SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1304-20

PLAYERS PLACE II
CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff-Appellant/
Cross-Respondent,

v.

K.P. and B.F.,

Defendants-Respondents/
Cross-Appellants.

———————————————————

Submitted January 26, 2022 – Decided March 23, 2023

Before Judges Gilson, Gooden Brown and Gummer (Judge Gummer dissenting in part, concurring in part).

On appeal from the Superior Court of New Jersey, Chancery Division, Camden County, Docket No. C-000096-18.

Ansell Grimm & Aaron, PC, attorneys for appellant/cross-respondent (David J. Byrne, on the briefs).

Freidel & Kramer, PC, attorneys for respondents/cross-appellants (Donna L. Freidel and Talbot B. Kramer Jr., on the briefs).

The opinion of the court was delivered by

GOODEN BROWN, J.A.D.

The dispute in this case pits a condominium association's attempt to enforce a pet policy limiting the size of residents' pets against a resident's disability claim and related request for a reasonable accommodation to keep a dog that exceeded the weight limit as an emotional support animal. Plaintiff Players Place II Condominium Association, Inc., a condominium association in Gloucester Township created pursuant to New Jersey's Condominium Act, N.J.S.A. 46:8B-1 to -38, filed a complaint to restrain defendants B.F.[1] and K.P., residents of Player's Place II, from keeping a seventy-pound dog in their condominium unit in violation of the Association's rules and regulations restricting pet size to thirty pounds or less at maturity. Defendants filed a counterclaim alleging plaintiff violated the Fair Housing Act (FHA), 42 U.S.C. §§ 3601–3631, and the New Jersey Law Against Discrimination (NJLAD),

[1] In light of the sensitive issues discussed in this opinion, we use initials to protect the parties' privacy. See R. 1:38-3.

N.J.S.A. 10:5-1 to -50, by denying B.F.'s request to keep the dog as an emotional support animal as a reasonable accommodation for her disability.

Following a bench trial in the Chancery Division, the trial judge entered an order dated December 7, 2020, permitting defendants to keep the dog based on equitable principles, notwithstanding the violation of the Association's pet policy, but dismissing defendants' counterclaim based on a finding that B.F. was not "handicapped" or "disabled" under the NJLAD or the FHA to justify an accommodation or classifying the dog as an emotional support animal. Plaintiff appeals from the December 7 order, arguing the judge erred in failing to enforce the Association's rules and regulations given defendants' uncontroverted violation and failure to establish a disability-related exemption. Defendants cross-appeal, asserting the judge erred in finding that B.F. was not disabled and therefore not entitled to an accommodation, damages, and attorneys' fees under the NJLAD. In their cross-appeal, defendants have abandoned their claim under the FHA. Having considered the arguments and applicable law, we affirm.

I.

We glean these facts from the record, including the trial testimony. In May 2018, K.P. purchased a condominium unit at Player's Place II. Prior to closing, K.P. executed several documents and agreed to be bound by the

Association's rules and regulations, including the pet policy. The pet policy provided in pertinent part: (i) pets are to be "limited to the small domestic variety weighing thirty . . . pounds or less at maturity"; (ii) "[a]ny unit owner who previously had a pet grandfathered in with regard to the weight requirement will be subject to the weight requirement for any subsequent pet(s)"; (iii) unit owners must register their pets within two weeks of acquisition utilizing the Association-created pet registration form; and (iv) "[n]o pet may be kept which causes a nuisance of any kind to another unit owner." The pet policy exempted "[d]ogs used for the blind" from the "weight restrictions."

After the closing, K.P.'s then-girlfriend, now fiancée, B.F., moved in with him. On August 5, 2018, B.F., who suffered from numerous psychological disorders, adopted a seventy-pound dog named Luna from a shelter to live with her in the unit as an emotional support animal. Prior to Luna's adoption, in an August 2, 2018 email, K.P. had notified plaintiff that they were "considering adopting an emotional support dog" that would "[m]ost likely . . . be over the [thirty-pound] pet limit," and had inquired about the required medical documentation. On August 7, 2018, unaware that Luna had already been adopted, plaintiff responded that "[t]he Association will not and cannot

accommodate any alleged disability in regards to a dog that weighs in excess of [thirty pounds] that has not yet been purchased or possessed."

