Service and Emotional Support Animals as Reasonable Accommodations Under the Fair Housing Act

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By
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Introduction

Under the 1988 amendments to the Fair Housing Act, landlords, condominium associations, and other housing providers are prohibited “from discriminating against applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability.”1 The Act prohibits discrimination against individuals with disabilities by preventing housing providers from refusing “to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.”2 Significantly, housing providers must make reasonable accommodations in terms of “no pets” policies to let disabled individuals have service animals.3

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* Frank Young graduated from the John Marshall Law School in May 2006.
2 Joint Statement, Reasonable Accommodations at 1; Also see U.S.C. § 3604(f)(3)(B).
3 The HUD website provides the following example.

John has been diagnosed with severe depression and is disabled as defined by the Fair Housing Act. His doctor prescribes John a dog to help alleviate some of his symptoms. John asks his landlord if he can have a dog as a reasonable accommodation for his disability. His landlord says yes, but tells John he’ll need to pay a $250 pet deposit and must provide proof that the animal is trained.

Question: Did John’s landlord correctly handle John’s request under the Fair Housing Act? What if John wanted a cat or a ferret instead?

Answer: No, John’s landlord did not handle his request correctly. The landlord cannot charge John a pet deposit for his animal because it is not a pet, but rather a service/companion animal required for disability. Further, the landlord cannot ask for proof that the animal is trained. Lastly, service/companion animals do not have to be just dogs; they can also be other animals, such as cats or ferrets.

A recent study noted that 62 percent of American households include a pet. While pet owners state there are numerous intangible benefits of having an animal, many disabled individuals require service animals. Service animals are individually trained to perform tasks for the benefit of persons with disabilities. Service animals can be any breed or size, possibly wearing “specialized equipment such as a backpack, harness, special collar or leash,” but there are no legal requirements. Service animals are “allowed anywhere you could take another medical device, such as a wheelchair.” It should be noted that service animals should be distinguished from therapy animals and emotional support animals. Healthcare professionals utilize therapy animals as part of a treatment plan, and therapy animals do not have access to public places. Emotional support animals “provide companionship, relief from loneliness [, and] depression;” emotional support animals may be allowed in housing with “no pet” restrictions, but they do not have access to public places.

Housing providers “may restrict or prohibit the harboring of an animal in a rental unit” or condominium. However, housing providers are limited by the Fair Housing Act to a certain extent, whereby disabled individuals with service animals, and in some cases emotional support animals, may be “allowed to stay in housing despite “no pet” clauses.” A recent article stated that “[o]ne of the most prevalent and controversial accommodations under the [Fair Housing Act] concerns the necessity of pets for certain medicinal or service-oriented

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5 Disability Law Center of Alaska, http://www.dlca.org/publications/mentalhealth/04serviceanimals.htm (accessed Apr. 14, 2006). Service animals perform a wide variety of tasks for people with a wide variety of disabilities, including the following: guiding a person who is blind; alerting a person who is deaf or hard of hearing to noises such as alarms, doorbells, a baby crying, etc.; assisting wheelchair users by retrieving dropped items, opening doors, pulling a wheelchair, or carrying supplies; sensing and warning about a person’s oncoming seizure; and providing support or balance for someone with an unsteady gait.

6 Id.


8 Id.

9 Id.

10 Huss, 11 Animal L. at 72.

11 Id. at 70.
functions." Clearly, an individual’s right to have the housing provider to make an accommodation is without question in cases of visual or hearing impairment. However, there is a great deal of uncertainty “when dealing with requests to waive pet restrictions based upon claims that a pet is necessary for everything from companionship to relieving symptoms of depression and arthritis” among others.13

This paper will discuss the following topics: 1) a brief overview of the Fair Housing Act; 2) what constitutes a reasonable accommodation for service or support animals under the Fair Housing Act; 3) animals that are classified as service or support animals; and 4) the types of disabilities that allow an individual to have a service or support animal.

I. The Fair Housing Act

The Fair Housing Act was part of the Civil Rights Act of 1968, providing protection from discrimination in housing on the basis of race, color, national origin, or gender.14 In 1988, the Fair Housing Act was amended, expanding protection from housing discrimination for new classes, including disability and familial status.15 John Marshall Law School Professor F. Willis Caruso noted that Congress passed the Fair Housing Amendments Act of 1988 to ensure that [disabled] members of society have an equal opportunity to reside and enjoy their living environment in the same manner as all members of society . . . recognize[ing] that sometimes landlords and other housing providers have to take affirmative steps to ensure that handicapped individuals have an equal opportunity to enjoy their living environment.16

The Fair Housing Act affords wide protection for individuals with disabilities, including: having a physical or mental disability that substantially limits one or more major life activities, having a record of such a disability, or

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13 Id. “Emotional support animals have been proven extremely effective at ameliorating the symptoms of these disabilities, such as depression and post-traumatic stress disorder, by providing therapeutic nurture and support.” Bazelon Center for Mental Health Law, Fair Housing Information Sheet # 6 Right To Emotional Support Animals In “No Pet” Housing, http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html (accessed Apr. 14, 2006).
being regarded as having such a disability.\textsuperscript{17} A wide range of disabilities are covered under the Act; as “physical or mental impairment” includes the following: orthopedic, visual, speech and hearing impairments; as well as, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV/AIDS, mental incapacity, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.\textsuperscript{18} Significantly, a housing provider may not refuse to let a disabled individual make reasonable modifications to their dwelling or common areas or refuse to make reasonable accommodations in rules, policies, practices, or services for the disabled individual to use the housing.\textsuperscript{19} For this discussion, the key provision of the amended statute makes it “unlawful to refuse to make reasonable accommodations to afford a handicapped person equal opportunity to use and enjoy a dwelling.”\textsuperscript{20}

\textsuperscript{17} 42 U.S.C. 3602(h); U.S. Department of Housing and Urban Development, \textit{Fair Housing,} 3 (Jan. 2002). Disabilities include hearing, mobility, and vision; chronic alcoholism; chronic mental illness; HIV/AIDS; AIDS Related Complex; and mental retardation.

\textsuperscript{18} Joint Statement, \textit{Reasonable Accommodations} at 3.

\textsuperscript{19} HUD, \textit{Fair Housing} at 3.


\textit{§ 3604. Discrimination in the sale or rental of housing and other prohibited practices.}

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

[(a) through (e) omitted]

[(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, made available; or

(C) any person associated with that buyer or renter.

(2) To 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 of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
(B) a refusal 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; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term “covered multifamily dwellings” means--
Plaintiffs can prevail under the Fair Housing Act by proving discriminatory intent on the part of the defendant or on the theory that the defendant’s conduct has a disparate impact on individuals with disabilities. Discriminatory intent cases are straightforward, as the housing provider refuses to provide housing to an individual solely because of that person’s race, color, national origin, gender, familial status, or disability. Courts follow the burden shifting method in analyzing disparate impact cases. In the case of a disabled person, the plaintiff must first establish a *prima facie* case of housing discrimination, showing the following four elements: 1) the plaintiff suffers from a disability; 2) the housing provider knew of the disability or should reasonably be expected to know of it; 3) the accommodation of the disability may be necessary to afford the plaintiff an equal opportunity to use and enjoy the dwelling; and 4) the housing provider refused to make such accommodation.

