Apartment Building Residents Get Dogged About Acquiring Emotional Support Pets

By Virginia Trunkes

I. Introduction

Residents of multi-family housing developments seem to be litigating at an ever-increasing rate over "emotional assistance" or "support" animals. Indeed, a common pet peeve of residents in multiple dwellings is their close proximity to neighbors who live incompatible lifestyles, such as cohabitation with an animal. Perhaps still desiring to be "part of a pack," often people choose apartment buildings, whether rental, cooperative or condominium, having certain "house rules" that reflect their preferences. A leading differentiator among multi-residence buildings is the pet policy, whether it be "pet friendly," "pets upon approval," "pets weighing 40 pounds or less," "no dogs" or "no pets." Many residents rent or buy into a building relying on pet policies, and their preferences can fall on both ends of the spectrum.

A fast-growing trend, both in New York and throughout the country, is the practice of residents claiming an exception to limited or no-pet policies by asserting the need for their pet, usually a dog, because of its accompanying emotional support. Some even sneak in the dog, and then, upon being caught, assert their new realization that they need the dog because they enjoyed a more positive residential experience once they cohabited with the dog.

But upon discovery of the unauthorized dog, landlords and governing boards in limited or no-pet buildings cannot just let sleeping dogs lie. They have a responsibility to the other residents not to let their building go to the dogs. Those who forgo this obligation may be considered to have "dogged it," likely to face complaints by pet-free owners reiterating the building's limited or no-pet policy.

The legal bases supporting some residents' right to an emotional support dog are varied and complex, and landlords and boards need to appreciate and be familiar with them. Residents with recognized disabilities should likewise understand their legal rights, as well as the limits thereto.

Recently there has been a rising trend of requests for waivers of no-pet rules for the purpose of "emotional support," "companionship" or "comfort," resulting in increased lawsuits and administrative agency claims involving housing discrimination. Stepping in with a recent action on behalf of tenant-shareholders who were denied permission to reside with a dog, which provided emotional assistance, the federal government has become aggressive in advocating for the rights of disabled residents. At the same time, suspicions of exaggerated or disingenuous applications for both service dogs and emotional support animals have increased as well. Consequently, for landlords and boards, both granting and rejecting applications for emotional support animals have practical effects requiring thorough consideration. For applicants, submitting the appropriate paperwork at the outset should reduce delays and/or rejections associated with dubious requests.

II. The Fair Housing Act

Throughout the country, residents claiming an exception to no-pet policies have relied on the federal Fair Housing Act (FHA), enacted as part of the Civil Rights Act of 1968, as amended in 1988.[1] The FHA and its promulgated regulations constitute the prime source of protection against discrimination, which enables residents to enjoy and use their multiple occupancy dwellings.

The FHA makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap[2] of…(A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person."[3] Discrimination prohibited by the FHA includes the refusal to make "reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford [a person with a "handicap"] an equal opportunity to use and enjoy a dwelling."[4] To prevail on a reasonable-accommodation claim under the FHA, a plaintiff is required to show that "(1) [he or she (or a person associated with him or her)] suffers from a handicap as defined by the FHA; (2) defendant knew or reasonably should have known of the plaintiff's handicap; (3) accommodation of the handicap 'may be necessary' to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation."[5]

Traditionally, the FHA has been invoked in cases where people with physical disabilities require service animals. A "service animal" is not defined by the FHA or the accompanying regulations. Rather, it is defined in the Americans with Disabilities Act of 1990 (ADA), which addresses disability discrimination in multiple contexts including public housing, to include "any guide dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.…"[6] There are many ways in which service animals, usually dogs, can assist people, e.g., Guide Dog or Seeing-Eye Dog,

Mobility Support Dog, Hearing Dog, Seizure Alert Dog and Diabetic Alert Dog. The Department of Housing and Urban Development (HUD), which is charged with administering the FHA, uses as an example in its regulation entitled "Reasonable accommodations"[7] a blind applicant for rental housing who needs a seeing-eye dog to have an equal opportunity to use and enjoy a dwelling.

A qualifying "service animal" must be trained to work for a disabled individual,[8] but there is no specified amount or type of training that an animal must receive,[9] or type or amount of work a service animal must provide.[10] Rather, the relevant question is whether the animal helps the disabled person perform tasks to ameliorate the ADA disability.[11]

Requests for service animals generally are not controversial: the issue of whether the person is physically "disabled" is usually straightforward. And given the lack of specific parameters for the requisite training, it is fairly simple to produce evidence that the subject animal has received training and is certified to accomplish the tasks needed for the person to reside independently in a home.

