

During a hearing on the request for permanent injunctive relief,² held on November 16, 1998, both parties presented testimony and documents. I then ordered the parties to file proposed findings of fact and conclusions of law. The following findings of fact and conclusions of law are reached after consideration both of the evidence and of the parties' submissions.

FINDINGS OF FACT

(A). Fulciniti's Condition

1. Fulciniti was diagnosed with multiple sclerosis ("MS") when she was 22 years of age. She suffers from chronic, or progressive multiple sclerosis, as contrasted with episodic multiple sclerosis.

2. As suggested by the name, Fulciniti's condition worsens with her age. Although once able to walk, she is now confined to a wheelchair. Similarly, Fulciniti's ability to use her hands and arms is now compromised.

3. Fulciniti also suffers from major depression, secondary to MS. The depression is described as an "organic affective disorder."

4. Fulciniti has experienced some cognitive loss of memory, is now unable to understand financial transactions, and is impaired in her ability to detect and perceive deception.

5. For the past six years, Lori Passafiume ("Passafiume") has acted as Fulciniti's caregiver. Passafiume moved in with Fulciniti approximately 5 years ago.

6. Passafiume provides Fulciniti with essentially around the clock care. She aids Fulciniti in her exercises, takes her to appointments, takes care of the house,

² I denied, as moot, Fulciniti's request for preliminary injunctive relief. See Docket No. 2.

does grocery shopping, fills prescriptions and performs many other daily tasks.

7. Passafiume has a scheduled leave every Sunday for 7 and 1/2 hours. During this weekly leave, as well as any other time Passafiume must leave Fulciniti for more than a few hours, another caregiver comes to replace her.

(B). Acquisition of the Condominium

8. Fulciniti currently owns and resides in Unit 301 of the Village.

9. Rocco A. Fulciniti, Fulciniti's former husband, purchased Unit 301 on or about June 16, 1993.

10. Although the precise date is uncertain, Fulciniti became the equitable owner of Unit 301, as part of a divorce settlement.

11. Fulciniti formally acquired title to Unit 301 by deed dated October 21, 1997.

(C). Village of Shadyside

12. The Village of Shadyside was declared as a Condominium pursuant to the Pennsylvania Uniform Condominium Act of 1980, 68 Pa. Cons. Stat. Ann. § 3101 on March 31, 1986.

13. The Village of Shadyside Condominium Association ("the Association") is the governing body. The Association is responsible for the enforcement of all of the provisions of the Declaration, Code of Regulations and the Rules and Regulations.

14. Article XVI, Section 16.02(j) of the Declaration provides:

No animals or reptiles of any kind shall be kept or bred in any Unit, unless the owner possessed said animal(s) at time of his purchase of the dwelling unit (date of Agreement of Sale). The maximum number of pets in this event is a total of two (2) domesticated dogs or domesticated cats or one of each. When these pets die they shall not be replaced by any other animal. No pet shall be permitted to run loose or uncontrolled in or on the Common Elements. Pet owners shall immediately clean up any waste left by pets

on the Common elements or any other part of the Property

15. It is undisputed that, when Unit 301 was purchased, the purchaser was given a copy of the Declaration, Code of Regulations, and the Rules and Regulations.

(D). Fulciniti's Acquisition of the Dogs

16. Prior to the purchase of Unit 301, Fulciniti owned two dogs, Ruby and Fritz.

17. Initially, Fulciniti's condition prevented the dogs from residing with her. Once Passafiume moved in, and could help feed and walk the dogs, Ruby and Fritz came to live with Fulciniti.

18. It is undisputed that, because Fulciniti owned Ruby and Fritz prior to purchasing Unit 301, her possession of them did not violate § 16.02(j) of the Declaration.

19. At some point after Fulciniti moved in, Fritz died.

20. At or about the same time, Fulciniti was undergoing a difficult divorce, and struggled with custody issues. Because of her condition, Fulciniti's children were not able to live with her.