Victims of housing discrimination have a number of options under the Fair Housing Act; a complainant “may commence action under the federal act, in state or federal court, [or] by filing an administrative complaint with the Department of Housing and Urban Development (HUD).” Additionally, state and local laws also prohibit discrimination based on handicap or disability such as the provisions found in the Illinois Human Rights Act or the Chicago Fair Housing Ordinance. It should be noted that plaintiffs are not required to exhaust administrative remedies before resorting to the courts. So, plaintiffs may initiate an action in federal or state courts without referring the matter to HUD or a state or local agency, such as the Illinois Department of Human Rights or the Chicago Commission on Human Relations. As stated previously, disabled individuals may be able to keep their service or support animals despite a “no pets” policy under the reasonable accommodation provision of the Fair Housing Act.

(A) buildings consisting of four or more units if such buildings have one or more elevators; and
(B) ground floor units in other buildings consisting of four or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

24 *Id.*
II. Reasonable Accommodations

Professor Caruso noted that three categories of disability-based discrimination exist.26 The first category is straightforward, where a housing provider expressly will not rent to an individual solely because of that individual’s physical or mental disability.27 The second category occurs when the housing provider refuses to make a reasonable modification in terms of facilities, i.e., grab bars in a bathroom.28 The final category occurs when the landlord or condominium association refuses to make a reasonable accommodation in its policies or rules.29 Here, the final category will be discussed—looking at what types of service and support animals are considered reasonable accommodations and what types of disabilities are entitled to a service or support animal.

Under the Fair Housing Act, the definition of housing discrimination includes refusing to make “reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”30 As a general rule, the “waiver of no-pet rule to allow disabled resident [the] assistance of [a] service animal constitutes reasonable accommodation of handicap under [the] Fair Housing Act.”31 Courts have concluded that a reasonable accommodation analysis “requires a flexible standard, based on the needs of the particular tenant.”32 Further, case law required that a disabled individual must establish the following to obtain a waiver of a “no pets” policy as a reasonable accommodation: “1) the accommodation must facilitate the disabled person’s ability to function; and 2) the accommodation must pass a cost-benefit balancing test that takes both parties’ needs into account.”33

Additionally, the plaintiff must establish a nexus between the animal and the disability in order to establish a valid claim under federal law.34 The HUD-DOJ Joint Statement explained that this idea as “an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.”35 An example of such a nexus was where a tenant was in fact mentally disabled and that there was a link between the tenant’s ability to function and the emotional support provided by the presence of the cat. The court further noted that

26 Caruso, 29 John Marshall L. Rev. at 331.
27 Id. at 332.
28 Id.
29 Id.
31 Danne, 148 A.L.R. Fed. at 140.
32 See Bronk v. Inichen, 54 F.3d 425, 428-429 (7th Cir. 1995).
33 Id. at 431.
35 Joint Statement, Reasonable Accommodations at 6.
reasonable accommodations are necessary under the law, but accommodations that cause undue financial or administrative burdens on the housing authority need not be provided.\textsuperscript{36}

While courts noted that the nexus analysis was fact-specific, courts created rules stating whether specific training was necessary for an animal to be a reasonable accommodation.\textsuperscript{37}

As mentioned previously, the key provision under the Act for this discussion presents a significant affirmative obligation on the housing provider, requiring “that reasonable accommodations be made in rules, policies, practices, or services when such may be necessary to afford a [disabled] person equal opportunity to use and enjoy a dwelling.”\textsuperscript{38} In interpreting the provision, courts have noted that

Congress borrowed this reasonable accommodation language from regulations and case law interpreting . . . the Rehabilitation Act . . . and intended for such case law to supply the governing standard for what accommodations are reasonable under the FHAA . . . and some courts have made general pronouncements concerning what constitutes a reasonable accommodation.\textsuperscript{39}

Generally, courts have applied a broad rule that a reasonable accommodation does not impose undue financial or administrative burdens on the housing provider making the accommodation.\textsuperscript{40}

Specifically, a reasonable accommodation has been defined as “a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.”\textsuperscript{41} The HUD-DOJ Joint Statement also noted that

[s]ince rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.\textsuperscript{42}

\textsuperscript{37} \textit{Id.}
\textsuperscript{38} Danne, 148 A.L.R Fed. at 43.
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} \textit{Id.} at 44.
\textsuperscript{41} Joint Statement, \textit{Reasonable Accommodations} at 6.
\textsuperscript{42} \textit{Id.}
As such, under the reasonable accommodation provision of the Act, a housing provider must make a reasonable accommodation “to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.”\textsuperscript{43} In making a reasonable accommodation, a housing provider may ask for supporting materials, which document the need for an emotional support animal.\textsuperscript{44} However, the Fair Housing Act does not require the disabled individual “to provide proof of training or certification of the animal.”\textsuperscript{45} Certification of service and support animals will be discussed in the following section.

III. Types of Animals

Federal statutes and regulations do not attempt to define the animals that can be used as service or support animals.\textsuperscript{46} According to the Americans with Disabilities Act (ADA), “a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.”\textsuperscript{47} This includes also “guiding individual with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”\textsuperscript{48} Under the ADA’s definition, service animals are broadly defined, and courts have not ruled on what types of animals may be service or support animals. Rather, the proper inquiry is whether the animal in question is a reasonable accommodation. Disabled persons are not restricted to using only dogs and cats as support animals, as other species have assisted disabled persons, including monkeys, horses, birds, and pot-bellied pigs.\textsuperscript{49} Monkey Helpers for the Disabled states that monkeys are

\textsuperscript{43} Id. at 6-7. The Joint Report provides the following example of a reasonable accommodation: “A housing provider has a ‘no pets’ policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing provider must make an exception to its “no pets” policy to accommodate this tenant.” End quote?


\textsuperscript{45} Id. Two courts addressed this issue holding that the only requirements to be classified as a service animal under federal regulations are that the animal be 1) individually trained, and 2) work for the benefit of an individual with a disability. See Bronk, 54 F.3d at 430; Green v. Hous. Auth. of Clackamas County, 994 F.Supp. 1253, 1256 (D. Or. 1998).

\textsuperscript{46} Huss, 11 Animal L. at 83.


\textsuperscript{48} 28 C.F.R. § 36.104.

\textsuperscript{49} Huss, 11 Animal L. at 83 (noting Susan D. Semmel, When Pigs Fly, They Go First Class: Service Animals in the Twenty-First Century, 3 Barry L. Rev. 39, 40 (2002). The Semmel article discussed the evolution of support animals in the United States, the variety of species being used, and the variety of tasks for which they may be utilized. She described a case of a 300-pound pot-bellied pig that was used as a support animal. Id. at 39. In that case, an individual flew from New
trained to provide assistance to serve “quadriplegic and other people with severe spinal cord injuries or mobility-impairments.” The Guide Horse Foundation purports to “provide a safe, cost-effective and reliable mobility alternative for visually impaired people.”