The less common, but increasingly growing, occurrence is a resident's request for an "emotional support" or "emotional assistance" animal, also usually a dog. This type of request prompts the inquiry into whether the resident (or a person associated with the resident) has a handicap or disability within the meaning of the FHA—without the benefit of visible evidence as would be found with a physical disability.[12]

III. Definition of "Disability" under the FHA and New York State's Counterpart

An individual has a handicap or disability, for the purposes of the FHA, if he or she has (a) "a physical or mental impairment which *substantially limits* one or more of such person's major life activities," (b) "a record of such impairment," or (c) is "regarded as having such an impairment."[13] "Substantially limited" is defined as either: "(i) [u]nable to perform a major life activity that the average person in the general population can perform; or (ii) [s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity."[14] In determining whether an individual is substantially limited in a major life activity, it is important to consider: "(i) The nature and severity of the impairment; (ii) The duration or expected duration of the impairment; and (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment."[15] Major life activities include "[c]aring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working."[16] Following the ADA Amendment Act of 2008 ("ADAAA"), "major life activities no longer need to be of 'central importance'" to most people's daily lives.[17]

Although the section of the New York State law requiring the provision of reasonable accommodations to disabled renters is largely similar to the analogous provision of the FHA,[18] under the New York State Human Rights Law (N.Y. Executive Law §§ 291 *et seq*.) (NYSHRL), the term "disability" is more broadly defined. Disability means:

> a physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function *or* is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such impairment or (c) a condition regarded by others as such an impairment.[19]

"Fairly read, the [NYSHRL] covers a range of conditions varying in degree from those involving a loss of a bodily function to those which are merely diagnosable medical anomalies which impair bodily integrity and thus may lead to more serious conditions in the future."[20] "An individual can thus be disabled under the [NYSHRL]…if his or her impairment is demonstrable by medically accepted techniques; it is not required that the impairment substantially limit that individual's normal activities."[21] In other words, under the NYSHRL, if the claimed disability does not "substantially limit" major life activities and/or cause the loss of a bodily function, then it should have a name, accepted by the relevant professional community.[22]

Note, then, that FHA regulations interpret "physical or mental impairment" to include any "mental or psychological disorder," such as "emotional illness,"[23] and that some courts construe "mental impairment" under the FHA as a generic term that incorporates multiple diagnoses…."[24] Thus, under the FHA, "there is no specific diagnosis needed to establish a disability under the [FHA]."[25] In such a case, however, under both the FHA and the NYSHRL, the resident will need to demonstrate that the impairment substantially limits a major life activity, or results in the loss of a normal bodily function.

IV. Accommodating Individuals with Disabilities So They Have an Equal Opportunity to Use and Enjoy a Dwelling

Under the FHA, in order to demonstrate the need for a reasonable accommodation in housing, applicants "must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice."[26] NYSHRL §

296(18)(2) imposes a similar requirement that a person with a disability requesting an accommodation must show that "such accommodation may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling...."[27] So both statutes focus on whether residing with an animal may likely improve a person's quality of life at home. That said, interestingly, although the state statute modifies the term "necessary" with the phrase "may be," the courts interpreting the NYSHRL typically require an applicant to demonstrate necessity when evaluating whether a non-pet building should make an exception for one of its residents—not whether there "may be" a necessity.[28]

Whether a requested accommodation is required is "highly fact-specific, requiring case-by-case determination."[29] Additionally, the nature of the accommodation is framed by the nature of the particular handicap or disability alleged.[30]

Effectively, then, to demonstrate one's entitlement to an emotional support animal, an individual may demonstrate that the prohibition on housing an emotional support animal in the apartment "causes the denial" of the individual's right to equal "use and enjoyment" of that apartment,[31] or even merely that the animal enables one to better use and enjoy the apartment. The focus is not on the animal, since unlike with a service animal, an emotional support animal need not undergo any training whatsoever. As one court has reasoned: "In some instances, a plaintiff may have a disability that requires an assistance animal with some type of training; in other instances, it may be possible that no training is necessary."[32] Thus, the relevant inquiry for a request for an emotional support animal centers not on the attributes of the animal but rather on the characteristics of the individual, and how the individual benefits from the presence of the animal.