The following day, August 8, 2018, K.P. sent a second email to plaintiff to clarify his original e-mail. In the August 8 email, K.P. stated that his "girlfriend is moving in with" him and "she already has an emotional support dog." To support the request for a waiver of the pet policy, K.P. submitted a letter dated August 6, 2018, from B.F.'s psychiatric nurse practitioner, Natalie Eisenhower. Eisenhower's letter stated that she had been treating B.F. since February 2018, that B.F. "suffer[ed] from a mood and anxiety disorder," and that B.F. "would benefit" from "hav[ing] an emotional support animal." In response, in a letter dated August 13, 2018, plaintiff's attorney informed K.P. that "the Association will immediately commence an action . . . seeking a court order barring any dog weighing more than [thirty pounds]" from residing at the property and offered the Association's alternative dispute resolution (ADR) program to address the issue. K.P. countered in an August 15, 2018 email that the Association's pet policy was not implicated because "assistance animals [were] not considered pets" by the United States Department of Housing and Urban Development (HUD), and if the Association denied the request, "[his] next step [would] be to file a complaint with HUD for disability discrimination."

After K.P. failed to respond to plaintiff's ADR offer and failed to submit a completed pet registration form, on October 3, 2018, plaintiff filed a complaint against K.P., which was later amended to include B.F. as a defendant. The complaint alleged violations of the Association's recorded master deed, bylaws, and rules and regulations, including the pet policy (collectively, the governing documents), by virtue of defendants' acquisition of a dog in excess of the weight restriction and failure to register the dog within two weeks of acquisition. Defendants filed a contesting answer and counterclaim, which was later amended. The amended counterclaim alleged that Luna was "not a pet" as defined in the governing documents, "but . . . a support animal as recognized by the . . . Division of Civil Rights," and "was obtained at the direction of several of [B.F.'s] medical providers." As such, in the counterclaim, defendants claimed B.F. had a right under the NJLAD and the FHA "to possess the support dog" despite the Association's pet policy, and sought judgment "enjoining plaintiff from violating their rights," as well as "compensatory damages" and other relief.

Defendants subsequently sought an order to show cause prohibiting the continuous accrual of fines imposed by the Association in accordance with the governing documents for violating the pet policy. In a supporting certification, B.F. certified that she had "been treated for mental health issues since 2008 and

[had] been under the care of psychiatric professionals and therapists since 2014." B.F. averred that she was "diagnosed with bipolar II disorder" in 2014, which "added to [her] already existing anxiety and depressive disorder." B.F. stated that despite being prescribed "proper medications for [her] conditions," she "began experiencing increased symptoms . . . beginning in February of 2018." According to B.F., "[j]ust prior to . . . moving into . . . Players Place II with [K.P.]," her therapist "recommended a support dog, a suggestion that resonated with [her] since [she] had a dog that provided [her] with a great deal of comfort when [she] was residing with [her] parents." As a result, she "searched for" and "ultimately found" a large dog to adopt because "[l]arger dogs [were] generally more comforting to [her]" and bore a "likeness to [her] family dog."

B.F. certified further that "[a]side from exceeding the weight limits imposed by the Association's governing documents, Luna ha[d] not violated any other requirements dealing with pet ownership at the property," and "[her] symptoms ha[d] been under better control . . . from having [Luna] to assist [her] emotionally." However, "[d]espite the relief provided by [Luna]," "[d]ue to the events of the last few months," B.F. felt that a depressive episode "m[ight] strike . . . at any moment" and had "discussed the stress and upset stemming from . . . [the dispute] with the Association" with her therapist and psychiatrist.

Accompanying B.F.'s certification were letters from her therapist, Kathryn Pillion Rim, LCSW, and Eisenhower, in support of her "keep[ing] her emotional support animal" to manage her symptoms.

On January 29, 2019, a consent order was entered suspending the accrual of fines "until . . . further order of the court." On May 29, 2019, the judge entered a bifurcation order specifying that "the claims by . . . plaintiff regarding allowing the dog to remain in the condominium will remain in Chancery," and, after that trial was completed, "[t]he damages portion of the case [would be] transferred to the Law Division." During the ensuing five-day trial, conducted in September and October 2020, defendants presented testimony from Rim, a psychology expert, Dr. Jo Ann Cannon, and B.F.'s parents. Defendants also testified on their own behalf. Plaintiff produced as witnesses its own psychology expert, Dr. Mark Siegert, Eisenhower, and the Association's Board President, John Quinesso.

Quinesso testified that the Association's pet policy "equate[s] any dog, whether it's a service dog, an emotional support dog, or a pet dog, to be the same thing; all pets." He acknowledged that the policy did not specify that "it cover[ed] emotional support animals" and explained that the thirty-pound weight limit in the pet policy was established in 2006 by a seven-member "pet

committee" after "dog attacks," "damage to . . . landscaping," and "noise complaints" associated with "larger pets" had occurred. Quinesso conceded that Luna had not been the subject of any such complaints and confirmed that since the policy was enacted in 2006, there were residents who had been "grandfathered in" and were allowed to keep pets that exceeded the weight limit. He also acknowledged that between 2006 and 2020, the Association had received two emotional support animal requests and had granted both.