Under the ADA’s definition, “animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.” However, “housing providers may ask an applicant or tenant to provide documentation from a qualified professional that the individual has a disability and requires a service animal as an accommodation.” Such documentation might include the following: details about the tenant’s disability; tenant’s medical records; and the animal’s proof of training (such as a training certificate). According to Valparaiso Law School Professor Barbara Huss,

[t]here is excepted . . . seeing-eye and [hearing-aid] dogs or any other trained dog, provided the animal is properly trained and certified for the particular disability, licensed and provided further that the stockholder or resident has a certificate or authorization request from a licensed physician specializing in the field of subject disability.

Nevertheless, the only requirements in the federal regulations are that the support animal is 1) individually trained and 2) work for the benefit of the disabled person. Further, the owner may provide the animal’s training; the key is to satisfy the second prong so that the animal works for the benefit of the disabled person by aiding him to cope with his disability.

Jersey to Washington state, notifying the airline in advance that she was disabled, a heart condition, with a service animal. Id. When she arrived at the airport, her pot-bellied pig was the service animal. Id. While the airline acted in a reasonable and thoughtful manner, other passengers complained. Id. The FAA supported the airline, as the Air Carrier Access Act of 1986 provided that service animals may accompany disabled individuals on airplanes. Id. (citing 49 U.S.C. § 41705). Professor Huss noted that given the popularity of these animals, a logical approach is to focus on the impact of the animal on surrounding property holders--whether there is unreasonable noise or odor rather than the type of animal that is being kept.” Huss, 11 Animal L. at 121-122.

WHERE IS THE BEGINNING QUOTE?

54 Id.
55 Huss, 11 Animal L. at 78.
57 Id.
While housing providers can ask to review certification, courts have rejected the idea “that only certified animals may be reasonable accommodations.” 58 Rather, courts follow a fact-specific reasonable accommodation analysis to determine “whether the animal lessens the effects of the specific person’s disability, and does not depend on the animal receiving professional training.” 59 A number of courts have discussed service and support animals, as well as certification, in the reasonable accommodation context. The following key cases in this area will be discussed briefly: Bronk v. Ineichen, Green v. Housing Authority of Clackamas County, Prindable v. Association Apartment Owners, and In re: Kenna Homes. Additionally, two cases involving miniature horses will be discussed; and while not fair housing cases, these cases can be applied in a fair housing context.

One of the most significant cases in this area was the Seventh Circuit case Bronk v. Ineichen. In Bronk, the plaintiffs, two “profoundly” deaf women, alleged a violation of the Fair Housing Act, inter alia, against their former landlord, who refused “to allow them to keep a dog in their rented townhouse.” 60 The plaintiffs sought to have a hearing-aid dog to assist them, but the defendant refused to modify his “no pets” policy. 61 The court noted that a plaintiff’s brother had trained the dog as a hearing-aid dog: “to alert his owners to the ringing of the doorbell, telephone or smoke alarm, and to carry notes.” 62 The defendant argued that the dog “had received no training beyond that purportedly provided by one of the plaintiff’s brother, an amateur with no demonstrated experience in training hearing dogs” and that “no facility had ever certified [the dog] as a hearing dog.” 63 The jury found for the defendant, finding that the defendant did not discriminate against the plaintiffs “by failing to reasonably accommodate their disability.” 64

On appeal, the Seventh Circuit noted that “a deaf individual’s need for the accommodation afforded by a hearing dog is, we think, per se reasonable within the meaning of the statute.” 65 However, the parties contested the question of the dog’s skill level, and the court noted that “it was well within the province of a rational jury to conclude that [the dog’s] utility to plaintiffs was as simple house pet and weapon against cranky landlord.” 66 However, the Seventh Circuit vacated the trial court’s verdict, ordering a new trial. 67 The Seventh Circuit disagreed with the trial court’s jury instruction, inter alia, that stated: “[i]t is not discriminatory or unreasonable for a landlord to require a tenant wishing to keep a

58 Brewer, Emotional Support Animals at 11.
59 Id.
60 Bronk, 54 F.3d at 426-427.
61 Id. at 427.
62 Id. at 427 n. 4.
63 Id. at 428.
64 Id.
65 Id. at 429.
66 Id.
67 Id. at 432.
hearing dog to show the landlord training credentials from a school.”

The Seventh Circuit held that in determining a reasonable accommodation, “a disabled individual’s ability to function must survive a cost-benefit balancing that takes both parties’ needs into account.”

Significantly, “[p]rofessional credentials may be part of that sum; they are not its sine qua non.”

A subsequent federal case also dealt with a dispute over a hearing-aid dog; however, a public housing provider was the defendant. In following Bronk, the District Court of Oregon noted that “[t]he only requirements to be classified as a service animal under federal regulations are that the animal be 1) individually trained, and 2) work for the benefit of a disabled individual.”

The court concluded that the defendant “did not accommodate plaintiffs by modifying its [‘no pets’ policy] despite the fact that there was no undue burden on it.”

While the “no professional training” requirement was significant for the court in reaching its disposition, the court noted another significant fact: the defendant admitted that “it was told that the dog alerted [the plaintiff’s] son to knocks at the door and to the sounding of the smoke alarm.”

Further, the court held that no undue burden was placed on the defendant by allowing the dog in the apartment, and the defendant violated the Fair Housing Act by failing to accommodate the plaintiffs’ request.

Recent decisions have restricted reasonable accommodation by focusing on the animals’ training or certification. The Kenna Homes case presented a situation, where an apartment complex changed its by-laws, implementing a “no pets” policy. The new policy would phase out pets; whereby when the animals died, they could not be replaced.

The policy included an exception for service animals, so long as the animal was “properly trained and certified for the

68 Id. at 430.
69 Id. at 431.
70 Id. While professional training is not required, a landlord may require verification of training. See HUD v. Blue Meadows Limited Partnership, No. HUD ALJ 10-99-0200-8, 10-99-0391-8 (July 5, 2000). In Blue Meadows, a tenant brought suit against the landlord for failing to allow a tenant to keep a pet on the property. Id. The landlord asked the tenant to provide verification that the pet was trained/certified, which the tenant failed to produce; the ALJ ruled in favor of the landlord. Id.
71 See Green, 994 F.Supp. 1253.
72 Id. at 1256. The court also noted that “There is no requirement as to the amount or type of training a service animal must undergo. Further, there is no requirement as to the amount or type of work a service animal must provide for the benefit of the disabled person.” 28 C.F.R. § 36.104. The regulations establish minimum requirements for service animals.
73 Id. at 1257.
74 Id. at 1256.
75 Id.
76 Id. at 1256-1257.
78 Id. at 385.
particular disability,” among other criteria. After a resident couple’s dog died, they sought to replace the dog but their permit was denied. Both individuals were diagnosed with various ailments and offered a physician’s statement that it was a medical necessity for these residents to keep their pets “to suppress both the physical and mental need for companionship as well as the confinement due to various illnesses.” After rejecting the request, the housing providers filed a petition for declaratory judgment as to the validity of its regulations.

