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**Condo pet policies and the Fair Housing Act:
Dubois v Association of Apartment Owners, 2006
Roger Bernhardt**

Fair Housing Act discrimination claim predicated on condominium association's bylaw limiting presence of animals rejected because association never refused to make requested accommodation.

Dubois v Association of Apartment Owners (9th Cir 2006) 453 F3d 1175

Dubois owned a unit in a residential condominium project in Honolulu and lived there with Prindable. One of the condominium project's bylaws limited the presence of animals:

No animals ... shall be permitted on the premises, except that qualified individuals with disabilities may have assistance animals.... A disabled resident must provide appropriate medical documentation justifying the need for the assistance animal before bringing it onto the project.

Dubois brought home Einstein, an English bulldog. Dubois and Prindable submitted letters from doctors recommending that one or the other be permitted to keep Einstein for "medical reasons," with little other explanation. The condominium association (association) requested more information. Dubois and Prindable submitted additional letters stating that Prindable suffered from depression, would benefit from animal-assisted therapy, and that separation from Einstein would exacerbate his condition.

The association granted temporary permission to keep Einstein pending its review of the submissions. Prindable filed a complaint with HUD, which was referred to the Hawaii Civil Rights Commission. The association advised that it would continue the temporary exemption, with final approval contingent on the results of the state agency's investigation. Instead of waiting, Dubois and Prindable sued the association, alleging discrimination in violation of the Fair Housing Act (FHA)(42 USC §§3601–3631), for failure to make a reasonable accommodation for Prindable's disability. The association moved for and was granted summary judgment.

The court of appeal affirmed. Discrimination under the FHA includes refusal to make reasonable accommodations necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. 42 USC §3604(f)(3)(B). Proof that the association refused to make the requested accommodation is an essential element of such a claim. The association never required Einstein to leave and thus never refused to make the requested accommodation. Accordingly, the FHA claim necessarily failed.

THE EDITOR'S TAKE: I wish I could say that this little case doesn't matter because no resident can seriously expect to succeed on a claim of discrimination when his condominium association (or landlord) has not prohibited him from keeping an English bulldog to ease his depression and he moved out anyway. But the decision is by the Ninth Circuit and interprets the federal Fair Housing Act, which applies in California as well as Hawaii. Complaining tenants cannot always be expected to vacate before their landlord has the chance to say no. What if the plaintiff had stayed and the bulldog had been the one forced to leave?

Last year, our state appellate court held that a homeowners association's refusal to permit condominium owners to keep their dog to relieve their depression could violate the mandate of our Fair Employment and Housing Act to provide reasonable accommodations to the disabled. *Auburn Woods Homeowner's Ass'n v FEHC* (2004) 121 CA4th 11578, 18 CR3d 669, reported at 28 CEB RPLR 26 (Jan. 2005). (What has been said for dogs has been also held to apply to cats and birds. See *Janush v Charities Hous. Dev. Corp.* (ND Cal 2000) 169 F Supp 2d 1133).

Protections like Dubois was claiming are asserted not merely by speakers for the disabled, but also by animal rights advocates. See, e.g., *Brown v Muhlenberg Township* (3d Cir 2001) 269 F3d 205, holding Officer Eberly liable for wrongfully shooting Immi, an unleashed Rottweiler (sensitively covered in DiLuigi, *In the Line of Fire*, 9 J of Animal L 267 (2003)), or the three-year prison sentence imposed on Andrew Burnett for throwing Leo, a Bichon Frise lapdog, into oncoming traffic after Leo's owner had accidentally dented Andrew's car, described in Paek, *Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute*, 25 U Haw L Rev 481 (2003).

Given the direction in which all of this may be heading, I wonder whether courts will someday hold that when a landlord refuses to accommodate a dog owner's needs for his companion, the dog does not lose her own standing to sue even when her owner has abandoned the apartment where they both were living. Perhaps she can even sue her owner for moving her out without her consent? Especially if she (the dog) was disabled.—*Roger Bernhardt*