V. Requisite Documentation

Upon a landlord's or board's receipt of a request from a disabled person for permission to keep a service animal or an emotional support animal, pursuant to the FHA, "it is reasonable to require the opinion of a physician who is knowledgeable about the subject disability and the manner in which a service dog can ameliorate the effects of the disability."[33] Additionally, on occasion, laypersons, while not competent to offer specific diagnoses, are considered qualified to testify generally as to whether a person is suffering from a mental impairment under the FHA.[34]

HUD and the Department of Justice (DOJ) have provided guidance in their "Joint Statement on Reasonable Accommodations under the FHA" dated May 17, 2004 ("Joint Statement"), as to what kinds of information a housing provider may request from a person with a disability who has sought an accommodation if the alleged disability is not obvious:

> [I]n response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. *Depending on the individual's circumstances*, information verifying that the person meets the Act' s definition of disability can usually be provided by the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual), a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. *In most cases*, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.
>
> Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability.[35]

Notwithstanding what the Joint Statement suggests, courts interpreting the FHA and reasonable accommodation requests based on an alleged mental disability have generally placed great value on, and seemingly required, documentation from a medical or therapeutic professional substantiating the claim of disability and/or that the accommodation is necessary to alleviate the disability. Typically, the treating therapist describes the nature of the condition, how it has been treated and with what medications, if any, and how the condition has impeded the resident's functioning.[36]

The same seems to be true for New York State courts interpreting the NYSHRL.[37] The outcome in these cases, in which the courts seemingly ignore the modifier "may be" to the word "necessary" in the statute's

wording, and require documentation from a professional substantiating that the resident needs the accommodation to alleviate the disability, may make sense in instances where the resident did not demonstrate that the impairment substantially limited a major life activity, or resulted in the loss of a normal bodily function. Presumably, in contrast, a resident with a severe, undisputed disability from which it can be inferred that an animal would ameliorate the symptoms would have a lesser burden in demonstrating the "need" for the animal.

VI. Landlord's and Board's Obligations to Other Residents and Applicants' Obligations

Courts agree that a landlord/board may request, and indeed may have a duty to request, additional information from the applicant if the initial paperwork is incomplete. Landlords need to enforce the same lease provisions that govern all of its tenants. A tenant's harboring a dog in an apartment contrary to a prohibition in the lease is considered a substantial violation of the lease.[38] Similarly, cooperative and condominium boards have fiduciary duties to their tenant-shareholders and unit owners, respectively.[39]

Thus, landlords and boards are authorized to and should request additional documents reasonably necessary to make a meaningful review and an informed decision about whether the animal is necessary to ameliorate the disability.[40] Once they receive qualifying-disability information, nexus information, or information describing the needed accommodation, any further requests are unnecessary—and at some point are inappropriately intrusive.[41]

If an applicant can sustain that burden, there is no real argument supporting a denial of a pet request on the ground that the request cannot be reasonably accommodated. An accommodation is not reasonable only "if (1) it would impose an undue financial and administrative burden on the housing provider or (2) it would fundamentally alter the nature of the provider's operations."[42] A fundamental alteration is a modification that alters the essential nature of a provider's operations.[43] HUD has already pre-determined that permitting an animal for a qualified disabled person does not fundamentally alter the essential nature of a housing development/apartment building's operations by promulgating a specific regulation stating that it is unlawful for a housing provider with a no-pets policy to refuse to permit a blind person to live in a dwelling unit with a seeing-eye dog.[44]

That, of course, does not mean the emotional support animal may have full rein of the premises. A landlord or board is within its rights to and, for the benefit of its other residents, should consider placing limits on and set parameters for emotional support animals. Common examples include mandating the use of a leash in common areas, the use of a freight elevator, the use of a separate entrance to and exit from the building, and the use of a separate outdoor path.

A resident claiming a disability who protests these types of limitations has the burden of demonstrating why they are not reasonable.[45] That said, extra security deposits and fees for the retention of an emotional assistance animal are unlawful.[46] Nor may an application to retain an emotional assistance animal be rejected because of the animal's breed, size, or weight.[47] However, if the landlord/board's practice is to assess its residents for any damage they cause to the premises, it may likewise charge the tenant/shareholder/unit owner for the cost of repairing any damage caused by the emotional assistance animal.[48] Presumably, then, if an emotional support animal resides next door to a resident allergic to the animal, the resident with the animal would be obligated to pay for allergy-reduction mechanisms such as a "HEPA" air purifier or other items necessary to reduce the resultant allergic reactions.

VII. The Future of Emotional Support Dog Applications and Landlords'/Boards' Conundrum

As landlords and boards grapple with an increasing influx of emotional support dog applications, the DOJ, on behalf of HUD, has taken a particularly proactive approach in support of applicants for emotional support animals. Its recent lawsuit against a cooperative is especially notable because it succeeded two state courts' decisions upholding the cooperative's rejection of those same applications. In 2012, East River Housing Corp., a private cooperative in Manhattan ("Cooperative"), commenced two separate legal proceedings against tenant-shareholders for harboring dogs without permission. During the pendency of the proceedings, each tenant-shareholder filed a discrimination complaint with HUD. In late 2013, the state courts separately found against the tenant-shareholders and, respectively, ordered the removal of the dog or face eviction, and, where the second tenant-shareholder voluntarily removed the dog, enforced a proprietary lease provision entitling the Cooperative to recover its attorneys' fees caused by the breach of the proprietary lease.[49] In both matters, the courts rejected the tenant-shareholders' claims of disability of depression, which they belatedly realized was alleviated by the dog's presence and concomitant emotional support.

