a person experiences.[62] The court pointed out specifically that a training requirement would direct housing providers to accommodate people with physical disabilities but not those who have psychiatric disabilities and need an emotional-support animal. The court stated that eliminating a training requirement for assistance animals ensured equal treatment and held that "the [Fair Housing Act] encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability."[63]

Practical Tips for Advocates

Given the Fair Housing Amendments Act's legal framework and related case law, a legal aid provider can do a number of things to assist clients seeking approval for assistance animals.

REQUESTING AN EMOTIONAL-SUPPORT ANIMAL AS A REASONABLE ACCOMMODATION

A legal aid advocate can assist a person who needs an emotional-support animal by preparing a strong, detailed written request for a reasonable accommodation and obtaining supporting documentation from the client's treating physician or mental health provider.[64] Short notes written on prescription pads or cursory statements that a physician is "prescribing" an emotional-support animal are not sufficient. Although a person with a disability can write the person's own letter request-

55 *Bedell v. Long Reef Condominium Homeowners Association*, No. 2011-051 (D.V.I. Dec. 6, 2013); *Association of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F. Supp. 2d 1268 (D. Haw. 2012); *Falin*, 2012 WL 1910021, at *3; *Fair Housing of the Dakotas*, 778 F. Supp. 2d at 1036; *Auburn Woods I Homeowners Association*, 18 Cal. Rptr. 3d at 679.

56 Janush v. Charities Housing Development Corporation, 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000) (emphasis added).

57 *Auburn Woods I Homeowners Association*, 18 Cal. Rptr. 3d at 679.

58 *Overlook Mutual Homes*, 666 F. Supp. 2d at 859 (citing 24 C.F.R. § 5.303).

59 *Id.* at 860 (citing Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834).

60 *Id.*

61 *Association of Apartment Owners of Liliuokalani Gardens at Waikiki*, 892 F. Supp. 2d at 1285.

62 *Fair Housing of the Dakotas*, 778 F. Supp. 2d at 1036.

63 *Id.*

64 See U.S. Department of Justice & U.S. Department of Housing and Urban Development, *supra* note 14, at 13–14.

ing the accommodation, the request is stronger if most of the substantive information on the person's disability and the particular benefit that the person would derive from having an emotional-support animal comes from a treating physician or mental health treatment provider.

First, the request should state the person's disability, and it must describe how the disability substantially limits a major life activity, such as caring for oneself, working, or learning. Merely stating a diagnosis is not sufficient.

Second, the request should describe the ways in which the disability limits the person's use and enjoyment of the person's dwelling. For example, a mental health treatment provider could state that a person's diagnosis of major depression causes a depressed mood, difficulty leaving home, and limited social interactions.

And, third, the supporting documentation should explain how an emotional-support animal will alleviate the symptoms of the disability and give the person an equal opportunity to use and enjoy the person's home. The treatment provider can explain, for example, that the companionship of a dog will elevate the person's mood and taking a dog for daily walks will motivate the person to leave the house and interact with others. The request should contain an offer to discuss the request and give additional information if necessary.

Details must be given to avoid accusations that the request is vague or merely parroting the language of the statute, but an advocate should be careful not to disclose too much private information to the housing provider. Each person must decide how much information to disclose in the original request. If a person limits the details in the original request, the person can always supplement them if the housing provider makes a reasonable request for more information.

WHEN A REQUEST FOR AN EMOTIONAL-SUPPORT ANIMAL IS DENIED

The options for what to do when a request for an emotional-support animal is denied are likely to vary from state to state and from city to city with what kinds of state and local antidiscrimination statutes are available. However, as a general matter, legal aid practitioners should consider the following options for their clients.

First, review the documentation given to the landlord. Is the tenant willing to share additional information that could bolster the request? Consider working directly with mental health providers to craft a more complete letter of support for your client.

Second, could another animal that might be less objectionable to the housing provider serve as the emotional-support animal? For example, a housing provider might be more amenable to a request to have a small dog as opposed to a large dog, or a cat instead of a dog.

Third, explore whether the state or locality has laws prohibiting discrimination based on disability and has an administrative agency that enforces them. For example, in New York, clients can file a complaint with the State Division of Human Rights.

And, fourth, an advocate could file an affirmative case under the Fair Housing Amendments Act in federal court.

USING THE FAIR HOUSING AMENDMENTS ACT DEFENSIVELY IN EVICTION ACTIONS

Ideally people living in no-pet housing receive a housing provider's permission before obtaining an emotional-support animal. However, people sometimes obtain an animal without requesting a reasonable accommodation. When this occurs, some housing providers commence an eviction proceeding. Although available defenses vary considerably with jurisdiction, advocates should consider whether requesting a reasonable accommodation for the animal can help defend against the eviction action.

The significant benefit to people with psychiatric disabilities that emotional-support animals can give is increasingly being accepted by courts and government agencies. However, the concept still encounters suspicion and resistance from some housing providers who do not understand how an untrained assistance animal can be more than a pet to a person with a disability. Advocates who are well prepared to confront these barriers can offer crucial support to individual clients and be an essential part of building broader awareness and acceptance for this accommodation.

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