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This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.

As always, if you have any questions regarding the matters raised in this Digest, please feel free to contact Bill McCracken of our New York City office at ***wmccracken@moritthock.com,*** *or your regular contact at the firm.*

About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and cooperative law.

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Emotional Support Parrots & Reasonable Accommodation Policies

It is not often that a co-op or condo matter will make the front page of the New York Times, but few issues can generate a headline as catchy as "**They Tried to Evict Her Emotional Support Parrots. She Won $165,000**."

At the outset, let us acknowledge that the phrase "emotional support parrots" has an inherent comedic resonance to it, like a Mad Libs word game come to life. However, the issues raised here are quite serious and resulted in what **the Department of Justice described** as "the largest recovery [it] has ever obtained for a person with disabilities whose housing provider denied them their right to have an assistance animal." There are important lessons to heed in this case for any co-op or condo board.

Meril Lesser lived at a Manhattan cooperative known as the Rutherford. She lived there with her parrots – actually, a series of parrots over the years. In or about 2015, a new parrot joined the household and was apparently particularly noisy. Management began receiving a number of complaints about the noise from a neighbor, which complaints were corroborated by others in the building. The board eventually decided that the birds violated the provisions of the co-op's proprietary lease and house rules prohibiting excessive and annoying noises.

As a result, the co-op "treated Lesser the same as any other shareholder in accordance with the Proprietary Lease and warning letters, and per its standard practice, [notified] her that she would be charged back for Rutherford's legal fees incurred in addressing her lease defaults."

After receiving a notice to cure from the co-op, Ms. Lesser produced a letter from a psychiatrist stating that the parrots were emotional support animals. Notwithstanding this letter, the co-op took the position that it was Ms. Lesser's responsibility to abate the noise, and when she did not do so (or pay the legal fees incurred by the co-op on the matter), it began a holdover proceeding to evict her from the building. It was not until several months after the proceeding started that Ms. Lesser first formally requested a reasonable accommodation to the co-op's rules for her parrots.

We suspect that at this point in the story, many readers will be sympathetic to the co-op, and possibly exasperated to learn that the Department of Justice ended up bringing a lawsuit and obtaining a severe **consent order** against the co-op. What did the co-op do wrong, and what can the rest of us learn from this case?

Adopt a Reasonable Accommodation Policy. One mistake the co-op made was not having a reasonable accommodation policy, which policy would help guide all parties as to how to handle requests by disabled persons for a change or exception to the building's rules and policies. In this case, the co-op seemed to argue that because it was a "pet friendly" building, it did not need a reasonable accommodation policy, but that takes a too narrow view of the building's obligations. Here, for example, Ms. Lesser needed the co-op to explore reasonable accommodations to its noise rules, not to its pet rules.

A properly-drafted reasonable accommodation policy would have outlined or suggested the steps the board should have taken in response to Ms. Lesser's request and might have avoided the need for litigation. If you are reading this and your building does not have a reasonable accommodation policy already in place, you should contact your building's attorney immediately.

Federal Law Controls. The co-op argued that it could not be held liable because it was simply applying its rules to Ms. Lesser just like it would for any other shareholder. But this was more like a confession – the whole point of federal fair housing laws is that persons with disabilities must be provided an equal opportunity to use or enjoy a dwelling, which paradoxically might require a departure from the existing rules of the co-op. As one court has put it, "requiring a landlord to 'violate its own policies' is *precisely* what a reasonable accommodation may be and what federal law requires."

Here, for example, the co-op belatedly suggested that Ms. Lesser enter into an alteration agreement to install soundproofing at her expense (as

would ordinarily be done). Under the Fair Housing Act, however, housing providers (not occupants) have a duty to provide reasonable accommodations and incur the associated costs, an obligation the co-op never seemed to understand.

Respect Persons with Disabilities. If you are serving as a board member for a co-op or condominium association, you have a duty to take legally-recognized disabilities seriously. In this case, the government frequently cited testimony from the co-op board's president that he did not consult applicable HUD guidance for dealing with reasonable accommodation requests, and instead was motivated by "stereotypes about persons with a disability-related need for emotional support animals," such as mocking Ms. Lesser's disability in his deposition and suggesting that the psychiatrist who provided Ms. Lesser a letter supporting her disability was only doing so to "keep[their business healthy" rather than for a good faith reason.

This cynical response to the prospect of Ms. Lesser legitimately needing accommodations for her "emotional support parrots" only succeeded in exposing the co-op and himself – he ended up being individually named as a defendant – to substantial liability.

New Real Estate Brokerage Rules Implemented
by Brett Stack

Real estate brokerage rules are undergoing significant changes beginning as of August 17, 2024, following **a recent settlement** between various realtor plaintiffs and the National Association of Realtors (the "NAR Settlement").

Among other things, the NAR Settlement prohibits all realtors from advertising commissions on any Multiple Listing Services ("MLS"). Compensation can still be advertised elsewhere, such as on their own websites, or by e-mail, text messages, or in verbal communications. Additionally, listing agreements with a seller, and buyer agreements with a buyer, must contain a "conspicuous statement"

that broker fees and commissions are not set by law and are fully negotiable.

The provision of the NAR Settlement making the most headlines is that now brokers on the MLS representing a buyer may be compensated (typically by a percentage of the purchase price of the unit or a predetermined fee) by one or more of the following individuals or entities:

- The buyer;
- The seller (if authorized by the buyer);
- The listing broker (if authorized by the buyer); and/or
- A third-party (if permitted and authorized by the buyer).

This is a significant departure from the status quo. Prior to the NAR Settlement, purchasers' and sellers' brokers would divide a commission between themselves, typically 5% to 6%. The NAR Settlement changes this so that now a seller does not necessarily have to offer a purchaser's broker any commission at all when the property is advertised on the MLS.

Before the purchaser's broker and the purchaser enter into a brokerage agreement, the purchaser's broker (if an MLS participant) is now obligated to discuss the commission amount (and who is responsible for same per the above) with the purchaser's broker and purchaser. Sellers should also discuss the commission split with the listing agent since this is part of the offer to purchase the property. However, under the NAR Settlement, the purchaser's broker is not obligated to represent the purchaser if any one of the following conditions exists:

- The purchaser does not agree to compensate the purchaser's broker;
- The seller is not offering compensation;
- The listing broker is not offering cooperating compensation; or
- The amount of compensation being offered is lower than what is agreed upon between the purchaser's broker and the purchaser.

These new rules will inevitably shape brokerage commission structures and spur new negotiation tactics for future purchase and sales transactions. Please note this new commission structure only applies to contracts signed after August 17, 2024, and do not apply to brokerage commissions for contracts signed before that date.