Rim testified for defendants by way of a de bene esse deposition taken prior to trial. Rim, a "licensed clinical social worker," testified that B.F. had been diagnosed with "bipolar II disorder," "ADD or ADHD," "panic disorder," and "acute post-traumatic stress disorder." Rim stated she began seeing B.F. in 2016, after B.F. was in "a car accident" that "triggered . . . a depressive episode." As a result, B.F. began "experiencing suicidal thoughts." Rim explained that over the course of B.F.'s treatment, B.F. had "difficulty managing and regulating her emotions," which "prevent[ed] her from having a good quality of life." Rim testified that since June 2017, B.F. had had a "few depressive episodes," separated "in between by periods where her mood was a bit more stable," which was "typical" of the "up-and-down cycles" of bipolar disorder. According to

Rim, B.F.'s depressive episodes were "often triggered by an event or a big change in her life."

Rim described the characteristics of typical depressive episodes as follows:

> So, typically, . . . a depressive episode . . . can last anywhere from a couple weeks up to a couple months, and the depressive symptoms are marked by lack of motivation, loss of interest, trouble sleeping, trouble concentrating[,]
>
> . . . certainly sadness, feelings of hopelessness, specifically with bipolar, suicidal thoughts, ideation and/or plans . . . .
>
> And then, usually, . . . a person goes back into a more stable mood. It is also marked by what they call hypomanic episodes, which are similar to manic episodes, but not as severe.
>
> So in [B.F.'s] case, it would be things like . . . spending a lot of money, and . . . at times, she would kind of talk very fast, so mostly hyperactive.

Rim testified that during B.F.'s depressive episodes, "[B.F.] was able to function, but her quality of life was suffering." According to Rim, B.F.'s worst episode lasted approximately two months, which was on the "more . . . severe end" for bipolar patients. Rim explained that bipolar disorder was "a chronic condition" that could not be cured, only "managed" with medication, and that B.F. was on multiple medications. Rim stated B.F.'s medications were

"definitely . . . helping" to "mitigate" her symptoms, but needed to be "adjusted by her psychiatrist" depending on the severity of her symptoms. Rim testified that B.F.'s "prognosis" was "good in the sense that her condition c[ould] continue to be managed" through "therapeutic interventions," but her condition would never "go away." Instead, "manag[ing] the severity of the symptoms" was "the goal."

Rim acknowledged she learned about Luna after B.F. had adopted her. She also acknowledged that there was never a treatment plan in place regarding B.F. adopting any dog. However, in Rim's experience, "it[was] more common for people who have either obtained or already have an animal" to rely on that animal as "their emotional support companion," rather than a treating physician recommending one. Rim also testified that in her practice, she had "never seen . . . a prescription" for an emotional support animal, only "recommendations."

Typically, Rim would write a letter for an emotional support animal, such as the one she wrote for B.F., only for patients with whom she "already ha[d] an established therapeutic relationship." Generally, she would conduct an assessment and look at the patient's history to see if an emotional support animal was "appropriate" given the patient's diagnosis and verbalization of "how the dog ha[d] been helpful to them." Rim stated that although she wrote the letter

after B.F. had adopted Luna and informed her about the dispute with the Association, she "would not have written the letter if [she] didn't feel that . . . [the dog] was[] having some sort of benefit for [B.F.]."

Rim described the beneficial effects of Luna on B.F., explaining that prior to getting the dog, B.F.'s depressive episodes "were more on the moderate to potentially severe scale," but "after getting the dog, they seem[ed] to have decreased to . . . mild to moderate." Rim also testified:

> [W]hen [B.F.] would experience her depressive episodes, it would impact her motivation, her interest in doing things, she would become socially isolated at times.
>
> There were times when she would . . . hide[]away in her closet as a way to try to cope.
>
> And so[,] one of the ways that the dog was helping was . . . having less[] times when she would go into the closet, if at all. She definitely, even though she was still experiencing the depressive episodes, seemed to be more motivated, seemed to be able to get herself going a bit better.
>
> So[,] I would say that overall, it helped improve her ability to cope with day-to-day things. Even though she was still experiencing stress, . . . there was an improvement there.

Rim also explained that the choice of an emotional support animal "tend[ed] to be owner-specific." According to Rim, "the breed, the size, all of

those things . . . varied based on the [patient]," and particularly "important" was the "bond" between the patient and the animal. Rim stated that because B.F. "grew up with . . . a bigger dog" that "provided a lot of emotional support to her," she had an "immediate bond and connection" with Luna. Regarding the probable impact of Luna's removal, Rim opined:

> [I]f [B.F.'s] dog were to be taken away . . . , that would be very detrimental to her mental health.
>
> . . . .
>
> Her ability to cope with change is really[,] really challenging, . . . and given that there is the history of suicidality, depressive episodes, and . . . her diagnosis of bipolar, [the dog's removal] could trigger all of those things.