In the meantime, while the state court proceedings were pending, HUD issued charges of discrimination, charging the Cooperative with engaging in discriminatory housing practices in violation of the FHA. Notwithstanding the determinations in the state court proceedings, in December 2013, as a result of the HUD charges, the DOJ commenced a federal action against the Coopera-

tive on behalf of those and a third tenant-shareholder, seeking declaratory, injunctive, and monetary relief.[50] The DOJ asserts that the Cooperative, which permits dogs only upon board approval, but without setting forth any parameters, lacks a written or established policy or procedures for providing reasonable accommodations for individuals who require service or support animals because of a disability. Currently, according to the Southern District Court of New York's docket's website, the parties are exchanging discovery and the Cooperative has moved for partial summary judgment, for severance of the causes of action as they relate to the individual underlying complainants and to dismiss one of the causes of action, and the motion has not been fully briefed.[51]

This action suggests that in the federal government's view, tenants (including tenant-shareholders) whose mental health symptoms improve after they have harbored dogs without seeking advance permission may qualify as having a "disability" mandating a "reasonable accommodation," if they can document that they have a mental health condition with symptoms that improved following the acquisition of the dog. It also indicates that, while state courts may look skeptically on the claims of tenants who belatedly assert a disability upon being caught residing with a dog, a pet policy which fails to set forth an exception and/or procedures for providing reasonable accommodations for disabled residents may trigger claims filed with HUD—and even lawsuits by the United States government.

VIII. Conclusion

Confusion among landlords, boards and residents alike is inevitable and understandable. Charged with abiding by discrimination laws, landlords and boards must perform thorough and acute—yet non-"intrusive"—investigations of applications for emotional support dogs in view of a perceived growing trend of fraudulent applications. The easiest and first step in avoiding or defending against litigation is for landlords and boards to implement an exception within a pet policy for animals assisting persons with disabilities, set forth a procedure for requesting such an exception and apply the policy and procedure consistently. Being mindful of the housing discrimination laws and knowing which documentation is appropriate and adequate to support an exception to the policy is the next best step—for applicants as well to expedite approvals of their submissions. Finally, for all interested parties, keeping an eye on the DOJ's litigation against East River Housing Corp. and any other similar lawsuits will be instrumental in better understanding the relevant criteria of emotional support dog applications which will be considered dispositive.

Endnotes

1. Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibited discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin, and was amended in 1988 by the Fair Housing Amendments Act, which, *inter alia*, expanded the coverage of the Fair Housing Act to prohibit discrimination based on disability.
2. Though antiquated, "handicap" was the commonly accepted term in 1968. It has since been generally substituted with the more modern term "disability."
3. 42 U.S.C. § 3604(f)(2).
4. 42 U.S.C. § 3604(f)(3)(B). The FHA's definition of "dwelling" appears to cover "second" and "weekend" homes as well. *See, e.g.*, United States v. Columbus Country Club, 915 F.2d 877, 881 (3d Cir. 1990) (holding that country club summer bungalows which could be leased by "annual members" constituted a "dwelling" for purposes of the FHA); Conn. Hosp. v. City of New London, 129 F. Supp. 2d 123, 135 (D. Conn. 2001) (viewing the inquiry as turning on whether "plaintiffs' occupancy resembles that of a resident…more than that of a hotel guest") (quotation marks omitted); Hernandez v. Ever Fresh Co., 923 F. Supp. 1305, 1308-09 (D. Or. 1996) (temporary, seasonal housing for migrant farm workers constituted a dwelling under the FHA).
5. Ayyad-Ramallo v. Marine Terrace Assocs. LLC, 18, 2014 WL 2993448, *5 (E.D.N.Y. May 30, 2014) (citation omitted); *see* Echeverria v. Krystie Manor, LP, 2009 WL 857629, *7 (E.D.N.Y. Mar. 30, 2009); *see also* Hevner v. Vill. E. Towers, Inc., 2011 WL 666340 (S.D.N.Y. Feb. 7, 2011).
6. *See* 28 C.F.R. § 36.104.
7. 24 C.F.R. § 100.204(b), Example 1.
8. *See* Access Now, Inc. v. Town of Jasper, Tenn., 268 F. Supp. 2d 973, 980 (E.D. Tenn. 2003).
9. *Id.* ("the issue of whether the horse is a service animal does not turn on the type and amount of training"); *see also* Green v. Hous. Auth. of Clackamas Cty., 994 F.Supp. 1253, 1256 (D. Oregon 1998) ("[t]here is no requirement in any statute that an assistance animal be trained by a certified trainer"); *see also* Bronk v. Ineichen, 54 F.3d 425, 430-431 (7th Cir. 1995).
10. *Access Now, Inc*., 268 F.Supp.2d at 980.
11. *See id.; Bronk*, 54 F.3d at 431 (focusing on the degree to which the purported service animal "aids the [person] in coping with their disability"); Vaughn v. Rent-A-Center, Inc., 2009 U.S. Dist. LEXIS 20747, 29-30, 2009 WL 723166 (S.D. Ohio 2009).
12. An emotional support animal is distinguishable from a psychiatric service animal (PSA), as the latter is regarded as a service animal for purposes of the ADA. A PSA's primary function is not to provide emotional support, but to perform tasks which enable its handler to fully function, and works in distracting public environments to mitigate the handler's psychiatric disability, not just in the handler's home. *See* U.S. Dep't of Justice, *Nondiscrimination on the Basis of Disability in State and Local Government Services*, 75 Fed. Reg. 56164, at 56193 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 35, app. A); *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236, 56267 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36, app. A).
13. 42 U.S.C.A. § 3602(h) (emphasis added).
14. 29 C.F.R. § 1630.2(j)(1). *See* Amador v. Macy's East-Herald Square, No. 12 CV. 4884 MHD, 2014 WL 5059799, at *16 (S.D.N.Y. Oct. 3, 2014).
15. 29 C.F.R. § 1630.2(j)(2).
16. 29 C.F.R. § 1630.2(i)(1)(ii).
17. Graham v. Three Vill. Cent. Sch. Dist., 2013 WL 5445736, at *11 (E.D.N.Y. Sept. 30, 2013) (quoting D'Entremont v. Atlas Health Care Linen Servs. Co., No. 12–CV–0060 (LEK/RFT), 2013 WL 998040, at *6 (N.D.N.Y. Mar. 13, 2013 (citation omitted)); *see* Franchi v. New Hampton Sch., 656 F. Supp. 2d 252, 259-60 (D.C.

