ANSELL.LAW
ANSELL GRIMM & AARON, PC

Client Alert

AN ASSOCIATION NEED NOT ACCOMMODATE EVERY "EMOTIONAL SUPPORT" ANIMAL-RELATED ACCOMMODATION REQUEST

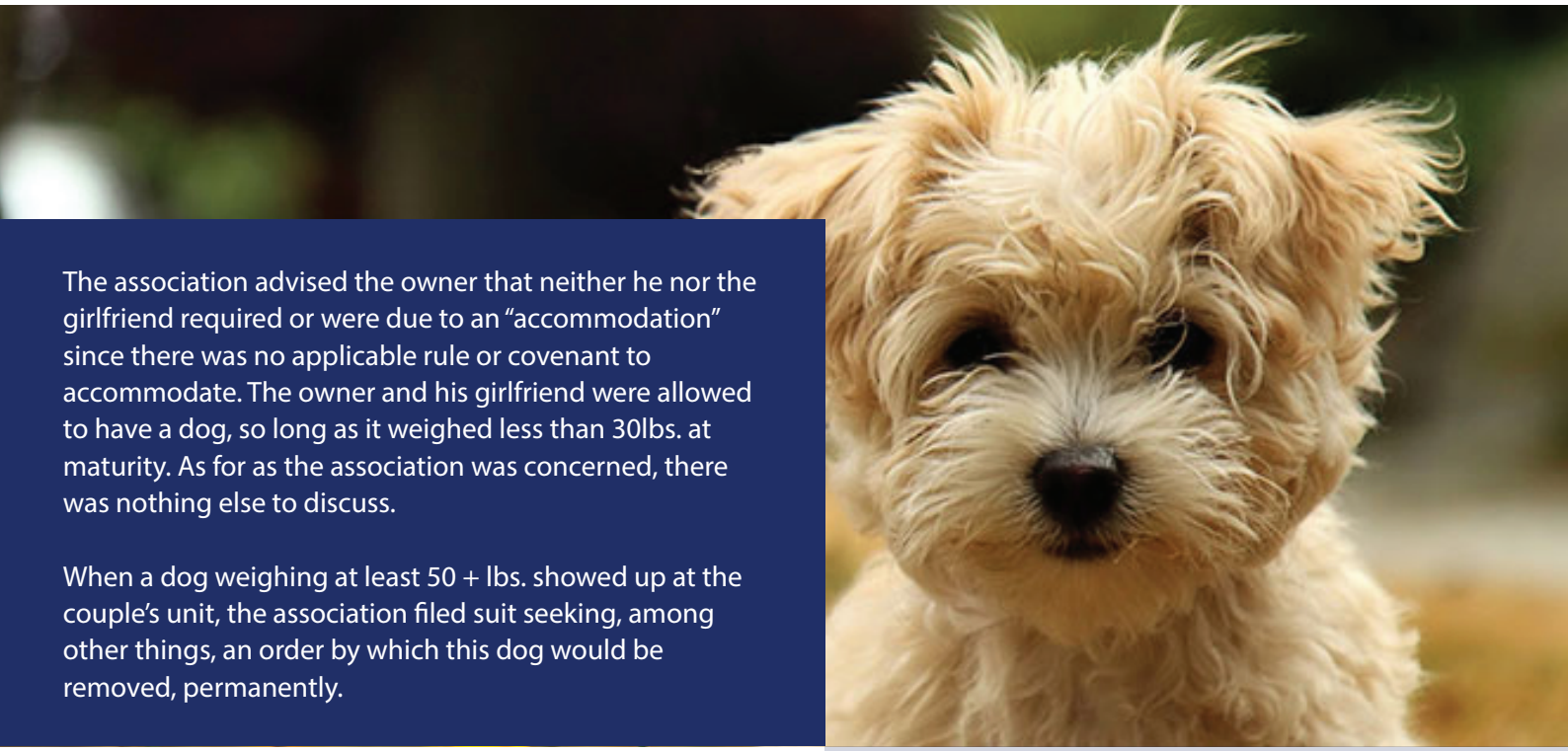
David J. Byrne
Partner

To our community association member colleagues:

You may find the following update from Ansell Grimm & Aaron's Community Association Practice regarding "emotional support" animals of particular interest. On behalf of one of our clients, we secured a New Jersey Judge ruling that an alleged disabled resident, with an alleged emotional support animal, is not entitled to either proceed summarily or obtain early victory. Instead, the owner must show that the claim of an emotional support animal is not a pretext to avoid an association's dog-related weight limit.