Defendants' expert, Jo-Ann Cannon, Ph.D., a licensed clinical psychologist who evaluated B.F. and reviewed her medical records, also testified for defendants by way of a de bene esse deposition taken prior to trial. Cannon confirmed B.F.'s "long psychiatric history . . . going back to the seventh grade." According to Cannon, B.F. has "been medicated since the eighth grade because of severe anxiety, [and] depression." Cannon added that "later on, the diagnosis included bipolar disorder, post-traumatic stress disorder, and . . . attention deficit disorder." Cannon testified that B.F. is "on a stew of

medications," including "two mood stabilizers," "an anti-depressant," "an anti-psychotic," "[T]razodone to sleep," and "Adderall for her ADD."

Cannon stated that B.F.'s illness has "affected her ability to enjoy life" and her condition is "not completely controlled by her medication[s]." Cannon explained that even with medication, B.F. "tend[ed] to cycle in and out of very severe depression and anxiety episodes" that were "exacerbate[d]" by "stress." According to Cannon, "as soon as there's stress," B.F. "decompensates" and goes into "crisis." In that state, B.F. "gets suicidal ideations" and "withdraws from everything." Cannon further described B.F. as "very panicky" and "very socially anxious." Cannon explained that "even on the medication, if [B.F.] has a bad day, she can't take stimulation and she'll actually, which is unusual, lock herself in a closet and she'll stay there for hours in order to calm herself down in a calm environment."

According to Cannon, "because [B.F.'s] illness is not always controlled," "[b]efore getting Luna, she could not be alone in the condo." However, after acquiring Luna, B.F. was "comfortable staying alone in the condo as long as she has Luna with her." Cannon testified that B.F. "immediately bonded" with Luna because Luna "resembled . . . the dog that she had for fourteen years when she was growing up" and Luna was "quiet" and "cooperative." Cannon

acknowledged however that even with Luna, B.F. "still suffered from bouts of depression and anxiety," but the episodes "were much less severe."

Cannon also explained that when B.F. was at work, she was able to cope with being separated from Luna because she knew Luna would "be waiting for her . . . when she g[ot] home." According to Cannon, "if [B.F.] has a tough [work]day," Luna "will calm her down" by "sit[ting] in the closet with her for hours if she's panicking or decompressing," and "lick[ing] her face when she cries." Cannon stated B.F. was also able to leave Luna when she traveled on vacations, explaining that it was not unusual for a patient with an emotional support animal to go away on a vacation without the animal because the patient is "away from the stressors" of the home environment.

Cannon testified further that in her experience, the prospect of obtaining an emotional support animal "always come[s] from the patient," not the clinician. Cannon acknowledged that although she has never prescribed an emotional support animal, she has written letters of support for "[i]ndividual patients" detailing the disabling condition and the symptoms that an emotional support animal would alleviate. Cannon testified that in her expert opinion, someone with B.F.'s diagnoses and medication regimen clearly qualified for an emotional support animal to live a normal life. Cannon explained that Luna

"keeps [B.F.] stable" and "helps [B.F.] enjoy her daily living in [the] condo." Cannon did not believe B.F. would "be able to be there alone without Luna" and opined that if Luna was taken away from her, there would be "[decompensation] . . . which could be potentially dangerous" given her history of "suicidal ideation."

In contrast, plaintiff's expert, Mark Siegert, Ph. D., a forensic psychologist who also evaluated B.F. to determine whether B.F. "fit the criteria for an accommodation," testified that in his opinion, B.F. did not need an emotional support animal to live a normal life. After examining B.F. for several hours, administering two psychological tests, and reviewing her medical records, Siegert agreed with B.F.'s clinicians that B.F. "actually suffer[ed] from some mental illness." Siegert described his "diagnostic impression" of B.F. as "bipolar II disorder, major depressive disorder, generalized anxiety disorder, somatoform disorder, compulsive personality disorder, and borderline personality type." However, Siegert opined that while these conditions may "limit" or "restrain" B.F. in some way, they did not "substantially limit" or "prevent" B.F.'s typical exercise of bodily or mental functions or major life activities.

To provide an example of the distinction, Siegert explained that "when [B.F.] gets depressed or gets really anxious or has panic attacks, during those periods of time she . . . is definitely restrained and at the moment may not be able to stop crying and may not be able to" function. However, B.F. is "able to get back together" and, "[i]n fact, . . . [has] done, objectively, quite well through most of her life." In that regard, Siegert pointed to B.F.'s exceptional performance and success in the educational arena, where she had graduated from college with "cum laude honors," and at work, where she had received positive employee reviews. Siegert also relied on the fact that B.F.'s "medical records" showed that "she was doing well . . . at the time leading up to" the adoption of Luna, she was able to travel "for an extended period without Luna," and she was able to procure a firearms purchaser identification card prior to adopting Luna.

