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No-Pet Policy Does Not Violate State or Federal Fair Housing Acts

***Hawn* v. *Shoreline Towers Phase I Condominium Association, Inc.*, No. 3:07-ev-97/RV/EMT, U.S. Dist. Ct. of Fla., March 12, 2009**

Covenants Enforcement/Use Restrictions/Federal Law and Legislation: An association board was within its rights to deny a homeowner's request to have a dog, when the homeowner did not provide sufficient documentation of a disability and the association had a no-pet policy.

Davis Hawn is the owner of a condominium unit governed by Shoreline Towers Phase I Condominium Association. For several years, Shoreline had a no-pet policy and posted a sign on its property stating "No Animals Allowed." Hawn was aware of the policy when he bought his unit in 2004; but, at that time, he said he "wasn't concerned about it." However, in January 2005, after he adopted a Labrador retriever puppy, he wrote the association's board of directors to propose a change in policy that would allow unit owners to own pets. In his letter, he did not claim that he was disabled, or that Booster, his dog, was a "service animal."

Booster was a puppy at the time Hawn adopted him and more than a year away from being certified as a service dog. Hawn's letter to the board stated that the puppy had become his close companion, who taught him, "to be more responsible, caring, and less self-centered," and who, "sleeps at the foot of my bed and has even jumped into the shower to be with me." He requested a six-month trial period, "to give folks a chance to prove that they love their pets as one would love any other family member."

The record does not reflect what action the board took in response to Hawn's initial letter; but more than a year later, he wrote another letter to the board asking for permission to keep Booster in his unit, claiming that he was disabled and that Booster had been certified as a "service animal, … trained to help me both physically and psychologically." The letter also stated that his ability to walk was restricted due to a leg injury, he was often in pain, and Booster performed tasks that helped him overcome his disabilities. He attached a separate letter stating that he had been assaulted in his condominium unit and because of the ordeal was afraid to be alone. He explained that his service animal could make him aware of an intruder, summon help, and bring the phone upon command. He also attached Booster's "resume" to these two letters with the dog's certification records.

Hawn provided letters from two medical providers. Patrick Evans, a psychologist, stated that Hawn suffered from severe panic attacks, was unable to properly cope with anxiety and stress and was particularly vulnerable in his condominium unit due to past occurrences on the property. Evans wrote that he was, "prescribing a service animal," to provide support and help Hawn cope with his, "emotionally crippling disability." At the time Evans signed this one-page letter, his entire treatment of Hawn consisted of two recent one-hour counseling sessions. The other letter was from Desmond Hoda, a chiropractor, who wrote that Hawn had mobility limitations, and a support animal would assist him with this disability. At the time Hoda signed his letter, he too had seen Hawn only two times.

After submitting this request to the association, Hawn attended a board meeting and asked to have his request put on the agenda, which it was. He then read a speech explaining how Booster was a service animal who was helpful and necessary for him to overcome his disabilities. During the speech, he voluntarily gave details of his personal life and medical history and became "tearful and emotional." He later claimed that during the meeting, the board, "ignored his request in deliberate indifference to his physical and mental impairments," and "treated [him] poorly" in that they suggested he move from Shoreline.

In August 2006, Shoreline's general manager asked Hawn for additional information to consider his request, including documentation to support his alleged disabilities and the qualifications of Evans and Hoda. Hawn did not respond or otherwise provide the requested information.

In September 2006, the general manager wrote a letter to Hawn, once again asking for further documentation to consider his request. The letter concluded by stating that, "[w]hile the association sympathizes with your situation, at this time we must deny your request to keep a pet in your condominium unit 3023." Hawn did not respond to this letter or provide the information that was requested; instead, he filed a complaint with the Florida Commission on Human Relations ("Commission"). During the course of the Commission's investigation, Evans and Hoda filed Medical Certification Forms under oath, in which they stated that Hawn was disabled and a service dog was necessary. These forms were provided to the board. The Commission found cause to believe that the association had discriminated against Hawn by not providing

reasonable accommodation for his disabilities. He then sued the association, alleging violation of the Federal Fair Housing Act, violation of the Florida Fair Housing Act and intentional or reckless infliction of emotional distress, seeking an injunction.

The association moved for summary judgment. Since the Florida Fair Housing Act and the Federal Fair Housing Act contain essentially identical provisions and implicate essentially the same facts, the trial court considered them together and collectively referred to them as the "FHA." Hawn first challenged the "No Animals Allowed" sign posted on the property. He argued that the sign demonstrated discriminatory intent to violate the FHA, which prohibits any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on [handicap] or an intention to make any such preference, limitation or discrimination. He argued that discrimination could be inferred from the sign because if the point of the policy were merely to deny pets, the association could have posted a sign that said "No Pets Allowed." He argued that because the term "animals" is a larger category than "pets," and would, arguably, include service animals, it established discriminatory intent. The court noted that he did not cite any case law to support his argument and, furthermore, that although the sign could perhaps be worded more precisely, the fact that it read, "no animals" instead of "no pets" simply did not reflect an intentional preference, limitation or discrimination based on handicap in violation of the FHA.

Hawn also argued that the association violated the FHA by failing to make a reasonable accommodation for his alleged disabilities. Under the statutes, it is unlawful to discriminate against a person by refusing, "to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." The court explained that whether an accommodation is required by law is "highly fact-specific, requiring case-by-case determination." To prevail under this line of argument, a person must establish: (i) that he or she is disabled or handicapped within the meaning of the FHA; (ii) that the offending party knew or should have known of the disability or handicap; (iii) that the offending party knew that an accommodation was necessary to afford the disabled individual equal opportunity to use and enjoy the dwelling; (iv) that such an accommodation is reasonable; and (v) that the offending party refused to make the requested accommodation. In the court's opinion, Hawn failed to meet the first, second and third criteria.

Assuming that Hawn was disabled under the FHA guidelines, the court concluded that no reasonable jury could find that the association knew or should have known about his disability because at the time he initially lobbied the board for permission to keep Booster, he lobbied to keep him as a pet. At that time, he did not claim to be physically or psychologically disabled. In addition, he waited a year after his initial request to have Booster certified as a service animal. Furthermore, the court did not find the letters provided by Evans and Hoda helpful in establishing Hawn's disabilities because they did not provide any information about Hawn's disabilities. Neither letter indicated whether his limitations were permanent, or whether Booster was actually necessary to afford Hawn equal opportunity to use and enjoy his dwelling, as opposed to being just desirable and helpful. The court found it noteworthy that the letters did not describe the providers' individual qualifications, background or Hawn's treatment history.

The court found no evidence to indicate that the association would have refused to accommodate Hawn if he had provided adequate documentation that he was disabled and needed a service dog. Instead, it considered it commendable that the board did not deny Hawn's request outright, but attempted to get additional information from him to make an informed decision. Insofar as the court found the letters from Evans and Hoda deficient in several ways, it found that the board was well within its right to request additional information. The court concluded that Hawn failed to establish that the association knew the accommodation was necessary, and the FHA claims failed.

In considering the final count of Hawn's complaint, the court explained that, to prevail on a cause of action for intentional infliction of emotional distress, a claimant would have to prove that the offending party's action was "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as utterly intolerable in a civilized community." Hawn contended that he was treated poorly because board members, "wrongfully claimed that he was requesting the use of a pet rather than a trained service animal." He further asserted that, in deciding to deny his request, the board acted with, "reckless disregard for the impact that its callous decisions would have on him." The court quickly dismissed this claim, stating that Hawn wholly failed to satisfy the high standard for intentional infliction of emotional distress.

The court granted summary judgment in favor of the association and its board of directors.