A New Jersey condominium's rules and covenants permit dogs, so long as the dog weighs less than 30lbs at maturity. The owner, in the context of the closing of his purchase, executed a form by which he acknowledged that only those dogs that weigh less than 30lbs. are permitted. Shortly thereafter, his significant other, a non-owner, took up residence in that condominium. Neither had a dog.

Three months later, the boyfriend told the condominium that he and his girlfriend were "considering adopting an emotional support dog." A note from a "psychiatric nurse practitioner" was provided to the association shortly after that. In that note, the nurse advised that the owner's girlfriend "suffers from a mood and anxiety disorder" that she had been "treating her" for the past six months. The nurse stated further that "it would benefit Brittany to have an emotional support animal." This note provided no further detail.



The association advised the owner that neither he nor the girlfriend required or were due to an "accommodation" since there was no applicable rule or covenant to accommodate. The owner and his girlfriend were allowed to have a dog, so long as it weighed less than 30lbs. at maturity. As for as the association was concerned, there was nothing else to discuss.

When a dog weighing at least 50 + lbs. showed up at the couple's unit, the association filed suit seeking, among other things, an order by which this dog would be removed, permanently.

In response, the owner and his girlfriend filed court papers claiming that the:

(i) girlfriend is "disabled;"
(ii) 50 + lb. a dog is her "emotional support animal;" and
(iii) girlfriend needs this dog to "alleviate" her condition and "enhance her ability to function independently."

The couple filed additional court papers demanding that the court:

(i) dismiss the association's lawsuit;
(ii) permanently protect the dog in question; and,
(iii) forever prohibit the association from enforcing its dog-related weight limit as to this particular dog.

The court refused the owner's, and the girlfriend's, request. Importantly, the court also advised them that a real question existed as to whether they were using the alleged disability, and the laws created to allow them to have an "equal opportunity to use and enjoy a dwelling," as a pretext to avoid the association's lawful and appropriate rule. The court also questioned why, in a situation like this, the disabled unit occupant did not simply adopt a dog that will not weigh more than 30 lbs. at maturity.

The court recognized the association's right to subject to the alleged disabled person to an independent medical examination. Additionally, the court decided that association was empowered to present witnesses, have a trial and cross-examine both the owner and his girlfriend as to anything that is connected with the alleged disability and/or the claim that the dog weighing more than 50 lbs. and characterized as an "emotional support animal" was allowed to stay.

This association's victory proves that an association is NOT obligated to say yes to every owner and/or resident who wants to have a dog that would otherwise be prohibited just because the owner and/or resident claims that the dog is an "emotional support animal."

Instead, associations have rights in the face of alleged "emotional support animals." That is true even if the government, in addition to and/or in lieu of, is involved, investigating, threatening or doing something else.

Associations must still tread very carefully when faced with an alleged "emotional support animal" as the penalties for making the wrong decision can be harsh. But while it treads ever so carefully, an association does not always have to say "ok" when presented with an alleged "emotional support animal."

About Ansell Grimm & Aaron's Community Association Group

The attorneys of Ansell Grimm & Aaron's Community Association Group have more than 50 years of combined experience in the Community Association industry. Our condominium, homeowners' association and housing cooperative clients – as small as four units and as large as several thousand units – rely on us to deliver dynamic, creative and effective representation for a full range of legal issues and operational requirements.

About Ansell Grimm & Aaron, PC

Founded in 1929, Ansell Grimm & Aaron, PC (www.AnsellGrimm.com) has a long history of delivering the advice, experience, and sophistication to clients who come to us to resolve legal matters that are often urgent, stressful, and of great importance. A general practice regional law firm, Ansell Grimm & Aaron's litigation practice is powered by experienced attorneys who understand that the best outcome is the one that serves the needs of each client – whether plaintiff or defendant.