Ultimately, Siegert concluded that while B.F. suffered from multiple significant mental health issues, in his opinion, she was not handicapped or disabled within the meaning of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(1)(A), which he believed was similar to the NJLAD and FHA, because her conditions did not "substantially limit" her and "she did not need a dog to have an equal opportunity to use and enjoy the [condominium] unit."

Additionally, despite B.F.'s subjective reports,[2] Siegert saw no evidence that any of B.F.'s symptoms were directly ameliorated by Luna. In support, Siegert referred to B.F. suffering "at least five depressive episodes," several "panic attacks," and "nine" instances of "suicidal ideation and suicidal feelings" subsequent to Luna's adoption. Siegert found it significant that B.F.'s first treating psychiatrist, who had prescribed emotional support animals for other patients, never prescribed nor recommended one for B.F. Siegert also criticized the letters prepared by Rim and Eisenhower in support of B.F. keeping Luna. In addition to his belief that it was inappropriate for treating professionals to provide such support letters, Siegert testified the letters were incomplete and deficient in the underlying clinical analysis.

During her trial testimony, Eisenhower confirmed that she had been treating B.F. since November 2018 for medication management. She opined that medications could not cure B.F.'s mental health conditions but could "keep[] her for the most part somewhat stable." Eisenhower acknowledged that she had not prescribed, recommended, nor suggested an emotional support animal for B.F. prior to B.F. adopting Luna. Eisenhower agreed that sometimes, the

[2] Siegert "found symptom exaggeration" on the part of B.F., which he explained was on the "malingering . . . continuum."

recommendation for an emotional support animal "comes from [the mental health professional], and . . . sometimes it comes from the patient." However, according to Eisenhower, even if the suggestion comes from the patient, she does not "rubber stamp" the idea, but instead uses her "professional judgment" before deciding that an emotional support animal would be helpful to the patient. Eisenhower stated that in B.F.'s case, she had written the two support letters to the Association at B.F.'s request because she felt the dog was beneficial to B.F. as "an adjunct to [her other] treatment." Eisenhower believed that if a person felt their symptoms were "lessened by virtue of an emotional support animal," as B.F. did, then the "animal [was] helping."

B.F. and K.P. testified that they began dating in 2015, moved in together in 2018, and got engaged in 2020. B.F. confirmed that she had suffered from anxiety and mental health issues since "middle school" and had been taking medications to mitigate the symptoms. She acknowledged that she had raised the idea of obtaining an emotional support animal with her therapist after researching the subject and had chosen Luna because she was looking for a dog with an "upbeat[,] happy-go-lucky, [and] quiet" personality, that was not "wiry or over the top." She explained that although there had been "small dogs" at the shelter, they gave her "more anxiety" because they were "very . . . loud and

yappy." According to B.F., since getting Luna, although her symptoms have not "gone away" completely, "they've dramatically . . . decreased." She stated Luna provided a "great deal of comfort" to her, particularly after "a really bad day at work." She also explained that although she still "retreat[ed] to the closet," it was "not as often as it used to be." She testified that before adopting Luna, she could not stay in the unit alone because it did not "feel like home." However, Luna helped her enjoy the condo because Luna made her feel "like [she] belong[ed] there."

K.P.'s testimony about Luna's positive impact was consistent with B.F.'s. He recounted that since adopting Luna, he had observed a drastic change in B.F.'s behavior. K.P. also confirmed that when he and B.F. considered acquiring a dog, they were both aware of the weight restrictions imposed by the Association. However, after conducting research on the subject, he believed that emotional support animals were "[not] considered pets" and therefore did not fall under the strictures of the Association's pet policy.

During their testimony, B.F.'s parents corroborated B.F.'s account of her longstanding mental health issues, confirming that B.F. had suffered from psychological issues since "middle school" and had been treated by mental health professionals since the beginning of high school when she was diagnosed

with bipolar II and attention deficit disorders. B.F.'s father recalled observing B.F. "crawled up in a little ball in the closet of her bedroom," but did not know whether B.F. still engaged in that type of self-soothing behavior. Both parents confirmed that B.F. was happier since adopting Luna.

Following the trial, the judge entered an order on December 7, 2020, permitting defendants to keep Luna and requiring defendants to submit the Association's pet registration form within fourteen days. However, the judge dismissed defendants' counterclaim, finding that B.F. "failed to prove . . . that she [was] handicapped or disabled under [the] FHA or [the] NJLAD" and was therefore not entitled to classify Luna as an emotional support animal. In a December 3, 2020 oral decision, the judge found as "uncontroverted" that in accordance with the master deed, the Association was authorized "to operate, administer, manage and regulate the property," that the master deed required the occupants to comply "with the rules, regulations and laws of the condominium," and that defendants knowingly violated two of the Association's "rules concerning . . . pets" by adopting a dog that exceeded the weight limit and failing to register the dog by submitting the Association's pet registration form. The judge observed that despite the clear violation, "[defendants] have admitted no

liability and no responsibility for having violated the law of the condominium knowing full well what the law was before adopting Luna."