The residents argued that the regulation violated the Fair Housing Act, because it failed to provide a reasonable accommodation “unless the dogs at issue are properly trained, certified, licensed, and an authorization request from a physician specializing in the field of the subject disability is produced.” The West Virginia Supreme Court noted the Bronk and Green cases in reaching its conclusion that “a requirement that a service dog be ‘properly trained’ does not conflict with federal or state law.” In following Bronk and Green, the West Virginia Supreme Court concluded that the Fair Housing Act does not require “professional training,” but it recognized that “some type of training is necessary to transform a pet into a service animal.” As to the certification provision, the court noted that there were “no uniform standards or credentialing criteria applied to all service animals or service animal trainers.” However, the court ruled that a tenant should make a bona fide effort to locate a certifying authority. Finally, the West Virginia Supreme Court concluded that the physician authorization requirement was reasonable, as the “requirement has attributes of a causation requirement.”

In a subsequent case, the defendant condominium association had a “no pets” policy without an exception for service animals. One plaintiff requested a reasonable accommodation, as to the “no pets” policy, requesting “a dog for his personal safety.” According to the plaintiff’s physician, the plaintiff needed a dog “to cope with the stress, poor sleep patterns [and] problematic ailments resulting from trauma from an earlier assault.” Subsequently, the plaintiff’s partner submitted a note handwritten on a prescription pad from the Waikiki
Health Center [reading] ‘[the plaintiff] has a medical illness for which a dog is necessary for his improvement.’ 91 The District Court of Hawaii noted that only one of the plaintiffs was appropriately considered to be “disabled” under the Fair Housing Act, concluding that there was evidence that the latter plaintiff suffered from depression. 92 However, in following Bronk and noting Kenna Homes, the court noted that “most animals are not equipped ‘to do work or perform tasks for the benefit of an individual with a disability’. … There must instead be something—evidence of individual training—to set the service animal apart from the ordinary pet.” 93

The court concluded that “the animal at issue must be peculiarly suited to ameliorate the unique problems of the mentally disabled.” 94 In following Kenna Homes, the court noted that

[unsupported averments from [the plaintiff] and slight anecdotal evidence of service are not enough... to satisfy Plaintiffs’ burden in opposition to summary judgment. ... Plaintiffs needed something more—an affidavit detailing [the dog’s] training, a declaration from [the dog’s] veterinarian or a certificate from any licensed training school—to survive summary judgment. 95

In granting summary judgment for the defendants, the court concluded that “there is no evidence that would lead a reasonable jury to conclude that [the dog] is an individually trained service animal and, therefore, nothing to show that an accommodation for [the dog] may be necessary to afford [the plaintiff] an equal opportunity to use and enjoy the dwelling.” 96

There are two recent cases involving miniature horses that build on the analysis discussed in the previous cases. These cases were not under the Fair Housing Act, but involved a restrictive covenant and a municipal ordinance. However, the disabled individuals could have argued for reasonable accommodations under the Fair Housing Act. One case was filed against the owners of a miniature horse, alleging a violation of a restrictive covenant. 97 In the other case, the plaintiffs challenged a municipal decision that denied the issuance of permit as violative of the ADA. 98

91 Id. at 1249-1250.
92 Id. at 1255.
94 Id. at 1256.
95 Id. at 1257 (citing In re Kenna Homes, 210 W.Va. at 390-391).
96 Id. at 1260.
In *Ridgewood Homeowners Association v. Mignacca*, the plaintiff homeowners association and residents alleged that the defendants violated a restrictive covenant, because they kept a miniature horse.\(^9\) The trial court noted that the restrictive covenant was ambiguous as to its scope, noting that its purpose was to prevent individuals from “keeping and raising animals in a ‘farm-like’ setting for commercial purposes.”\(^1\) The trial court concluded that “the restrictive covenant would not apply to the miniature horse in this case.”\(^0\) On appeal, the Rhode Island Supreme Court reversed, concluding that “[t]he restrictive covenant was not ambiguous and had not been enforced arbitrarily.”\(^1\) The Rhode Island Supreme Court ordered that the defendants should be permanently enjoined “from keeping the miniature horse on their property.”\(^1\)

Professor Huss indicated that a different effect or outcome might have resulted if the defendants raised the Fair Housing Act. She noted that “if [the defendant] was disabled, and the horse was a service animal, the analysis could be whether a reasonable accommodation would need to be made to the restrictive covenant.”\(^0\) It also should be noted that individuals have challenged municipal ordinances, with mixed results, as violations of the Fair Housing Act.\(^0\)

In another miniature horse case, the plaintiff sought declarative and injunctive relief under the ADA to prohibit the defendant municipality from discriminating against a disabled individual.\(^0\) The defendant attacked the plaintiff’s allegations, *inter alia*, on the grounds that the plaintiff’s physician testified at deposition that the plaintiff was “not a qualified individual with a disability.”\(^0\) In that case, the plaintiff suffered “from the congenital birth defect of spina bifida…she has cervical meningocele which is an open spine in the area of her neck…[she] also has hydrocephalus, commonly known as water on the brain.”\(^0\) The plaintiff walked with difficulty and used a wheelchair on occasion.\(^0\) A benefactor gave the plaintiff a miniature horse, and thereafter sought a permit from the defendant to keep the animal.\(^0\) However, the plaintiff did not inform the defendant “that she intended to utilize the horse as a service

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100 *Id.* at 11.
101 *Id.* at 11.
102 *Mignacca*, 813 A.2d at 970-972.
103 *Mignacca*, 813 A.2d at 977.
104 Huss, 11 Animal L.J. at 123.
105 See *U.S. v. City of Edmonds*, 18 F.3d 802 (1994) (municipal zoning ordinance challenged with respect to group home); *Fair Housing Advocates v. City of Richmond*, 209 F.3d 636 (6th Cir. 2000) (housing provider establishing occupancy standard must show it is reasonable); *U.S. v. Town of Cicero*, 1997 WL 337379 (N.D. Ill. Jun. 16, 1997) (occupancy restriction challenged based on allegations of the intent to discriminate based on familial status and national origin, and that the ordinance has a discriminatory impact).
107 *Id.*
108 *Id.* at 2.
109 *Id.*
110 *Id.* at 3.
animal for [the plaintiff] under the ADA.”¹¹¹ Further, “[p]rior to the delivery of the horse . . . none of [the plaintiff’s] treating physicians had ever prescribed or recommended that [the plaintiff] utilize a miniature horse as a service animal.”¹¹²

Significantly, the court noted that “[t]here is no proof the horse had received prior training as a service animal for purposes of the ADA.”¹¹³ Nevertheless, the plaintiffs contended that