21. Concerned about Fulciniti's increasing depression, Passafiume brought Fulciniti a new puppy - Sampson. Passafiume believed Sampson could act as a "surrogate baby," and help alleviate Fulciniti's depression. Passafiume testified that Sampson was approximately 3 months old when she brought him home.

22. At that time, Passafiume was unaware of § 16.02(j) of the Declaration, and the prohibition of getting a replacement pet.

(E). Sampson's Training as a Service Dog

23. Shortly after getting Sampson, Passafiume arranged with Mary Waugh, a

dog trainer with Misty Pines Dog Park, to train Sampson as a service dog. Waugh explained that Ruby, Fulciniti's other dog, is too old, and not of the appropriate breed, to be trained as a service dog, that is a dog who is trained to assist a disabled person maintain essential services.

24. Waugh testified that she began working with Sampson when he was approximately 3 and 1/2 months old, in or around April of 1996. Waugh explained that the initial training sessions (occurring once a week) took place at Fulciniti's home, and that gradually she began training Sampson in public places, such as a park or a supermarket.

25. Eventually, the lessons decreased to one time a month. In the interim, both Passafiume and Fulciniti were directed to work with Sampson on his lessons.

26. Sampson's initial training lasted approximately 1 and 1/2 years. Although Sampson was originally trained to perform tasks such as picking up and retrieving objects, and opening and shutting doors, additional training is required as Fulciniti's condition worsens. Sampson is now also trained to provide Fulciniti with physical support. Both Waugh and Passafiume testified that they have observed Sampson provide Fulciniti with support when she moves in and out of her wheelchair.

27. Sampson has also received "alert training." If Fulciniti needs aid, but is unable to draw Passafiume's attention, Sampson is trained to alert Passafiume to Fulciniti's need.

28. Passafiume testified that Sampson's "alert training" has already proven to be of assistance. Approximately 3 and 1/2 months ago, Fulciniti awoke during the night, and made her way to the bathroom. While in the bathroom, she fell and cracked her head. She was wedged between the toilet and the wall, and could not

move. Passafiume, who was asleep, was unaware of Fulciniti's predicament. Sampson was able to alert Passafiume of Fulciniti's accident.

29. Passafiume also testified that Sampson aids in the performance of Fulciniti's daily exercises. Passafiume must stretch Fulciniti's muscles each day. If Fulciniti is tense, or is concentrating too much on the tasks, Passafiume is unable to get "a good stretch." Now, Sampson distracts Fulciniti by engaging her while Passafiume performs the stretches.

30. Sampson became a certified and registered therapy dog with Therapy Dogs International, after successfully performing 10 steps before an evaluator.

31. Sampson has also received a good citizenship award from the American Kennel Club, which award is a measure of his temperament and obedience under a variety of distractions.

32. Accordingly, I find that Sampson has been trained a service dog to perform certain tasks that Fulciniti can no longer do as her physical mobility deteriorates, such as retrieving objects and providing physical support to her as she gets in and out of her wheelchair.

(F). Confrontation With Association

33. Cynthia L. Clifton ("Clifton") formerly acted as the property manager for the Association. Clifton testified that she first learned of Fulciniti's acquisition of Sampson after a neighbor complained. Clifton spoke to the Board about the situation.

34. On or about June 3, 1996, at the Board's direction, Clifton forwarded to Fulciniti a letter demanding that she remove Sampson within 10 days of receipt of the letter. Fulciniti did not remove Sampson.

35. Upon receipt of the letter, Passafiume called Clifton and informed Clifton of Fulciniti's medical condition. Clifton brought to Passafiume's attention the prohibition set forth in § 16.02(j), and explained that there were "no exceptions" to the policy.

36. Although not introduced into evidence, counsel for Fulciniti apparently forwarded a letter to the Association requesting an exception to the policy.