In that regard, in rejecting defendants' "claim that they did not need to register" Luna because Luna was "not a pet," but an "[emotional] support animal," the judge explained:

> [G]iven that none of the physicians or other professionals who have rendered help to [B.F.] have recommended a support animal to her and this was something that [B.F.] herself decided might help her and, in fact, claims that it has[,] [t]his animal is a pet and needed to and still needs to be registered with the Association in accordance with their rules and regulations.

The judge also considered whether B.F. was "handicapped or disabled," entitling her to an exception or an accommodation under the relevant laws, and concluded that B.F. was neither "handicapped within the meaning of the [FHA]," nor "disabled under the . . . [NJLAD]" because "no aspect of her diagnosed conditions . . . prevented her from the normal exercise of any bodily or mental functions." The judge explained that although "[t]here were times when [B.F.] felt overwhelmed and anxious, times when she retreated temporarily to her closet to regroup," "there was never any testimony to convince the [c]ourt that her . . . mental illness rose to the level of [a] disability or handicap" under either the NJLAD or the FHA. The judge elaborated that although B.F. "suffer[ed]

from various forms of mental disturbances, as diagnosed by her own treating mental health professionals and Dr. Siegert who [was] . . . plaintiff's expert," "no one ha[d] prescribed an emotional support animal and certainly, not a service animal for [B.F.]," and "there was no proof at all that she need[ed] a dog to alleviate her conditions" or "that she needed a dog larger than [thirty] pounds to accomplish" that goal.

To further support her decision that B.F. was neither "handicapped" nor "disabled," the judge recounted:

> In May '17[, B.F.] graduated from Rowan University with honors. In November of '17[,] she had worked, and she worked throughout college . . . . She got great reviews from her employer. She says she loved her job. She started and maintained a serious relationship with [K.P.] She learned to use firearms. [K.P.] had taken her to the range and taught her how to use firearms. And then she applied for and obtained a [f]irearm's ID card.
>
> [P]laintiff made much of the fact that . . . there was a question on the questionnaire for a New Jersey [f]irearm's application that had to do with disclosure of mental health issues and treatments; to which plaintiff says she must have answered that she did not have any issues because this [f]irearms ID was issued to her.

Nonetheless, the judge allowed B.F. to keep Luna, determining that "it would [not] be beneficial to force her to abandon the dog." The judge reasoned:

> [T]he [c]ourt does believe that [B.F.] has demonstrated that this dog has acted to relieve certain symptoms of her mental health conditions either by shortening or lessening them. The dog has also allowed her to remain in the . . . unit without [K.P.], which she couldn't do before she had the dog. She says the dog sits next to her if she has an episode in the closet, which helps her to lessen or shorten the extent of the episode.
>
> The [c]ourt also notes that the restrictions placed by the [thirty] pound at maturity weight limit had no real basis in a definable purpose.

In that regard, the judge noted that during his testimony, Quinesso was unable to specify "why [thirty] pounds and not [forty] pounds or . . . [thirty-one] pounds was the appropriate at maturity weight for a dog."

The judge continued:

> [B]ecause this particular dog offers [B.F.] comfort and seems to assist her in lessening her episodes, the [c]ourt is making an allowance for her to keep this dog. This is a very limited decision in scope. What it says is that she is permitted to keep this dog. If something were to happen to Luna, this decision does not extend to allow [defendants] to obtain a[nother] dog in excess of [thirty] pounds.
>
> The [c]ourt is also making an exception because the testimony was, by both sides of the case, that Luna has not been at all disruptive, that she's a calm dog, that she doesn't bark, that she is not a nuisance and there have been no complaints about this dog by any of the neighbors. And also, that she doesn't urinate or defecate in any area that would be offensive to any of

> the other neighbors, and there has been strict compliance with those requirements.

In the conforming December 7, 2020 order, the judge specified that the "decision to allow Luna to remain in the [u]nit as a pet of [B.F. was] a very narrow finding applying only to this pet, not a substitute pet or an additional pet." Further, the decision applied "to this case only" and could not be "applied by other [u]nit owners to allow a pet over [thirty] pounds." Additionally, because the counterclaim was dismissed, "there [were] no damages to be determined by a jury in the Law Division" and the bifurcation order was therefore "vacated." This appeal followed.

II.

