

Daily Business Review

Suit Against Association for Emotional Support Animal Denial Sends Message to Fla. Condos, HOAs

By **Elizabeth A. Bowen** | December 11, 2018



Elizabeth Bowen, Shareholder Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel, Coral Gables (Photo: Courtesy photo)

Emotional support animals have been in the news quite a bit during the last couple of years. There have been reports of airline passengers boarding with a peacock, hamster, pig, a duck wearing a diaper and a squirrel. As a result, companies have started to change their

policies, and the public's attitudes and perceptions toward ESAs also appear to be changing.

Frontier Airlines recently announced its new policy to allow only cats and dogs as emotional support animals. It joined Spirit Airlines, Delta Air Lines, United Airlines and American Airlines, which have all tightened their policies on ESAs this year. Publix also banned them from its stores and posted signs reading: "For food safety reasons, only service animals that are specifically trained to aid a person with disabilities are permitted within the store."

These new policies and signs have raised awareness of the perceived abuse of ESAs by people trying to take advantage of federal disability laws in order to take their pets into businesses. As a result of the growing skepticism, community association boards of directors can easily fall into the trap of disregarding requests for accommodations for ESAs and summarily rejecting them.

A recent lawsuit by Broward County against a Lauderhill condominium association illustrates the potential pitfalls of such uninformed actions by associations. The county filed suit in federal court against the Environ Towers I Condominium Association seeking damages and injunctive relief for its alleged violation of federal fair housing laws as well as the Broward County Human Rights Act.

The suit alleges that the association illegally denied a unit owner's request for a reasonable accommodation for an ESA to help her cope with depression and other illnesses. It states that she submitted a written request accompanied by documentation from her physician noting that she suffers from depression and needs her pet to help her manage it.

In response, the county alleges that the association summarily denied the request, indicating that it lacked supporting documentation, was legally inadequate, and failed to show that the owner is disabled and requires an ESA. The complaint also states that prior to denying the request, Environ Towers I did not request additional documentation from

the owner or her physician, failed to engage in an open dialogue with her or the physician, and neglected to otherwise engage in any meaningful interactive process to assess the reasonableness of the request.

The suit states that the owner subsequently filed a housing discrimination complaint against Environ Towers I with the county. After attempts to achieve a resolution failed, the Broward County Board of Commissioners voted to authorize the county to file a civil suit in federal district court on her behalf.

Under the federal and state fair housing acts, housing providers such as condominium associations are required to make reasonable accommodations to their rules and regulations to ensure equal access to housing for individuals with disabilities. The law permits associations to ask individuals requesting an ESA to provide documentation from a physician, psychiatrist, social worker, or other mental health professional indicating that the animal provides emotional support and alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and the animal in question will provide some type of disability-related assistance or emotional support.

If the documentation is provided, as appears to be the case from the allegations in this lawsuit, associations must understand that the assistance animal falls outside of the parameters of their pet policies and restrictions, as it is not considered a pet but rather an aid to a disabled person. They should think of it as being akin to a wheelchair for a physically disabled individual, so pet restrictions such as dog weight limits do not apply.

However, if the specific ESA poses a danger to others on the property that cannot be reduced or eliminated via a reasonable accommodation, or the animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by an accommodation, the request may be denied. Absent any actual evidence of such

dangers, associations must provide reasonable accommodations for ESAs pursuant to the federal and state fair housing laws.

In addition to an injunction requiring Environ Towers I to allow the owner's ESA, the county's lawsuit also seeks monetary damages for the "mental anguish, emotional distress, humiliation, embarrassment, inconvenience and loss of the right to an equal opportunity to enjoy her dwelling" caused by the association's denial. It also seeks civil penalties to be imposed against the association as authorized under the federal Fair Housing Act and the Broward County Human Rights Act.

Defending against this federal lawsuit will likely prove to be very challenging and costly for the condominium association. In light of the growing cynicism toward ESAs, the suit should serve to remind all Florida community associations that they run serious risks of incurring significant legal liabilities if they improperly vet and deny such requests.

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