N.H. 2009) (plaintiff mother suing private boarding school sufficiently alleged that the daughter's eating disorder substantially limited the major life activity of eating, thus constituting a disability within the meaning of the FHA, because the alleged condition required a careful watch over her food intake to protect against potentially dangerous weight loss).

18. *See* Williams v. N.Y. City Housing Auth., 879 F. Supp. 2d 328, 336 (E.D.N.Y. 2012); *see infra*.

19. N.Y. Exec. Law § 292(21) (McKinney 2014) (emphasis added); State Div. of Human Rights v. Xerox Corp. 65 N.Y.2d 213, 219, 480 N.E.2d 695, 698, 491 N.Y.S.2d 106, 109 (1985).

20. Matter of Doe v. Bell, 194 Misc.2d 774, 779, 754 N.Y.S.2d 846, 851 (Sup. Ct. N.Y. Co. 2003) (*quoting Xerox Corp*. 65 N.Y.2d at 219, 480 N.E.2d at 699, 491 N.Y.S.2d at 109; *see* Reeves v. Johnson Controls World Services, Inc., 140 F.3d 144, 155-156 (2d Cir. 1998) (plaintiff's panic disorder was a disability under the New York City Human Rights Law because a "literal reading of the statute treats a medically diagnosable impairment as necessarily a disability").

21. Wilson v Phoenix House, 978 N.Y.S.2d 748, 763 (Sup. Ct. Kings Co. 2013).

22. The New York City Human Rights Law (NYCHRL) may define disability even more broadly, as "any physical, medical, mental or psychological impairment, or a history or record of such impairment." New York City Administrative Code (N.Y.C. Admin. Code) § 8-102(16)(a). From a review of the case law, it does not seem that the NYCHRL is regularly invoked in emotional support pet cases. Other municipalities throughout the state also have their own particular definitions and requirements.

23. 24 C.F.R. § 100.201.

24. Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1131 (D.C. 2005).

25. Rutland Court Owners, Inc. v. Taylor, 997 A.2d 706, 711 (D.C. 2010), *citing* Douglas, *supra*.

26. *See* Tsombanidis v. W. Haven Fire Dep't, 352 F.3d 565, 578 (2d Cir. 2003) (*citing* Smith & Lee Assocs., Inc. v. City of Taylor, 102 F.3d 781, 795 (6th Cir.1996); *see also In re* Durkee v. Staszak, 223 A.D.2d 984, 985, 636 N.Y.S.2d 880, 881-82 (3d Dep't 1996) (affirming determination that petitioner in ADA and Rehabilitation Act case involving the provision of emergency housing had failed to establish that he was emotionally dependent on his dog).

27. *See In re* Kennedy St. Quad, Ltd. v. Nathanson, 62 A.D.3d 879, 880, 879 N.Y.S.2d 197 (2d Dep't 2009).