“they provided the [defendant] with extensive documents showing that [the plaintiff] is disabled and the horse is being utilized by [the plaintiff] as a service animal under the ADA. Despite this information, the [defendant] continued to deny the permit.”¹¹⁴

However, the court concluded that the plaintiffs did not submit sufficient “proof clarifying and explaining precisely what the horse has been trained to do to assist [the plaintiff] as a service animal under the ADA.”¹¹⁵ Further, the plaintiff’s physician testified that the miniature horse helped the plaintiff perform tasks that she would not otherwise be able to do; however, the physician did not “explain what specific tasks the horse actually performs for [the plaintiff] as a service animal under the ADA.”¹¹⁶ The court noted the Green disposition, concluding that “[t]here is no requirement as to the amount or type of work or assistance that a service animal must provide for the benefit of a disabled person.”¹¹⁷ However, the court ultimately concluded that “[t]here are genuine issues of material fact in dispute on this final element of the plaintiffs’ claim which will have to be resolved at trial.”¹¹⁸

The Bronk, Green, Kenna Homes, and Prindable cases, as well as the miniature horse cases, provide examples of how courts will analyze whether a service or support animal will be considered as a reasonable accommodation under the Act. Under this analysis, the type of animal is not relevant, as the case law has noted that ADA and HUD regulations construe service animals broadly. The Seventh Circuit standard from Bronk has carried a lot of weight with other jurisdictions.¹¹⁹ The key principles from Bronk are that 1) the accommodation must aid the disabled individual’s ability to function and 2) the accommodation must survive a cost-benefit balancing that accounts for both parties’ needs.¹²⁰ Additionally, Bronk and subsequent cases support the proposition that an animal

¹¹¹ Id.
¹¹² Id.
¹¹³ Id.
¹¹⁴ Id. at 4.
¹¹⁵ Id.
¹¹⁶ Id.
¹¹⁷ Id. at 7.
¹¹⁸ Id.
¹²⁰ Bronk, 54 F.3d at 430.
does not have to be professionally trained, but a housing provider may require that the animal be trained or certified.\textsuperscript{121} However, it is important that the animal receive some type of training to transform a pet into a service animal.\textsuperscript{122} The \textit{Bronk} analysis will be critical in the context of which types of disabilities are entitled to service or support animals.

\section*{IV. Types of Disabilities}

A disability that may require a service or support animal has expanded over the past several years. Case law and regulations provide that a reasonable accommodation under the Fair Housing Act may require a landlord or condominium association to allow a tenant to keep a service or support animal, such as a seeing-eye dog.\textsuperscript{123} However, the idea of a service or support animal under the Fair Housing Act is not limited to a seeing-eye dog. The West Virginia Supreme Court noted that “there are several other types of service dogs,” which aid hearing-impaired individuals, mobility-impaired individuals, individuals with autism, and individuals with seizures.\textsuperscript{124} Many recent cases have discussed the applicability of Fair Housing Act protection to individuals with such disabilities as hearing impairment, epilepsy, depression, mental anxiety, panic disorder, HIV/AIDS, and physical disabilities. Significantly, recent studies have demonstrated the affects of companion animals on humans.\textsuperscript{125} Some examples show that interaction with companion animals decrease human’s blood pressure, lowers human’s cholesterol and triglycerides, and helps to treat some forms of

\begin{itemize}
\item \textsuperscript{121} See \textit{Bronk}, 54 F.3d 425; \textit{In re: Kenna Homes}, 210 W. Va. 380.
\item \textsuperscript{122} \textit{Id.} at 390.
\item \textsuperscript{123} 42 U.S.C.A. § 3604(f)(3)(B); Danne, 148 ALR Fed. at 146-147. The ALR article notes that one court has speculated that such an obligation would cease once the animal endangers other tenants. An example from HUD’s regulations provides “that where a blind applicant for rental housing desires to live in a dwelling unit with a seeing-eye dog, but the building has a ‘no pets’ policy, it is unlawful for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing-eye dog because, without the dog, the blind person will not have an equal opportunity to use and enjoy the dwelling.” 24 CFR 100.204(b). Also, HUD’s Fair Housing booklet provides the specific example of “[a] building with a ‘no pets’ policy must allow a visually impaired tenant to keep a guide dog.”
\item \textsuperscript{124} \textit{In re: Kenna Homes}, 210 W.Va at 388 n. 7. Autistic individuals are assisted by “[a]n ‘SsigDog’ [which] is trained to assist persons with autism by alerting its partner to distracting repetitive movements common among those with autism, and thus allowing the person to stop the movement. Also, an autistic person may have difficulty with sensory input and need the same support services from a dog that a dog might give to a person who is blind or deaf.” \textit{Id.} Also, “Seizure Response Dogs . . . are trained to assist a person with a seizure disorder. For example, the dog may stand guard over the person during a seizure, or the dog may go for help. A few dogs have learned to predict a seizure and warn the person in advance.” \textit{Id. (citing The Board of Regents of the University of Wisconsin System, University of Wisconsin Service Animal Policy, http://www.wisc.edu/adac/physical/servicedog.html (accessed Apr. 22, 2006)).}
\item \textsuperscript{125} Huss, 11 Animal L. at 70.
\end{itemize}
mental illnesses. Additionally, there have been news reports and articles on trained dogs that guard their owners during a seizure, activate medical alerts, or get help when necessary. The following sub-sections will discuss the types of disabilities and whether service or support animals have been allowed as a reasonable accommodation.

A. Visual Impairment

HUD regulations express clearly that a seeing-eye dog is a reasonable accommodation under the Fair Housing Act. Similarly, case law supports this proposition, where the Ninth Circuit held that the Fair Housing Act requires a housing provider to waive a “no pets” rule for a blind tenant, who required a seeing-eye dog. The Ninth Circuit noted that housing providers might impose fees in certain circumstances, but “such a fee could effectively prevent the handicapped tenant from obtaining the needed benefit.” Clearly, seeing-eye dogs will pass muster under a reasonable accommodation analysis, because such an animal requires training in order to assist a visually impaired individual and clearly works for the benefit of the disabled individual. However, a court has acknowledged that a housing provider’s refusal to allow a blind tenant to have a seeing-eye dog may not amount to a failure to accommodate where the dog endangers other tenants. The Rakuz court observed that although an example in the HUD regulations indicated that it was a violation of the reasonable accommodation requirement of the Fair Housing Act for a landlord with a “no pets” policy to refuse to allow a seeing-eye dog to live with a tenant with blindness. However, the court concluded that it is questionable whether the landlord must continue to tolerate a situation in which the seeing-eye dog bites other tenants.