In its appeal, plaintiff argues the judge erred in allowing Luna

> to remain in the [u]nit despite having properly determined that: (i) the Association has and had the authority and power to adopt the [r]elevant [r]ules . . . ; (ii) the [d]og's status in the [u]nit constitute[d] a violation of the [r]elevant [r]ules . . . ; (iii) [B.F.] was not disabled for the purpose of either the [NJLAD] or FHA . . . ; and, (iv) even if [B.F.] was . . . disabled, the [d]og was not "necessary" . . . [under] either the [NJLAD] or FHA.

We apply a deferential standard in reviewing a "trial court's determinations, premised on the testimony of witnesses and written evidence at a bench trial." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). "[W]e do

not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]" Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (second alteration in original) (quoting In re Tr. Created by Agreement Dated Dec. 20, 1961, 194 N.J. 276, 284 (2008)); accord Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974); see also Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) ("In [an] appeal from a non-jury trial, we give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions."). However, "[t]o the extent that the trial court's decision constitutes a legal determination, we review it de novo." D'Agostino, 216 N.J. at 182 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Equitable remedies are reversed on appeal only for an abuse of discretion. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). "As a general rule, courts exercising their equitable powers are charged with formulating fair and practical remedies appropriate to the specific dispute." Kaye v. Rosefielde, 223 N.J. 218, 231 (2015); see also Rutgers Cas. Ins. Co. v. LaCroix, 194 N.J. 515, 529 (2008) ("'In doing equity, [a] court has the power to adapt equitable remedies to the

particular circumstances of each particular case.'" (alteration in original) (quoting Mitchell v. Oksienik, 380 N.J. Super. 119, 131 (App. Div. 2005))).

"Equitable remedies 'are distinguished by their flexibility, their unlimited variety,' and 'their adaptability to circumstances.'" Marioni v. Roxy Garments Delivery Co., 417 N.J. Super. 269, 275 (App. Div. 2010) (quoting Salorio v. Glaser, 93 N.J. 447, 469 (1983)). "While equitable discretion is not governed by fixed principles and definite rules, '[i]mplicit [in the exercise of equitable discretion] is conscientious judgment directed by law and reason and looking to a just result.'" Kaye, 223 N.J. at 231 (alterations in original) (quoting In re Est. of Hope, 390 N.J. Super. 533, 541 (App. Div. 2007)).

Guided by these principles, we are satisfied that by allowing defendants to keep Luna in the unit despite the clear violation of the Association's pet policy, the judge acted within her discretion in fashioning an equitable remedy suitable for the particular facts of the case. After considering Luna's positive effects on B.F.'s mental health conditions, and the adverse impact of Luna's removal, the judge determined that this narrow ruling applicable only to this dog and these defendants was "a just result." Ibid. (internal quotation marks omitted) (quoting Est. of Hope, 390 N.J. Super. at 541). The judge also considered the rationale for the pet policy as recounted by Quinesso, including noise complaints

and property damage associated with larger pets, and noted that Luna had not been the subject of any such complaints. Under the totality of the circumstances, including the fact that, in the past, plaintiff had made exceptions for other pets that weighed over thirty pounds, and had previously granted two requests for emotional support animals, we conclude the judge did not abuse her discretion in her balancing of the equities and formulation of an appropriate remedy, despite the judge's determination that B.F. was not disabled under the NJLAD or the FHA. On the contrary, the judge's decision is supported by substantial credible evidence in the record and does not offend the interests of justice. See Seidman, 205 N.J. at 169.

Plaintiff further argues that in the absence of "fraud, bad faith or unconscionability," none of which apply here, New Jersey's business judgment rule prevents the judge from "disturb[ing]" or "second[-]guess[ing]" the Association's decision to impose and enforce a weight limit on pets in units. Thus, plaintiff asserts that based on the judge's determination "that the [r]elevant [r]ules were authorized and that [d]efendants' violation of them was uncontroverted," the judge should have ordered the dog's removal.

"'[D]ecisions made by a condominium association board should be reviewed by a court using the . . . business judgment rule,'" which shields

"'internal business decisions from second-guessing by the courts,'" Alloco v. Ocean Beach & Bay Club, 456 N.J. Super. 124, 134-35 (App. Div. 2018) (first quoting Walker v. Briarwood Condo Ass'n, 274 N.J. Super. 422, 426 (App. Div. 1994); and then quoting Seidman, 205 N.J. at 175), and "protects . . . residents from arbitrary decision-making," Comm. for a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344, 369 (2007). "Pursuant to the business judgment rule, a homeowners' association's rules and regulations will be invalidated (1) if they are not authorized by statute or by the bylaws or master deed, or (2) if the association's actions are 'fraudulent, self-dealing or unconscionable.'" Ibid. (quoting Owners of the Manor Homes of Whittingham v. Whittingham Homeowners Ass'n, 367 N.J. Super. 314, 322 (App. Div. 2004)). "The business judgment rule creates 'a rebuttable presumption' that the actions of a Board are valid," and "'places an initial burden on the person who challenges a corporate decision to demonstrate the decision-maker's "self-dealing or other disabling factor."'" Alloco, 456 N.J. Super. at 136 (quoting In re PSE & G S'holder Litig., 173 N.J. 258, 277 (2002)).

