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**Emotion Support Animals and the New Jersey Law Against Discrimination**

The New Jersey high court recently ruled that a tenant or resident is not obligated to provide medical records to show they need an accommodation. Housing providers can request proof of a medical need such as a "determination from a government agency or a letter from a health care professional." In Players Place II Condominium Association, Inc. v. K.P. (A-60/61-22) (088139) Argued November 6, 2023 -- Decided March 13, 2024, Justice Rabner issued an opinion for a unanimous Court, holding that a trial court improperly dismissed the disability discrimination claims brought by condominium unit owners after the condominium association declined their request to have an emotional support animal (ESA) based on the animal's weight.

The Court addressed how requests of this type should be evaluated under New Jersey's Law Against Discrimination (LAD). Plaintiff Players Place II Condominium Association limits pets "to the small domestic variety weighing thirty (30) pounds or less at maturity." Defendant K.P. agreed to be bound by the policy when he purchased a unit. His spouse, defendant B.F., had a diagnosed mental health condition, and K.P. notified the Association that he and B.F. were "considering adopting an emotional support dog" that would "[m]ost likely . . . be over the 30lb pet limit." Defendants thereafter adopted a 63-pound dog named Luna to live with her as an ESA.

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 animal. 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. It 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."

A divided Appellate Division panel modified and affirmed the trial court's judgment. 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 determined that the trial court misinterpreted the relevant statutes when it found B.F. was not disabled, but it 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." The dissent agreed that defendants' claims were properly dismissed but disagreed with the award of equitable relief.

Plaintiff appealed as of right based on the dissent, R. 2:2-1(a)(2), and the Court granted defendants' petition for certification, 254 N.J. 500 (2023). The Supreme Court determined that requests for reasonable accommodations like the one here should be assessed under the following framework:

Individuals who seek an accommodation must show that they have a disability under the LAD and 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).

> Housing providers then have the burden to prove the requested accommodation is unreasonable.
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> During that process, both sides should engage in a good-faith, interactive dialogue.
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> If the parties cannot resolve the request, courts may be called on to balance the need for, and benefits of, the requested accommodation against the cost and administrative burdens it presents.

The Supreme Court held that the claims should not have been dismissed. The LAD prohibits discrimination in housing on account of a person's disability, N.J.S.A. 10:5-12(g)(2), including "any mental, psychological, or developmental disability," The LAD defines "disability" more broadly than federal law, which requires that a disability "substantially limits one or more . . . major life activities." 42 U.S.C. § 3602(h). The LAD includes no such requirement.

The Court held that a resident of a condominium complex is entitled to request an accommodation to a pet policy in order to keep an emotional support animal. The individual must first demonstrate they have a disability under the LAD. In addition, they must show 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).

The housing provider then has the burden to prove the requested accommodation is unreasonable. As part of that process, the parties should engage in a good-faith, interactive dialogue to exchange information, consider alternative options, and attempt to resolve or narrow any issues. If that collaborative effort fails and litigation follows, courts will inevitably 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.

In the Defendants' case, there was no dispute that B.F. was deemed disabled within the meaning of the LAD. If the accommodation will alleviate at least one symptom of the disability, the accommodation is deemed reasonable provided the ESA would not fundamentally alter the housing provider's operations or impose an undue financial or administrative burden.

The Court held that before a housing provider denies a request on reasonableness-grounds, the parties should engage in good-faith, interactive discussions to evaluate the accommodation and explore possible alternatives.