B. Hearing Impairment

A hearing-aid dog is trained to assist a deaf individual in his or her daily activities, as by alerting the individual to the ring of a doorbell, telephone or

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128 24 C.F.R. 100.204.
129 U.S. v. California Mobile Home Park Mgt. Co., 29 F.3d 1413, 1416-1417 (9th Cir. 1994)
130 Id. at 1419.
132 Id. (citing 24 CFR § 100.204, example one).
133 Id.
smoke alarm. The Seventh Circuit noted that “a deaf individual’s need for the accommodation afforded by a hearing dog is...per se reasonable within the meaning of the [Fair Housing Act].” The Seventh Circuit noted that denying a tenant a hearing-aid dog could be found to constitute not only a violation of the reasonable accommodation requirement of the Act, but a violation of the basic obligation imposed by § 3604(f)(2) of the Act not to discriminate on the basis of disability in the terms, conditions or privileges of sale or rental of a dwelling.

The Bronk court noted that HUD’s regulations give as an example of a reasonable accommodation allowing a blind applicant for rental housing to keep her seeing-eye dog in a building with a “no pets” policy, and said that clearly the situation of a deaf resident who wishes to keep a hearing-aid dog is analogous. Similarly, a hearing-impaired tenant sued the county housing authority for refusing to allow the tenant to keep a service dog for hearing assistance purposes. In that case, the Green court found that the housing authority failed to accommodate the tenant by modifying the no pet policy despite the fact that there was no undue burden. That court reinforced the position that hearing-aid dogs are reasonable accommodations under the Act. In an interesting twist, the John Marshall Law School Fair Housing Legal Clinic represented a plaintiff, who claimed a condominium’s “no pet” policy prohibited her from having a hearing cat. While this case settled, there would be no reason to conclude that the hearing-impaired plaintiff would not prevail, so long as the cat was adequately trained to assist the plaintiff.

C. Epilepsy

The Department of Justice notes that service animals can “alert people with epilepsy to an impending seizure.” Such an example is a clear indication that an individual who suffers from epilepsy would be able to keep a service animal as a reasonable accommodation. However, a recent court decision demonstrated that the plaintiffs still must put their housing provider on notice of their disability and need for a service animal. In Evans v. Watson, the plaintiff alleged, inter alia, that the defendants “failed to accommodate her epileptic condition by refusing her request for permission to have a dog.” The defendants contended that the plaintiff “faked epilepsy in order to get money from the government,” as well as arguing that the plaintiff never requested any

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134 Bronk, 54 F.3d at 427 n. 4.
135 Id. at 429.
136 Id. 429-430.
137 Id. at 429 n. 6.
138 Green, 994 F. Supp. at 1254-1255.
139 Id. at 1257.
accommodation for her condition. The Oregon District Court denied both the plaintiff’s motion for partial summary judgment and the defendants’ motion for summary judgment, observing that “[s]everal issues must be resolved by the trier of fact regarding [the plaintiff’s claim] of discrimination based upon her [disability].” Essentially, the plaintiff should have informed the defendant of her condition and that she required a service animal.

D. HIV/AIDS

In Zatopa v. Lowe, a tenant suffering from AIDS and long-term clinical depression acquired a dog to help alleviate his symptoms in violation of a “no pets” provision in his lease; the plaintiff adopted a pit bull mix. The defendant conceded that the plaintiff was disabled and an emotional support animal was a reasonable accommodation. However, the dispute was over the type of animal chosen by the plaintiff. The defendant argued that the dog in question, a pit bull mix, was a nuisance, creating “a substantial interference with the comfort, safety or enjoyment of the landlord and tenants in the building.” While the defendant agreed to let the plaintiff to keep a dog that was of a “safe and gentle” breed, the focus for the Northern District Court of California was whether the defendant was required to allow the plaintiff to keep that “particular dog as a reasonable accommodation.” In resolving this case, the court noted that “an accommodation need not satisfy the particular preference of the disabled person in order to be held reasonable.” As a result, the court concluded that the defendant’s offer of a “safe and gentle” dog breed was a reasonable accommodation under the Fair Housing Act.

E. Mental Disabilities

The Kenna Homes and Prindable cases have shaped the jurisprudence for emotional support animals. Professor Huss noted

[i]f the standards set by [Kenna Homes], and adopted by Prindable, are supported by subsequent decisions interpreting the [Fair Housing Act], persons asserting their rights under the [Fair Housing Act] will need to establish a clear record of their

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143 Id. at 1-2.
144 Id. at 3.
146 Id. at 5.
147 Id. at 3-6.
148 Id. at 4.
149 Id. at 12.
150 Id.
151 Id. at 15.
152 See Kenna Homes, 210 W.Va. 380; Prindable, 304 F.Supp.2d 1245.
disabilities, as well as the status of the animal, to have a service animal in housing where a “no pets” policy applies.\textsuperscript{153}

As noted previously, the \textit{Bronk} analysis was still at the core of the \textit{Kenna Homes} and \textit{Prindable} cases; so the key determination of whether an emotional support animal is a reasonable accommodation depends on the Seventh Circuit’s analysis in \textit{Bronk}.

The West Virginia Supreme Court required that a tenant show that the pet possessed specific training or provided services other than companionship that facilitated the disabled individual’s ability to function.\textsuperscript{154} In \textit{Kenna Homes}, the condominium association sought a declaratory judgment regarding its occupancy regulation prohibiting animals, except for service animals.\textsuperscript{155} The regulation further provided that such service animals must be properly trained and certified for the particular disability and required that the resident seeking to house the service animal provide the cooperative with a certificate from a physician specializing in the field of the claimed disability, certifying that the resident suffers from the claimed disability.\textsuperscript{156} The court stated that the purpose of the Fair Housing Act is to ensure that disabled individuals are provided the same opportunity to use the housing, but it does not require accommodations that increase the benefit to a disabled individual above and beyond that provided to non-disabled individuals for matters unrelated to the disability.\textsuperscript{157}

In \textit{Prindable}, an “unsupported averment” by a condominium resident who was allegedly disabled by depression and anxiety that his dog was “individually trained to provide emotional support” was insufficient to make the dog a “service animal” for purposes of Fair Housing Act requirement for reasonable accommodation of disability. The court noted that there was no evidence that the dog had been individually trained to provide assistance to the plaintiff, and the plaintiff’s counsel admitted that the dog possessed no abilities unassignable to the breed or to dogs in general.\textsuperscript{158} Conversely, a decision was rendered in a HUD administrative hearing with an opposite conclusion, involving a tenant suffering from depression who sought to keep a dog.\textsuperscript{159} However, it should be noted that the HUD decision was issued several years before the \textit{Kenna Homes} and \textit{Prindable} cases. In that case, the ALJ agreed with the tenant that her depression was a mental handicap protected by the Act’s anti-discrimination provisions, also agreeing with the tenant’s expert witnesses who opined that the tenant’s dog was a necessary therapeutic device to alleviate the tenant’s symptoms.\textsuperscript{160}

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\textsuperscript{153} Huss, 11 Animal L. at 81. \\
\textsuperscript{154} \textit{In re Kenna Homes}, 210 W. Va. at 393. \\
\textsuperscript{155} Id. at 385. \\
\textsuperscript{156} Id. at 385-386. \\
\textsuperscript{157} Id. at 386. \\
\textsuperscript{158} \textit{Prindable}, 304 F. Supp. 2d at 1260. \\
\textsuperscript{159} \textit{HUD v. Riverbay}, No. HUD ALJ 02-93-0320-1 (Sept. 8, 1994). \\
\textsuperscript{160} Id.
\end{flushleft}
Nevertheless, that HUD claim might have survived scrutiny even after *Kenna Homes* and *Prindable*, as the plaintiff must provide more than just a self-serving statement that the animal is necessary for emotional support.