28. *See e.g.* The N.Y. State Div. of Human Rights v. 111 East 88th Partners, N.Y.L.J., Sept. 18, 2014, 1202670317446, at *1 (Sup. Ct. N.Y. Co.) (finding that although tenant may have had a record of a disability in the past, where his impairment had not limited his day-to-day activities, and he could not demonstrate a current impairment, or provide any evidence as to when he might again experience the same symptoms and their severity, he was unable to demonstrate that the dog "is necessary for the enjoyment of the apartment"); *see also Kennedy St. Quad, Ltd.*, *supra* (although the complainants submitted evidence that the dog helped them with their symptoms of depression, they failed to demonstrate that the dog was actually necessary in order for them to enjoy the apartment); *In re* 105 Northgate Co-op. v. Donaldson, 54 A.D.3d 414, 416, 863 N.Y.S.2d 469, 470 (2d Dep't 2008); *In re* One Overlook Ave. Corp. v. N.Y. State Div. of Human Rights, 8 A.D.3d 286, 287, 777 N.Y.S.2d 696 (2d Dep't 2004); Landmark Props. v. Olivo, 5 Misc. 3d 18, 21, 783 N.Y.S.2d 745, 748 (App. Term 2d Dep't 2004); Contello Towers Corp. v. N.Y. City Dep't of Hous. Pres. & Dev., N.Y.L.J., Nov. 17, 2004, p. 19, col. 1 (Sup. Ct. Kings Co.) (granting Article 78 petition because there was "no evidence in the record to establish that allowing an exception to the no-pet rule in this instance was necessary to afford [the tenant] equal opportunity to use and enjoy the apartment"). Notably, in contrast, the NYCHRL does not make any reference to "necessity." It simply requires a reasonable accommodation whenever doing so "enables" a person with a disability to enjoy certain rights. *See* Comm'n of Human Rights v. Riverbay Corp., 2011 N.Y. OATH LEXIS 156, 25-26 (2011). While it may be informative to review analogous statutes and caselaw, the Local Civil Rights Restoration Act of 2005 mandates a more liberal construction and broader application of remedies under the NYCHRL. *Riverbay Corp.*, *supra* at 30-32. In that connection, the NYCHRL has a broader definition of "reasonable accommodation" (N.Y.C Admin. Code) § 8-102(18)), in that it does not permit any category of accommodation to be "excluded from the universe of reasonable accommodation." Phillips v. City of New York, 66 A.D.3d 170, 182, 884 N.Y.S.2d 369 (1st Dep't 2009) (rejected by Jacobsen v. New York City Health & Hospitals Corp., 22 N.Y.3d 824, 988 N.Y.S.2d 86 (2014).

29. Hubbard v. Samson Mgmt. Co., 994 F.Supp. 187, 190 (S.D.N.Y. 1998).

30. *See* New York State Div. of Human Rights v. 111 E. 88th Partners, 2012 N.Y. Misc. LEXIS 2647, 25, 2012 N.Y. Slip Op. 31475(U), 19 (Sup. Ct., N.Y. Co. 2012), *citing Hubbard*, *supra*.

31. See United States v. Cal. Mobile Home Park Mgmt. Co., 107 F.3d 1374, 1380 (9th Cir. 1997).

32. Ass'n of Appartment Owners of Liliuokalani Gardens v. Taylor, 892 F. Supp. 2d 1268, 1287 (D. Haw. 2012).

33. *In re* Kenna Homes Coop. Corp., 210 W.Va. 380, 392, 557 S.E.2d 787, 799 (W.Va. 2001); *see* Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 856-57 (S.D. Ohio 2009) (housing corporation was entitled to question the treating psychologist about the alleged disability and the need for the dog).

34. *See* Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1131 (Dist. Col. App. 2005).

35. Joint Statement of the Department of Urban Housing and Development and Department of Justice, *available at* http://www.hud.gov/offices/fheo/library/huddojstatement.pdf, pp. 13-14 (emphasis added).