37. Fulciniti, either through her counsel or through Passafiume, also forwarded to the Association letters from her treating physician and psychiatrist.

38. In a letter dated June 19, 1996, Dr. Mark Webb, Fulciniti's treating psychiatrist, informed Clifton that he recommended that Fulciniti be allowed to keep Sampson "for training as a therapeutic work dog." Dr. Webb explained that "Linda will use it for special protection, back-up communication, and physical assistance. Her quality of life should be improved by the dog...." See Exhibit 18.

39. Fulciniti also forwarded to the Association, either through her counsel or through Passafiume, a letter from B.H. Eidelman, M.D., Ph.D, a professor of neurology at the University of Pittsburgh Medical Center. Dr. Eidelman, who had been treating Fulciniti for at least five years, asked that the Association make an exception to its policy. Dr. Eidelman explained that "Mrs. Fulciniti's condition would benefit greatly from the emotional benefit that a dog can provide." See Exhibit 19. He added that "[i]t has been proven that pets can provide companionship and comfort," and that he believed that "this will prove to be very beneficial [sic] in her case." Id.

40. Thereafter, the Association informed Fulciniti via a letter dated July 12, 1996, that it would hold a meeting on July 29, 1996 to determine what, if any sanction, would be imposed upon Fulciniti for refusing to remove Sampson from

Unit 301.

41. Fulciniti, her counsel, and Passaflume attended the meeting on July 29, 1996. The minutes from the meeting reflect that counsel for Fulciniti presented to the Board the letters from Dr. Webb and Dr. Eldelman. The Board was further informed that Sampson was being trained to be used for therapy. I find that, at least by this time, the Board was aware, or should have been aware, that Fulciniti's continued ownership and possession of Sampson was a vital part of her therapy for MS, and that Fulciniti's need for Sampson was more than simply emotional - that he provided, or would provide, physical support for her in the months and years to come.

42. The Board determined that it would be unfair to other residents to create an exception to the policy for Fulciniti. The Board resolved to send Fulciniti a letter "advising her that she must remove the puppy within 60 days. On the 61st day, if the dog is not removed from the premises (sic), a fine of \$100 per day will be imposed." See Exhibit 6.

43. By letter dated July 30, 1996, the Board informed Fulciniti, through its counsel, of its decisions reached at the hearing. See Exhibit 3. The letter indicated that the Board received, and carefully considered, the letters from Fulciniti's physicians.

44. Counsel for Fulciniti responded, via a letter dated August 23, 1996. Counsel informed the Board that he was "of the opinion that the Board's decision and impending action would violate the terms of Federal and State law," and that he was asking the Board to reconsider its decision. Specifically, counsel alleged that Fulciniti's condition "is a disability and is protected by the Fair Housing Act and

similar Public Accommodations laws in effect in the Commonwealth of Pennsylvania." See Exhibit 20. Counsel suggested that the Association had not made an appropriate accommodation - letting Fulciniti retain Sampson. Counsel further reminded the Association the Fulciniti had presented medical evidence, as well as Passafiume's testimony, indicating that Fulciniti required Sampson for therapeutic treatment. Finally, counsel indicated that Fulciniti would commence a federal lawsuit, if the Association pursued any disciplinary action relating to Fulciniti's ownership of Sampson.

45. On September 18, 1996, the Board held a special meeting to review Fulciniti's expressed intent to file suit. After some discussion, the Board resolved to fine Fulciniti \$100 per day commencing on October 1, 1996, until Sampson was removed from the property. See Exhibit 7.

46. After commencement of this action, the parties agreed that the Association would not take any steps to physically remove Sampson from Unit 301 and that the fine of \$100 would accrue until the lawsuit terminated. The parties contemplated that, if the Association was ultimately successful, the entire amount of the fine would then become due.