A recent case from the John Marshall Law School Fair Housing Legal Clinic tested the limits of the Fair Housing Act’s applicability to a disabled person’s right to have an emotional support animal. In that case, the plaintiff alleged that a condominium requirement prohibited him from keeping his dog, which was purchased “to address his therapeutic needs in dealing with his disabling depression.”161 The plaintiff had a history of depression, and his psychiatrist “stated that it is essential to [p]laintiff’s mental health that he keeps his present dog . . . to assist with his depression.”162 The condominium requirements had a weight limit restriction for dogs, and the plaintiff’s dog exceeded the limit by a large amount.163 In following the *Kenna Homes* and *Prindable* cases, it would be unclear whether the *Senerchia* plaintiff would be entitled to a reasonable accommodation. The key question is what kind of training is required for an emotional support animal? As the *Kenna Homes* court held that some type of training is necessary to transform a pet into a service animal.164 However, according to Professor Caruso, the parties were able to reach a settlement, whereby the plaintiff would keep his present dog, as well as being able to replace the dog when it died with a similar breed of dog and damages.165

Depression and anxiety cases have resulted in mixed results for plaintiffs. Despite the line of cases enforcing “no pet” provisions, the courts have sided with the pet owner in a number of cases. In a New York case, summary judgment was precluded on the issue of whether keeping a cat was necessary to assist a tenant in coping with a mental illness, specifically panic disorder with agoraphobia, mixed personality disorder, as well as chronic anxiety with a history of episodic alcohol abuse.166 Once again, this decision was issued before *Kenna Homes* and *Prindable*. In noting the applicability of both the Rehabilitation Act and the Fair Housing Act, the court stated that the plaintiff “must demonstrate that he has an emotional and psychological dependence on the cat which requires him to keep the cat in the apartment.”167 The plaintiff submitted evidence from his physician, among other experts, supporting his contention that he “received therapeutic benefits from keeping and caring for his cat,” thus, the cat helped him to use and enjoy the dwelling by alleviating the manifestations of his mental illness.168 In another administrative hearing (once again pre-*Kenna Homes* and *Prindable*), the

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162 *Id.*
163 *Id.*
164 *Id.* at 390.
167 *Id.* at 1006.
168 *Id.* at 1007.
complainant sought to keep a cat to alleviate his mental anxiety, pain, and depression, which resulted from a medical disability known as fibromyalgia, a musculoskeletal condition. The complainant presented expert physician testimony that his cat provided therapeutic benefits by relieving his anxiety and depression. The ALJ ruled against the housing provider, which had refused to waive its “no pet” policy.

In another recent case, the plaintiff suffered from a severe mental health disability, and her physician testified that the “plaintiff’s pets, two birds and two cats, lessen the effects of this disability by providing her with companionship and are necessary to her mental health.” The plaintiff had signed a lease with a low-income apartment building with a “no pets” policy; however, the plaintiff did not inform the defendant of her animals. The plaintiff alleged that the defendant refused to make a reasonable accommodation, while the defendant claimed that it was willing to accommodate partially her request. When the plaintiff failed to provide vaccination documentation, the defendant moved to evict; however, the plaintiff moved out and initiated her lawsuit. The defendant moved to dismiss, and alternately for summary judgment.

In rejecting the defendant’s motion to dismiss, the Northern District Court of California noted that federal regulations provide a broad definition for service animal. The court noted that the plaintiff sufficiently pleaded her case in order to survive a motion to dismiss. Additionally, the court held that “[a]s plaintiff has adequately plead that she is [disabled], that defendants knew of her [disability], that accommodation of the [disability] may be necessary and that defendants refused to make such accommodation, defendants’ motion to dismiss is denied.” Further, the court rejected the defendants’ motion for summary judgment, because the plaintiff had not conducted discovery; specifically, “to discover the likely costs, or administrative burdens that would be imposed on the defendants if they were to accommodate her.” What remained unclear was whether the plaintiff would be able to keep all of her animals—the two birds and two cats. Also, while Janush preceded Kenna Homes by one year and Prindable by three years, it would have conceivably equal precedential value, at least until the federal circuit courts address this issue.

170 Id.
171 Id.
172 Janush, 169 F.Supp.2d at 1134.
173 Id.
174 Id.
175 Id.
176 Id.
177 Id. at 1136.
178 Id.
179 Id.
180 Id.


F. Physical Disabilities

Just like in cases involving individuals with mental disabilities, the *Bronk* analysis plays a key role in cases involving physical disabilities. In a HUD administrative hearing, a complainant alleged that the respondent “failed to make a reasonable accommodation of his [disability] by refusing to waive its [“no pets”] policy.”181 The complainant’s [physician] noted that he had “a long-time severe physical disability and it is medically necessary that he [keeps] his emotional support companion animals, his cats, to control the frequency and severity of his physical disability.”182 According to his physician, the plaintiff suffered from severe emotional disabilities that also triggered asthma attacks.183 However, the ALJ noted that “[complainant] failed to establish that his two untrained cats are necessary for him to have equal opportunity to use and enjoy his dwelling within the meaning of the [Fair Housing Act].”184 The ALJ concluded that “[t]here was no direct linkage between being able to use and enjoy his unit.”185

In another case, a physically disabled plaintiff alleged a violation of the Fair Housing Act against a housing authority when, *inter alia*, it refused to allow him to keep his dog as a reasonable accommodation.186 The plaintiff was a 48-year-old “paraplegic who suffered lower extremity paralysis in a motorcycle accident in 1977.”187 In that case, the plaintiff appealed the lower court’s grant of summary judgment in favor of the defendant.188 As to the dog in that case, the housing authority imposed a weight restriction of 20 pounds for dogs; the plaintiff’s dog weighed 47 pounds.189 While the defendant argued that keeping a dog that violated the lease agreement, the appellate court noted that even were it established that plaintiff was aware of the pet policy at the time he entered into the lease, that does not mean that he would be precluded from keeping a pet in his unit if he needed the pet to accommodate his disability. Despite its pet policy, the [defendant] remains obligated to accommodate plaintiff’s disability “to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.”190

