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A Landlord's Obligation to Permit 'Support' Pets

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Generally, New York courts will enforce prohibitions on maintaining pets contained in residential and proprietary leases or condominium and cooperative house rules. However, exceptions arise from the provisions of the federal Fair Housing Act (FHA),[1] the New York State Human Rights Law (NYSHRL)[2] and the New York City Humans Rights Law (NYCHRL),[3] which, under certain circumstances, require landlords and boards to permit residents with disabilities to keep pets. As one court put it, "the legislative advances protecting the disabled…require the no-pet clause to bow upon proof of a specific, particularized need to keep a dog, which need arises out of the handicap."[4]

The rule utilized by New York courts in ascertaining whether a "no pet" clause must yield to a pet request based on disability, and some representative cases applying the rule, are discussed below. However, the bar should be aware that the U.S. Department of Justice applies a stricter standard than that employed by the New York courts when enforcing the FHA. As set forth below, in addressing situations in which a New York court would likely hold that landlords and boards are within their right to refuse a request for a pet, the Justice Department has demonstrated a propensity to press forward with civil enforcement actions and force settlements which not only permit the resident to maintain the pet, but set up binding procedures governing future pet requests by other residents.

The New York Rule

Under the FHA, NYSHRL and NYCHRL, landlords and condominium and cooperative boards must make "reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford the handicapped individual an equal opportunity to use and enjoy a dwelling."[5] Whether a particular accommodation is required is "highly fact-specific, requiring case-by-case determination."[6] If a court finds that a reasonable accommodation should have been but was not offered, the court may award compensatory and/or punitive damages, attorney fees and appropriate injunctive relief.[7]

Where, in the face of a no-pets rule, a building resident seeks to maintain a pet, he or she must establish: (1) a disability; (2) that he or she is otherwise qualified for residency; (3) the necessity to keep the pet in order to use and enjoy the apartment; and (4) that reasonable accommodations can be made to allow the resident to maintain the pet.[8]

Most of the reported cases in New York applying this test turn on whether the pet is necessary for the use and enjoyment of the apartment. Those cases usually hold that the resident has failed to satisfy the necessary burden.

For example, in *Kennedy Street Quad v. Nathanson*,[9] two proprietary shareholders acquired a dog in violation of their co-op's "no dogs" policy. Both of the tenants suffered from kidney problems and depression, and, at a hearing before the New York State Division of Human Rights (DHR), presented evidence from physicians and a psychologist demonstrating that maintaining the dog helped to ameliorate their symptoms of depression. DHR found that the co-op discriminated against the tenants in the terms, conditions, and privileges of their housing on the basis of their disabilities and that they should be permitted to maintain the dog as a reasonable accommodation for such disabilities. Further, DHR awarded the tenants $7,500 in compensatory damages against the co-op. On Appeal, the Appellate Division reversed, finding that the tenants did not satisfy the necessary legal standard:

Here, the complainants submitted evidence that the dog helped them with their symptoms of depression. Nonetheless, they failed to present any medical or psychological evidence to demonstrate that the dog was actually necessary in order for them to enjoy the apartment. Accordingly, the SDHR's determination was not supported by substantial evidence (citations omitted).[10]

In *Landmark Properties v. Olivo*,[11] the Appellate Term for the Ninth and Tenth Judicial Districts upheld a judgment of possession issued in favor of the landlord on the basis of the tenant's violation of the "no-pet" clause in his lease, and rejected the tenant's claim that he was entitled to maintain a dog as a reasonable accommodation under the FHA. The court held that the tenant failed to establish both that he had a disability and that the dog was necessary for him to use and enjoy his apartment:

The court properly found that tenant [Edward] Olivo failed to establish that he was entitled to keep a dog for therapeutic reasons as a reasonable accommodation pursuant to the Fair Housing Act (42 USC §3601 et seq.), as he failed to introduce sufficient evidence to establish his handicap and the necessity of keeping a dog to use and enjoy the apartment…

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…[The] tenant…submitted only the ambiguous statement of his physician that depressed people may benefit from having pets and notes from his medical records that he was anxious about possibly losing his dog. Furthermore, even assuming arguendo that tenant Olivo's anxiety, depression and physical ailments as described in the record constitute a "physical or mental impairment which substantially limits one or more of [his] major life activities," the record is not sufficient to demonstrate that keeping a dog would in fact be necessary to his enjoyment of the subject premises.[12]

