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# New Jersey Supreme Court Offers Guidance for Evaluating Emotional Support Animal Requests

On March 13, the New Jersey Supreme Court (NJ Supreme Court) decided the case of *Players Place II Condominium Association, Inc. v. K.P. and B.F.* (A-60/61-22) (N.J. Super. March 13, 2024). In this opinion, the NJ Supreme Court considered for the first time how to evaluate requests for emotional support animals under New Jersey's Law Against Discrimination (LAD).

Defendant K.P. purchased a unit located in Players Place II Condominium Association (Association) in 2018 and is subject to the Association's master deed and agreed to be bound by its rules and regulations. The Association's rules and regulations include a pet policy that limits pets "to the small domestic variety weighing thirty (30) pounds or less at maturity." Unit owners who acquire or replace a pet after buying a unit are required to "contact the Association within two (2) weeks to request and complete a Pet Registration Form." No pet that "causes a nuisance of any kind to another unit owner … may be kept." The policy exempts "[d]ogs used for the blind from the weight restriction but does not include emotional support animals."

After the unit purchase, in late July 2018, K.P.'s girlfriend (and now wife), B.F., moved into the unit. B.F. was diagnosed with several mental health conditions. K.P. notified the Association on August 2, 2018, that he and B.F. were "considering adopting an emotional support dog" that would "[m]ost likely … be over the 30lb pet limit." Before the Association responded, on August 5, 2018, B.F. adopted a 63-pound dog named Luna to live with her as an emotional support animal. The Association filed a complaint asserting K.P. had violated the Association's rules because he had a dog that weighed more than 30 pounds and had failed to register the dog. K.P.'s answer included a counterclaim against the Association for allegedly violating anti-discrimination laws.

The chancery court conducted a bench trial and heard testimony from an officer of the Association, multiple medical experts, defendants, and family members. The chancery judge dismissed defendants' claims under the LAD and federal law, finding that B.F. was not "handicapped or disabled" within the meaning of the relevant statutes. The court allowed Luna to remain with B.F. on narrow equitable grounds, however, because "this particular dog … offers her comfort and seems to assist her in lessening her episodes" and "ha[d] not been at all disruptive." The Association appealed and argued the trial court erred in failing to enforce the Association's rules and regulations and allowing Luna to stay.

On appeal, the Appellate Division issued a split opinion. The majority found that "the judge acted within her discretion in fashioning an equitable remedy suitable for the particular facts of the case." The majority, however, noted that the trial court misinterpreted the statute when it found that B.F. was not disabled. The court noted that "to establish a disability under the LAD … it is not necessary to demonstrate that a mental disability 'prevents the typical exercise of any bodily or mental functions'; the statute provides an alternative way to establish a disability 'by accepted clinical or laboratory diagnostic techniques.'" The majority concluded based on the evidence that B.F. was disabled under the LAD. The majority affirmed the dismissal of the discrimination claims, finding "insufficient proof that having a dog that exceeded the weight limit in the Association's pet policy 'was necessary to afford [B.F.] an equal opportunity to use and enjoy' the condominium unit." Thus, the Appellate Division concluded that the trial court's equitable remedy should be sustained, and Luna was allowed to remain at the condominium. The dissent agreed that defendants' claims under the LAD and the Fair Housing Act (FHA) were properly dismissed but disagreed with the award of equitable relief. The Association appealed the Appellate Division's decision.

The NJ Supreme Court, in its decision, created a streamlined process for individuals seeking accommodations for an emotional support animal. Under state and federal law, to request an exception to a pet policy in order to keep … animal, the individual must first show that they have a disability under the LAD. Under the LAD, there are two grounds for a disability: The first is a disability "which prevents the typical exercise of any bodily or mental functions." The second ground is "any mental, psychological or developmental disability … which is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques." N.J.S.A. 10:5-5(q). Housing providers can ask individuals to provide information that confirms they have a disability and need a support animal, such as a determination from a government agency or a letter from a healthcare professional. However, they cannot request medical records or a medical examination.

In addition to establishing a disability, residents must demonstrate that the requested accommodation may be necessary to afford them an "equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2). In essence, the question is whether the accommodation will alleviate at least one symptom, not whether the accommodation will cure or eliminate the disability.

The burden then shifts to housing providers to prove the requested accommodation is unreasonable. The housing provider must consider whether allowing an emotional support animal would fundamentally alter the housing provider's operations or impose an undue financial or administrative burden. An animal's training (or lack of training) cannot be a factor in an accommodation request. Before a housing provider denies a request on reasonableness grounds, the court encourages the parties to engage in good-faith interactive dialogue to exchange information, consider alternative options, and attempt to resolve any narrow issues. If this fails and litigation follows, courts will need to balance the need for and benefits of the requested accommodation against the costs and administrative burdens it presents to determine whether the accommodation is reasonable.

Applying the framework to this case, the NJ Supreme Court found that B.F. satisfied the proofs and demonstrated she has a disability under the LAD. Regarding the necessity element, the NJ Supreme Court found the trial testimony supported the fact that Luna helped with B.F.'s emotional state and that her depressive episodes were shorter and more "mild to moderate" than before. The NJ Supreme Court found that the chancery court and the Appellate Division should not have dismissed B.F. and K.P.'s claims under the LAD and FHA, because B.F. presented evidence of her need for an accommodation, which the Association disputes. The court also noted that whether the Association has shown the accommodation sought is unreasonable is also disputed and that both these inquiries are fact-sensitive.

The NJ Supreme Court reversed the Appellate Division's decision and vacated the dismissal of defendants' counterclaim under the LAD and FHA. However, because of the case's posture, the NJ Supreme Court remanded the matter to the trial court for further proceedings relating to the disability claim. In its opinion, the NJ Supreme Court strongly encouraged the parties to engage in a good-faith process to try and resolve the ongoing dispute. For now, Luna can remain until the trial court makes a determination.

The New Jersey Supreme Court's decision is a cautionary tale for housing providers that have pet policies. The decision also provides a framework for resolving disputes and clarity when seeking accommodations for emotional support animals from a housing provider. Despite several hurdles and almost six years of legal battles, this case has provided a new legal framework for people seeking accommodations for emotional support animals. This alert is only meant to summarize the decision and is not intended as legal advice. Any inquiries should be directed to any of Day Pitney's community association attorneys listed in the sidebar.

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