

Litigation UPDATE – Sabal Palm Condominiums v. Fisher

By: Matthew Dietz

Former Teacher with Multiple Sclerosis obtains a \$300,000 settlement in her fight to keep her service animal in her home in Broward County

On May 8, 2014, Deborah Fischer and Larry Fischer obtained a \$300,000 settlement against their condominium association for their three-year long fight to keep Deborah's service dog, Sorenson, in their home. As part of the settlement, Sabal Palm Condominiums of Pine Island Ridge agreed to promulgate policies that do not request unnecessarily intrusive information about a person's disability, especially in circumstances where the disability is obvious, and where the use of the dog evidently lessen the effects of the disability.

For the past 12 years, Deborah Fisher has lived with her husband, Larry, at Sabal Palm Condominiums in Broward County, Florida. She lives with Secondary Progressive Multiple Sclerosis, which affects her ability to walk and her fine motor skills. It progressed from walking with a limp, to a walker, then to a scooter, and then to a wheelchair and accessible van. She is now non-ambulatory and has been for about six years. For Deb Fischer, the transformation from able-bodied to a person with a disability was difficult. Prior to the advancement of her MS, Deb was an art teacher in a high school who was used to being self-reliant and in charge of her household. Now Deb is unable to work at a job she loved and unable to hold a paintbrush. She depends on Larry to cook and clean and care for the home. In 2011, Deb and Larry found that they were chosen by Canine Companions for Independence to receive a highly trained service animal to assist Deb with her daily life activities.

On November 12, 2001, Deb and Larry brought Sorenson, the service animal, to their home. Sorenson has been a blessing to the Fischers. According to Deb, "Sorenson has changed my life for the better, picking up everything I drop and cannot reach, opening heavy drawers and doors and pushing them closed, turning on switches and pushing buttons. He has taken some of the work and stress off my main caretaker, my husband. Sorenson is a perfect service animal: 'invisible' in public situations. He only barks only on command, and stops when commanded 'quiet'. We clean up after him on walks, and he does not jump on anyone. He is never off the leash outside our condo."

Notwithstanding the obvious nature of Deb's disability and the stated function of the service dog, her condo association would not approve her use of a service dog. For five months Deb tried her best to provide what they asked for, but the condo association was not satisfied with the information she provided regarding the extent of her disability and need for the dog, and wanted copies of all of her medical records detailing her disability. Deb tried to educate her condominium and provide them information regarding the fair housing act, her rights as a person with a disability, and the level of training this animal received to serve her needs, but they maintained that she did not need the dog, since it was not necessary to "survive."

Finally, on April 16, 2012, Sabal Palm Condominium Association filed a lawsuit under the Fair Housing Act against Deb and Larry Fischer, demanding that they get rid of Sorenson, and pay their attorney's fees and costs. In fear of losing her service animal, Deb and Larry Fisher retained the lawyers of Disability

Independence Group and Herb Milgrim to protect her rights and allow her to stay in her home with her chosen accommodation. The additional stress from this lawsuit and the fight to keep her dog has caused Deb's condition to further deteriorate, but she could not even imagine life without Sorenson's assistance.

The tide changed in mid-March, when U.S. District Court Judge Robert Scola issued two orders finding that the Condominium's actions, were in violation of the Fischers' rights under the Fair Housing Act. The Court noted that while there is some reason to be skeptical of people who use fake service dogs, which has a profound and negative effect on persons with disabilities, the court found that the condominium's decision to turn "to the courts to resolve what should have been an easy decision is a sad commentary on the litigious nature of our society. And it does a disservice to people like Deborah who actually are disabled and have a legitimate need for a service dog as an accommodation under the FHA." The Court found that "Sabal Palm got it exactly—and unreasonably—wrong." "Sabal Palm had more than enough information to make it clear that Deborah was legally entitled to keep Sorenson, but Sabal Palm did not grant her accommodation request."

Following the Court's Order, and in light of the ramifications of the Order, Sabal Palm had its annual meeting and elections and decided to elect new Board of Directors and a new condo board president. The residents and new board expressed overwhelming support to Deb and Larry. One of the priorities of the new board was to resolve this case and allow everyone to move on, mend fences and become better neighbors. As a result, they decided to scrap the onerous rules for persons to request animals as accommodations and adopt new rules which request only such information that is necessary to make a decision, and to allow Deb, Larry and Sorenson to live as neighbors at Sabal Palm.