36. *See* Rutland Court Owners, Inc. v. Taylor, 997, A.2d 706, 711-712 (D.C. 2010) (determination of disability was based on sufficient evidence where, *inter alia*, psychiatrist testified that cooperative shareholder suffered from bipolar disorder, post-traumatic stress disorder and basic mood instability, which were treated with a number of medications, and that these conditions impeded shareholder's ability to organize, concentrate, focus his attention and stay motivated to complete tasks); Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua, 304 F. Supp. 2d 1245, 1255 (D. Haw. 2003), *aff'd sub nom.* Dubois v. Ass'n of Apartment Owners of 2987 Kalakaua, 453 F.3d 1175 (9th Cir. 2006) (issue of fact as to whether condominium unit owner's roommate had a disability where physician concurred with behaviorist's evaluation that roommate had symptoms of depression, that a pet would "have a positive impact on [his] condition and a separation from his pet would exacerbate his condition," another physician identified roommate as suffering from a mental dysfunction that impaired his ability to work, and roommate averred that he had HIV, depression and anxiety, and had been unable to work); *see also* HUD v. Dutra, 2 Fair Housing-Fair Lending (P-H) P25,124, at p. 26,059, 1996 HUD ALJ LEXIS 55, 21-22, 1996 WL 657690 (HUDALJ 1996) (landlord violated the FHA by refusing to grant a mentally disabled man a reasonable accommodation to allow him to keep his emotional support cat in a no-pets apartment where he established that having his cat live with him greatly increased his enjoyment of his apartment and the quality of his life, and "[b]oth Dr. Gallo and Dr. Merritt were of the opinion that Complainant derived a therapeutic benefit from keeping his cat").

37. *See* N.Y. State Div. of Human Rights v. 111 East 88th Partners, 2012 N.Y. Misc. LEXIS 2647, 23, 2012 N.Y. Slip Op. 31475(U) (Sup. Ct., N.Y. Co. 2012) (issue of fact as to whether tenant had a "disability" and whether his pet was "necessary" for him to enjoy and use the premises where he provided medical and psychological evidence in support of his claim of a disability where he submitted his medical record and laboratory reports, his psychotherapist's treatment notes from 2002 to 2010 and documentation from his psychotherapist, discussing his history of treatment for Dysthymic Disorder, characterized by depressed mood for most of the day, for more days than not, for at least two years, manifested by overeating, low self-esteem, low energy and feelings of hopelessness, being distrustful and isolating himself; he was also a diabetic, and the dog provided tenant with unconditional affection and comfort, also lifting his spirits; even landlord's expert did not opine that tenant was a well-adjusted adult); Crossroads Apartments Assoc. v. LeBoo, 152 Misc. 2d 830, 578 N.Y.S.2d 1004, 1007 (City Ct., Rochester 1991) (tenant created an issue of fact as to whether he had an emotional and psychological dependence on the cat which required him to keep the cat in the apartment by submitting the affidavits of his treating psychiatrist, his clinical social worker, and a certified pet-assisted therapist who all described his mental illness, his course of treatment, and concluded that he received therapeutic benefits from keeping and caring for his cat, and that the keeping of the cat assisted him in his use and enjoyment of his apartment by helping him cope with the daily manifestations of his mental illness); *cf. In re* Kennedy St. Quad, Ltd. v. Nathanson, 62 A.D.3d 879, 880, 879 N.Y.S.2d 197 (2d Dep't 2009) (although the complainants submitted evidence that the dog helped them with their symptoms of depression, 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); *In re* 105 Northgate Co-op. v. Donaldson, 54 A.D.3d 414, 416, 863 N.Y.S.2d 469, 470 (2d Dep't 2008) (annulling New York State Division of Human Rights discrimination finding because "the complainant failed to demonstrate, through either medical or psychological expert testimony or evidence, that she required a dog in order to use and enjoy her apartment unit"); *In re* One Overlook Ave. Corp. v. N.Y. State Div. of Human Rights, 8 A.D.3d 286, 287, 777 N.Y.S.2d 696 (2d Dep't 2004) (where mother claimed that her son suffered from dysthymia, a form of depression, and that he should be able to keep a companion dog in the apartment in order to alleviate his depression and thus use and enjoy the apartment, she failed to demonstrate through either medical or psychological expert testimony or evidence that her son required a dog in order for him to use and enjoy the apartment); Landmark Props. v. Olivo, 5 Misc. 3d 18, 21, 783 N.Y.S.2d 745, 748 (App. Term 2d Dep't 2004) (affirming denial of a reasonable accommodation claim because 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").

38. *See, e.g.* Bovin v. Galitzka, 250 N.Y. 228, 165 N.E. 273 (1929) (landlord had right to terminate lease by reason of tenant's violation of provision of occupancy agreement which prohibited harboring and maintaining animals in the demised premises); Hillman Hous. Corp. v. Krupnik, 40 A.D.2d 788, 337 N.Y.S.2d 547 (1st Dep't 1972) (injunctive relief to remove a dog is available where lease forbids harboring dogs); Triangle Mgmt. Corp. v. Innis, 62 Misc. 2d 1095, 312 N.Y.S.2d 745 (Civ. Ct. N.Y. Co. 1970) (harboring a dog in an apartment contrary to a prohibition in the lease was considered a substantial violation of the lease).

