

HABITAT

"Disability Dog" Scams:

NYC Explains How to Tell Them from Legitimate Claims

Frank Lovece in Board Operations on December 13, 2012

You no longer have the right to live in a no-dog building. People with allergies, people afraid of dogs, people who don't like dog waste and urine on the sidewalk or loud barking, or even people who'd simply rather live without dogs — sorry, but your rights and preferences are meaningless.

That, at least, is the message co-op and condo boards, attorneys, and others are taking from the plethora of people falsely claiming a disability to avoid pet prohibitions. Not physical disability or psychiatric disability, for which there are specially trained service dogs, but emotional disability — which no one can see, anyone can claim, and for which your friendly family doctor will write a note, no questions asked. "It's ridiculous," says attorney **Adam Leitman Bailey**, principal in his eponymous firm. "People get a notice to remove a dog, all of a sudden they get a doctor's note. If you need a dog for support reasons, why would you go to a psychiatrist only after you get an eviction notice?" False claims of emotional disability are probably "happening more and more often," agrees Jennifer L. Stewart, an attorney with Smith, Buss & Jacobs who has defended disabled clients. Indeed, she adds, "I've seen signs posted in pet stores: 'Do you want a dog? Do you live in no-pet buildings? Here's what you do.' I was a little shocked at how flagrant that was."

The Commission Speaks

Complaints against condo and co-op boards forbidding an animal are usually filed with the city's Commission on Human Rights (CHR). As *Habitat* has covered many times, some boards have unreasonably forbidden disabled people with well-documented needs and therapeutic recommendations from keeping emotional-support cats or dogs. That's discrimination based on disability.

"The law requires a housing provider to reasonably accommodate disabled tenants, so they can enjoy the rights and privileges of the housing," explains **CHR Deputy Commissioner and General Counsel Clifford Mulqueen**. That includes mental and emotional disabilities. "You can't look at somebody and say, 'That person suffers from depression,' but that doesn't mean that the individual isn't disabled and entitled to receive a reasonable accommodation."

Yet scammers take advantage of the CHR trying to do the right thing, and trump up fake claims. To sort them out, boards must engage in a step-by-step back-and-forth "we call the interactive process," says Mulqueen. "If a board is engaging in good faith in the interactive process, it's never going to be held liable for its decisions" — which are protected by the Business Judgment Rule unless the board is found to be discriminating against the disabled. Going back nearly six years to January 2007, the commission has levied only \$10,000 in fines for all categories of housing providers, says Mulqueen, with "none having to do with animal cases."

Dealing with the Initial Request

It begins with a resident requesting a reasonable accommodation. While Mulqueen notes that this request need not be in writing — and that a board can't mandate that it be in writing — boards "do have a right to

request some sort of medical justification,” he says. So, in order to save a step and begin a paper trail, “I advise people to make [the request] in writing and provide medical documentation,” usually in the form of a doctor’s letter. How specific must the letter be? “The note should relate to the disability [and be written] by a professional in that area, saying a dog will alleviate the issue that arises because of that disability,” Mulqueen says. “We get a lot of notes from social workers. They’re not really relevant.”

“Boards have a right to more information besides the doctor’s letter to supplement a claim of disability,” adds attorney Bailey. One exception, notes **Marc H. Schneider**, a managing partner at Schneider Mitola: “When a disability is clearly visible, you can’t even ask for a doctor’s letter.” May a board have its own doctor to examine the applicant? “I’d be very cautious about that,” says Mulqueen, who doesn’t rule it out. “It shouldn’t be the first step. You’d have to have some medical documentation and have engaged in the interactive process. You’d better have done everything you’ve needed to do beforehand and have acted in good faith.”

The Nexus Step

Regarding doctors’ notes, there must be “nexus,” or an identifiable relationship, between the requested accommodation and the individual’s disability. Indeed, says forensic psychologist **Dr. Jennifer Duffy**, determining a nexus “is primarily what I do in evaluations to determine if someone does suffer from some psychiatric disorder and what function that [requested] animal serves, and what the loss of that animal would do to that individual and that particular disorder.”

In fact, Mulqueen says, under the right circumstances a board may even suggest an animal other than a dog. “Let’s say someone [has been recommended] a dog because of depression. Why not a cat?” — an indoor animal that avoids virtually all the objections levied against dogs. “Each case is going to be fact-specific, but I don’t see any problem with the board engaging in that kind of inquiry as part of that interactive process as long as they’re acting in good faith.” Forcing people with genuine mental or emotional conditions to jump through hoops is inhumane. Yet leaning so far in the other direction that scammers can thumb their noses at co-op/condo owners and boards is no better.

This information will help boards identify and deal with those who unconscionably take advantage of laws for the disabled — the pet equivalent of able people parking in a disabled spot.