On the other hand, in *Mozaffari v. New York State Division of Human Rights*,[13] the Appellate Division upheld DHR's ruling that a tenant who had suffered a loss of hearing was disabled under the NYSHRL and that the landlord should have provided the reasonable accommodation requested by the tenant in order to afford her an equal opportunity to use and enjoy her apartment:

The Commissioner's findings that Schatz was disabled within the meaning of Executive Law §292(21) and that petitioner [Mahmoud] Mozaffari failed to provide the reasonable accommodation she requested to afford her an equal opportunity to use and enjoy her apartment are supported by sufficient evidence on the record considered as a whole and are therefore conclusive. Contrary to petitioner Mozaffari's argument that [Patricia] Schatz did not adequately inform him of or document her need for a hearing dog, by letter dated August 18, 2005, Schatz's attorney informed petitioner that Schatz was suffering from a hearing disability and that she needed a service animal at her apartment in connection with that disability. Attached to the attorney's letter was a letter dated February 22, 2005 from an otologist stating, based upon his examination of Schatz, that she had bilateral hearing loss and would benefit from a hearing dog. (Citations and internal quotation marks omitted).[14]

Further, the court upheld the tenant's claim for damages based on mental anguish, but reduced the amount of the award from $10,000 to $1,000.[15]

Enforcement

While the New York case law provides landlords and tenants with relatively reliable guideposts in determining whether a particular fact pattern warrants the yielding of a no-pet clause, there is a wild card in play. The Justice Department takes a more aggressive approach in enforcing the FHA, including in situations where there is some doubt that a New York court would find an anti-discrimination violation.

The Justice Department's approach is well-illustrated by the recent case of *United States v. Woodbury Gardens Redev. Owners Corp.*[16] According to the complaint,[17] in 2005 Jack and Sandra Biegel purchased an apartment at Woodbury Gardens, a housing cooperative for senior citizens located in Woodbury, New York. The co-op's House Rule No. 10 (Co-op Rule 10) provided, in relevant part, that "[n]o bird or animals shall be kept harbored in the building unless the same in each instance have been expressly permitted."[18]

At the time the Biegels moved into their apartment, Sandra Biegel had a multitude of diseases, including depression, anxiety, severe hypertension, cirrhosis and diabetes.[19] In 2006, notwithstanding Co-op Rule 10, the Biegels acquired a miniature schnauzer, which allegedly provided emotional comfort and support to Mrs. Biegel.[20]

In September 2006, the defendant co-op demanded that the Biegels remove the dog from their apartment.[21] In response, the Biegels and their family asserted that the dog's companionship was "therapeutic" to Mrs. Biegel because "she suffered from chronic and severe depression," and asked that an exception to Co-op Rule 10 be made for Mrs. Biegel's "welfare and mental stability."[22] The Biegels submitted three letters from Mrs. Biegel's doctors and one letter from a clinical social worker in support of their assertion that Mrs. Biegel required "her emotional support dog."[23] In early 2007, however, the co-op advised the Biegels that it refused to waive Co-op Rule 10, and threatened fines, assessments and eviction if the Biegels did not comply therewith.[24]

In September, 2007, the Biegels complied and removed the dog, which allegedly "caused Sandra Biegel great emotional distress and aggravated her already extremely poor health."[25] Approximately one month later, Sandra Biegel passed away.[26] The co-op thereafter continued to demand the payment of fines and legal fees from Mr. Biegel relating to the dog's presence in the apartment, which monies Biegel eventually paid in the amount of approximately $2,300.[27]

The Justice Department filed a complaint against the co-op in 2012, alleging various violations of the FHA, including discrimination on the basis of disability, failure to make reasonable accommodations, and the improper coercion, intimidation, threatening of or interfering with Mrs. Biegel in the exercise of her rights under the FHA.[28]

Rather than proceed to trial, the co-op agreed to settle the case. In the Nov. 8, 2012 settlement agreement,[29] the co-op, while denying liability, agreed, among other things, to pay $58,750 to Biegel.[30] The co-op also agreed to adopt a new, detailed written policy governing requests by building residents to maintain an "assistance animal" notwithstanding Co-op Rule 10, and to maintain records relating to requests for reasonable accommodations of animals for three years.[31]