182 Id. at 2.
183 Id. at 3.
184 Id. at 4.
185 Id. at 5.
186 Ora s, 373 N.J.Super. at 306..
187 Id.
188 Id.
189 Id. at 307-308.
190 Id. at 314 (citing 24 C.F.R. § 966.7(a)).
The appellate court noted that “[w]hether a pet is of sufficient assistance to a tenant to require a landlord to relax its pet policy so as to reasonably accommodate the tenant’s disability requires a fact-sensitive examination.”\(^\text{191}\) Significantly, the appellate court stated that the trial court failed to give any consideration to the plaintiff’s needs when it granted summary judgment in favor of the defendants.\(^\text{192}\) The court noted that “a reasonable accommodation ‘means changing some rule that is generally applicable to everyone so as to make its burden less onerous on the handicapped individual.’”\(^\text{193}\) As a result, the appellate court concluded that the plaintiff was requesting a reasonable accommodation “when he requested that [the defendant] relax its policy of limiting dogs to [20] pounds, and allow him to keep his [47] pound dog, which two doctors indicated would assist his physical and mental well being.”\(^\text{194}\) As such, the appellate court reversed and remanded, but ordered the plaintiff to “prove that the requested accommodation was necessary to afford him an equal opportunity to use and enjoy his dwelling.”\(^\text{195}\)

In a subsequent case, the Washington Court of Appeals followed the analysis of Green and Prindable as to the amount of training necessary for a service animal.\(^\text{196}\) In that case, the Washington State Human Rights Commission filed a complaint on behalf of an individual who was expelled from a trailer park, allegedly “because of her disability and use of a service animal.”\(^\text{197}\) The individual experienced severe migraine headaches about three times a week, and she trained her dog to alert other individuals when she was suffering from the severe migraines.\(^\text{198}\) The complainant provided all of the dog’s training, and when the dog “was seven to nine months old, [it] began responding to [the complainant’s] migraines.”\(^\text{199}\)

After an administrative hearing, the ALJ concluded that the defendant’s reasons for denying the complainant’s application were pretextual, and the

\(^{191}\) Id. at 315.
\(^{192}\) Id. at 317.
\(^{193}\) Id. (citing Oxford House, Inc. v. Township of Cherry Hill, 799 F.Supp. 450, 462 n. 25 (D. N.J. 1992)).
\(^{194}\) Id.
\(^{195}\) Id.
\(^{197}\) Id. at 897.
\(^{198}\) Id. at 899 “Her symptoms include vision problems, nausea, vomiting, and tenderness on her right side. When she has enough warning, [complainant] can take a nasal spray that sometimes prevents a migraine. Once she has a migraine, others can assist her by taking her to the bathroom, getting her pain and nausea medication, or bringing her ice packs and cold cloths.”
\(^{199}\) Id. “If [the complainant] had a migraine, [the dog] found [the complainant’s] brother] or another person nearby and would ‘freak out’ by running, jumping, barking, scratching on a door, or pulling at their leg to alert them.”
defendant violated the Fair Housing Act by denying her rental application because the complainant used a service animal. The ALJ concluded that
[n]ot much [training] is required of an alert dog, that [the dog] had a propensity to alert others to [the complainant’s] needs, and that [the dog] achieves what she wants—attention to [the complainant]—[which] is in itself positive reinforcement of desired behavior and thus a form of training.

On appeal, the Washington Court of Appeals noted the Green court’s conclusion that there was no requirement “as to the amount or type of training a service animal must undergo” or the “type of work a service animal must provide for the benefit of the disabled person.” However, the appellate court acknowledged that there must be some training to set a service animal apart from an ordinary pet. As such, the appellate court noted that the ALJ found that the dog was not trained specifically to alert others when the complainant was incapacitated by a migraine headache, and such a conclusion was at odds with the legal conclusion that the dog was a service animal.

The appellate court reversed the ALJ’s decision, concluding that the dog “was not a service animal . . . [as the dog’s] training consisted of getting what she wanted—attention from [the complainant]—[such a conclusion would] make any family pet into a service animal.”

In reviewing a sample of reasonable accommodation cases, it is evident that individuals with various disabilities, mental and physical, may be entitled to a service or support animal as a reasonable accommodation under the Fair Housing Act. In analyzing these cases, courts have noted consistently that some type of training is necessary to transform a pet into a service animal. Significantly, there must be some kind of evidence as to the animal’s skill, but self-serving statements by a plaintiff are not sufficient.

**Conclusion**

Professor Caruso noted that “[i]n a [broad] sense, the Fair Housing Act requires communities as well as individual [housing providers] to recognize equal opportunities for [disabled] members of group homes or handicapped individual homeowners.” Significantly, the Fair Housing Act provides that housing providers must take affirmative steps to ensure that disabled individuals have an

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200 Id. at 898.
201 Id. at 901.
202 Id. (citing Green, 994 F.Supp. at 1256; C.F.R. § 36.104).
203 Id. at 901-902 (citing Prindable, 304 F.Supp.2d at 1256).
204 Id. at 902.
205 Id.
206 Id. at 390.
equal opportunity to enjoy their living environment.\footnote{208} Under the Act, housing providers must make changes “in long-standing rules and the imposition of reasonable financial burdens are not unreasonable means for providing equal opportunity housing for [disabled] individuals.”\footnote{209}

According to the case law, the reasonable accommodation analysis is fact intensive. A wide range of disabilities may be entitled to a reasonable accommodation of a service or support animal. Clearly, seeing-eye and hearing-aid dogs are reasonable accommodations. However, emotional support animals can provide assistance for disabled individuals “by lessening the effects of the disability and increasing their quality of life.”\footnote{210} Disabled individuals are not limited to certain types of animals, as service or support animals. Traditionally, the seeing-eye dog is the example that most people envision. However, the type of animal is not relevant in a reasonable accommodation analysis. As he Seventh Circuit concluded in \textit{Bronk}: “1) the accommodation must facilitate the disabled person’s ability to function; and 2) the accommodation must survive a cost-benefit balancing that takes both parties’ needs into account.”\footnote{211} Additionally, \textit{Bronk} and subsequent cases support the proposition that an animal does not have to be professionally trained, but a housing provider may require that the animal be trained or certified.\footnote{212}

The \textit{Kenna Homes} and \textit{Prindable} cases will play key roles in a reasonable accommodation analysis. The \textit{Kenna Homes} court concluded that a housing provider does not violate the Act by asking a disabled individual for proof of training or certification of the service or support animal.\footnote{213} While \textit{Kenna Homes} is a state court case, the Hawaii District Court followed it, concluding that some training is necessary to transform a pet into a service or support animal.\footnote{214} As Professor Huss noted disabled individuals arguing for a reasonable accommodation under the Fair Housing Act must establish a clear record of their disabilities, as well as the status of the animal, to have a service or support animal in housing where a “no pets” policy applies.\footnote{215}

\begin{footnotes}
\item[208] Id.
\item[209] Id.
\item[210] Brewer, \textit{Emotional Support Animals} at 14.
\item[211] \textit{Bronk}, 54 F.3d at 430.
\item[212] \textit{See Bronk}, 54 F.3d 425; \textit{In re: Kenna Homes}, 210 W. Va. 380.
\item[213] \textit{See Kenna Homes}, 210 W. Va. 380.
\item[214] \textit{See Prindable}, 304 F.Supp.2d 1245.
\item[215] Huss, 11 Animal L. at 81.
\end{footnotes}