39. *See In re* Levandusky v. One Fifth Ave. Appartment Corp., 75 N.Y.2d 530, 553 N.E.2d 1317, 554 N.Y.S.2d 807 (1990); Bd. of Mgrs. of Fairways at N. Hills Condo. v. Fairway at N. Hills, 193 A.D.2d 322, 603 N.Y.S.2d 867 (2d Dep't 1993).

40. *See, e.g.,* Hawn v. Shoreline Towers Phase I Condo. Ass'n, 2009 U.S. Dist. LEXIS 24846, 2009 WL 691378 at ** 3-4 (N.D. Fla. 2009) (board properly sought more information after it received a short, one-page letter from one physician, whose letter provided very little information about the plaintiff's alleged disability, and another from a chiropractor, whose letter did not provide any whatsoever, and neither letter indicated whether plaintiff's limitations and difficulties were temporary or permanent, nor did they indicate that the dog was actually "necessary…to afford [the plaintiff] equal opportunity to use and enjoy a dwelling," as opposed to just desirable and helpful, and, notably, the letters also did not describe the providers' individual qualifications, background, or treatment history with the plaintiff); Jankowski Lee & Assoc. v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996) (board faulted for not requesting additional information from tenant alleging handicap under the FHA).

41. *See, e.g.,* Sabal Palm Condos. of Pine Island Ridge Ass'n v. Fischer, 2014 U.S. Dist. LEXIS 36040, 52 (S.D. Fla. 2014) ("Sabal Palm had already received detailed—and in the case of the medical records, confidential—information addressing these three points. Asking for even more medical records providing nexus information was clearly 'highly intrusive,' and the intrusion was not necessary.").

42. Schwarz v. City of Treasure Island, 544 F.3d 1201, 1220 (11th Cir. 2008).

43. *Schwarz*, 544 F.3d at 1220.

44. 24 C.F.R. § 100.204(b)(1), *supra* at 6; *see, e.g.*, Sabal Palm Condos. of Pine Island Ridge Ass'n v. Fischer, 2014 U.S. Dist. LEXIS 36040, 24 (S.D. Fla. 2014) (The *raison d'être* of plaintiff condominium association was to provide housing, which would not be fundamentally altered by allowing a disabled resident to keep a service dog).

45. *See, e.g.*, Stevens v. Hollywood Towers & Condo. Ass'n, 836 F. Supp. 2d 800, 810 (N.D. Ill. 2011) (where condominium unit owner claimed that it was unreasonable to require her to carry her dog in a pet carrier because of her disability and physical limitations, which made it impossible for her to manage a carrier and her other belongings, and that the use of the building's side entrances was problematic because it required her to walk a greater distance and put her at risk of being hit by oncoming traffic, increasing her anxiety stemming from her disability, the court determined that she needed to provide evidence that she was disabled, that she needed the dog to treat her disability, and that her disability made it necessary for her to travel through the complex by the path of her choosing); Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua, 304 F.Supp.2d 1245, 1259 n.29 (D. Haw. 2003) (to succeed in his challenge to the limitations the association had placed on his use of the dog, the plaintiff would have to come forward with evidence that he had a disability that not only required the use of a dog, but which also required him to take the path of his choice through the building).

46. Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., 778 F. Supp. 2d 1028, 1040 (D.N.D. 2011), *citing* Joint Statement of the Department of Urban Housing and Development and Department of Justice, *available at*, http://www.hud.gov/offices/fheo/library/huddojstatement.pdf, *supra*, at p. 9, ¶11, Example 2.

47. HUD Notice: FHEO-2013-01, "Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs," p. 3; *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdfhttp://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

48. *See* Joint Statement of the Department of Urban Housing and Development and Department of Justice, *available at* http://www.hud.gov/offices/fheo/library/huddojstatement.pdf, p. 9, Example 2.

49. E. River Hous. Corp. v. Aaron, N.Y.L.J., Oct. 25, 2013, 1202624958690, at *1 (Civ. Ct., N.Y. Co.) and E. River Hous. Corp. v. Gilbert, N.Y.L.J., Jan. 9, 2014, 1202638977520, at *1 (Civ. Ct. N.Y. Co.).

50. Compaint by Plaintiff, United States v. East River Hous. Corp., S.D.N.Y. No. 13 Civ. 8650.

51. One of the issues raised in the motion practice, following an Appellate Division order in favor of the Cooperative (*In re* E. River Hous. Corp. v. N. Y. State Div. of Human Rights, 116 A.D.3d 562, 984 N.Y.S. 2d 331 (1st Dep't 2014)), is whether permitting one of tenant-shareholders to pursue her claim with HUD and in federal court, after the New York State Division of Human Rights (to which HUD originally transferred the tenant-shareholder's complaint) earlier dismissed her complaint for lack of probable cause, contravenes the election of remedies provision contained in Executive Law § 297(9) (9 N.Y.C.R.R. § 465.5[e][2][vi]).

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