Notably, in a much broader definition than that employed by the New York courts (including, without limitation, in the *Kennedy Street Quad* case discussed above), the settlement agreement defined an "assistance animal" as "an animal that does work or performs tasks for the benefit of a person with a physical disability *or that ameliorates the effects of a mental or emotional disability*…" (emphasis supplied).[32] Furthermore, the settlement agreement required all of the co-op's employees with responsibilities relating to the management of residential units to attend a training program regarding the disability discrimination provisions of federal, state and local fair housing laws.[33] The court will retain jurisdiction over the case and the settlement agreement through late 2015, whereupon the case will be dismissed with prejudice against the co-op.[34]

The *Woodbury Gardens* case is but one of many recent enforcement actions the Justice Department has commenced which allege FHA violations for failing to make reasonable accommodations for support pets. A review of the Justice Department's website[35] shows that the department has commenced and/or settled no fewer than five such actions across the country since October 2012. Clearly, this is an issue that is on the department's radar.

Conclusion

In general, New York courts are more likely than not to hold that a "no-pet" provision in a residential lease or house rules need not yield for a pet that merely provides emotional support for the requesting resident and is not necessary for the resident's beneficial use of an apartment. However, as evidenced by the *Woodbury Gardens* settlement and the Justice Department's more expansive view of what constitutes a "support animal," an apartment resident who believes that he or she was wrongfully denied a support pet under the FHA may yet have recourse—provided that he or she gets the attention of the Justice Department, which may be more difficult than normal at this time due to federal budget cuts.

Landlords and boards, meanwhile, must tread very carefully, lest they find themselves the subject of a federal inquiry. Landlords and boards should review their pet policies and the procedures adopted by the co-op in the *Woodbury Gardens* settlement agreement, and consider whether to amend their policies accordingly. Doing so may very well ward off unwanted attention from Uncle Sam.

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Endnotes:

1. 42 U.S.C.A. §§3601 et seq.

2. New York State Executive Law §290 et seq.

3. Administrative Code of the City of New York §8-101 et seq.

4. *Oceangate Associates Starrett Systems v. Dopico*, 109 Misc. 2d 774, 441 N.Y.S.2d 34 (Civ. Ct. Kings Cty 1981).

5. *Hubbard v. Samson Management*, 994 F. Supp. 187, 189-190 (S.D.N.Y. 1998) (citations and internal brackets omitted).

6. Id. at 190.

7. See 42 U.S.C.A. §3613(c); *Mozaffari v. New York State Division of Human Rights*, 63 A.D.3d 643, 881 N.Y.S.2d 437 (1st Dept. 2009).

8. See *Kennedy Street Quad v. Nathanson*, 62 A.D.3d 879, 879 N.Y.S.2d 197 (2d Dept. 2009).

9. Id.

10. 62 A.D.3d at 880.

11. 5 Misc. 3d 18, 783 N.Y.S.2d 745 (App. T. 9th/10th Jud. Dist. 2004).

12. 5 Misc. 3d at 20-21; see also *105 Northgate Cooperative v. Donaldson*, 54 A.D.3d 414, 863 N.Y.S.2d 469 (2d Dept. 2008); *One Overlook Avenue Corp. v. New York State Division of Human Rights*, 8 A.D.3d 286, 777 N.Y.S.2d 696 (2d Dept. 2004).

13. Supra, 63 A.D.3d 643, 881 N.Y.S.2d 437 (1st Dept. 2009).

14. 63 A.D.3d at 644.

15. Id.

16. E.D.N.Y., Civil Action No. 12-0711.

17. Available at http://www.justice.gov/crt/about/hce/documents/woodbury_gardenscomp.pdf

18. Id., at ¶14.

19. Id., at ¶9.

20. Id., at ¶15.

21. Id., at ¶16.

22. Id., at ¶19.

23. Id., at ¶¶20, 23-27.

24. Id., at ¶¶27-29.

25. Id., at ¶¶29-30.

26. Id., at ¶31.

27. Id., at ¶¶32-34.

28. Id., at ¶41.

29. Available at http://www.justice.gov/crt/about/hce/documents/woodbury_gardenssettle.pdf.

30. Id., at ¶15.

31. Id., at ¶¶5(a), 12.

32. Id., at ¶5(b).

33. Id., at ¶9.

34. Id., at ¶¶16, 17.

35. http://www.justice.gov/crt/about/hce/whatnew.php (visited May 28, 2013).