(G). Additional Testimony Received at Trial

47. During the hearing, Dr. Webb elaborated, by way of deposition, upon his letter dated June 19, 1996. Webb testified that Fulciniti's dogs are a reasonable and necessary part of her treatment plan; that the dogs have a positive therapeutic effect on her; that they provide her with necessary security; and that her condition would likely decline if she had to surrender either dog. Although unaware of any formal studies, Webb stated that he believed ownership of two dogs was more

beneficial than ownership of one dog.

48. Webb testified that, of the approximately 12 other patients suffering from MS whom he has treated, 4 have been prescribed dogs. Where the patient lives with and is surrounded by family members, he explained, a dog is not always necessary.

49. Dr. Eidelman, Fulciniti's treating neurologist, corroborated Webb's conclusions. Eidelman explained that dogs can be used to assist in carrying and picking up items, opening doors and providing a sense of responsibility and companionship.

50. As to Fulciniti, specifically, Eidelman testified that her dogs play an important role in her physical and mental well-being; that her condition would decline if she had to give up either dog; and that the continued ownership of her dogs is a necessary component of her treatment and care.

51. On cross-examination, Eidelman testified that he had no medical opinion as to the number of dogs necessary to her treatment.

52. Testimony elicited at the hearing also established that the Association has not granted any exceptions to the pet policy.

CONCLUSIONS OF LAW

1. Congress enacted the Fair Housing Act ("the Act") in 1968, making it illegal to discriminate, in housing practices, on the basis of race or national origin. See 42 U.S.C. § 3601 *et seq.* In 1988, Congress amended the Act so as to additionally prohibit the discrimination against any person in the terms, conditions or privileges of sale, of a dwelling because of a handicap. See 42 U.S.C. § 3604(f).

2. The Village of Shadyside Condominium Association is subject to the provisions of the Fair Housing Act, including its amendments.

3. The Act defines "handicap" to include: "(a) physical or mental impairment which substantially limits one or more of such persons major life activities" 42 U.S.C. § 3602(h).

4. It is clear that Fulciniti's MS is a handicap within the meaning of the Act. See Jankowski Lee & Associates v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996).

5. The Act defines "discrimination" to include:

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.

See 42 U.S.C. § 3604(f)(3)(B).

6. Fulciniti alleges that the Association has violated the Act by refusing her a reasonable accommodation - the continued possession of Sampson, despite the fact that Sampson is trained as a service dog, and is capable of meeting many of Fulciniti's physical and psychological needs.

7. The Code of Federal Regulations governing the Act provide that a service dog may be a reasonable accommodation:

(a) blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The building has a "no pets" policy. It is a violation of § 100.204 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, the blind person will not have an equal opportunity to use and enjoy a dwelling.

See 24 C.F.R. § 100.204(b)(1).

8. Similarly, case law supports the assertion that a service dog trained for a hearing impaired person would constitute a reasonable accommodation within the meaning of the Act. See Bronk v. Inelchen, 54 F.3d 425, 429 (7th Cir. 1995) (stating

that, "(b)alanced against a landlord's economic or aesthetic concerns as expressed in a no-pets policy, 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.").

9. Fulciniti's use of Sampson as a service dog, which is well documented, is analogous to a blind person's use of a seeing eye dog and to a deaf person's use of a hearing dog.

10. Permitting Fulciniti to allow Sampson to live with her constitutes a reasonable accommodation under the Act. The Association did not present any credible testimony that Sampson causes a disturbance or threat to any of the individuals dwelling within the Village.

11. The Association has violated the provisions of the Act by failing to provide Fulciniti with a reasonable accommodation - the continued possession of Sampson.

12. The Association is enjoined from discriminating against Fulciniti by refusing to permit her from retaining possession of Sampson, and it is prohibited from interfering with her continued ownership and possession of the dog.

13. The Association's levy of a \$100 per day fine against Fulciniti also violates the Act. Accordingly, the Association is enjoined from levying and collective any fines imposed upon Fulciniti as a result of her housing Sampson at Unit 301.

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