Here, although defendants assert the pet policy is arbitrary and the judge seemed to agree, defendants proffered no evidence at trial to challenge or rebut the presumption of validity applicable to the Association's promulgation and

enforcement of the pet policy. As a result, the judge did not invalidate the policy. Instead, the judge found as "uncontroverted" that plaintiff was a New Jersey condominium association created under New Jersey's Condominium Act; that the Association was "responsible for operating[,] . . . administering and managing the . . . property" in accordance with a "recorded" "[m]aster [d]eed and its bylaws"; that the master deed permitted the Association to promulgate and "enforce rules and regulations" governing the property; and that "each unit owner agree[d], by acceptance of the conveyance of their unit," to abide by the rules and regulations, including the pet policy. Additionally, the judge found that defendants "knew of the rule and regulation and decided not to adhere to the requirements." Although the judge found that the Association's actions were authorized and defendants' actions constituted a knowing violation, the judge fashioned an equitable remedy that was well within her discretion. See Kaye, 223 N.J. at 231.

That equitable decision was supported by B.F.'s unrebutted attachment to Luna and the emotional support she receives from Luna. As we discuss in the next section, the unrefuted medical evidence established that B.F. suffers from various psychological disorders and that Luna helps to allay some of her symptoms. On the other side of the scale, the Association presented no evidence

that Luna caused any problems. Consequently, in crafting an equitable remedy the judge did not fail to follow the law; rather she acted within her discretion to craft a fair result that did no harm to the Association.[3]

III.

In their cross-appeal, defendants argue the judge "erred in concluding that [B.F.] was not handicapped under the NJLAD and thus deserving of the requested accommodation, the right to keep her dog despite its being over thirty pounds." To address defendants' claim, we must first determine whether B.F. satisfies the statutory definition for a disability under the NJLAD.

The NJLAD defines disability as follows:

> "Disability" means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental,

[3] For the first time on appeal, defendants question the legitimacy of the policy on "ultra vires" grounds, arguing the policy was not properly enacted because the requisite "quorum was not attained." It is well established "that issues not raised below will ordinarily not be considered on appeal unless they are jurisdictional in nature or substantially implicate the public interest." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 339 (2010). Because neither exception applies here, we decline to consider the argument.

> psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.
>
> [N.J.S.A. 10:5-5(q).]

"Pursuant to N.J.S.A. 10:5-5(q), there are two specific categories of handicap: physical and non-physical. The physical and non-physical clauses of the statute are distinct from each other and provide separate ways of proving handicap." Viscik v. Fowler Equip. Co., 173 N.J. 1, 15 (2002); see also Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 594 (1988) (holding "that alcoholism is a handicap within the statute," and noting that "an alcoholic might suffer from either a 'physical disability [or] infirmity . . . which is caused by illness,' or from a 'mental [or] psychological . . . disability resulting from psychological, physiological or neurological conditions' . . . or both" (first, second, third, and fourth alterations in original) (quoting N.J.S.A. 10:5-5(q))). To establish a psychological disability, the plain language of the NJLAD requires a party to prove that he or she is suffering from "any mental" or "psychological . . . disability" that is a result of a "psychological, physiological, or neurological condition[]" that either "prevents the typical exercise of any bodily or mental

functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques." N.J.S.A. 10:5-5(q) (emphasis added).

"It is well established that the NJLAD should be 'liberally construed "in order to advance its beneficial purposes."'" Calabotta v. Phibro Animal Health Corp., 460 N.J. Super. 38, 61 (App. Div. 2019) (quoting Smith v. Millville Rescue Squad, 225 N.J. 373, 390 (2016)). "[T]he more broadly [the NJLAD] is applied, the greater its antidiscriminatory impact." Ibid. (alterations in original) (quoting Nini v. Mercer Cnty. Cmty. Coll., 202 N.J. 98, 115 (2010)); see also Tynan v. Vicinage 13 of the Superior Ct., 351 N.J. Super. 385, 398 (App. Div. 2002) ("Because the purpose of the [NJLAD] is 'to secure to handicapped individuals full and equal access to society, bounded only by the actual physical limits that they cannot surmount,' the Act besides being quite broad must also be liberally construed." (quoting Andersen v. Exxon Co., 89 N.J. 483, 495 (1982))).

Significantly, the NJLAD protects a broader range of disabilities than its federal counterpart, the ADA, which limits covered disabilities to "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." 42 U.S.C. § 12102(1)(A); see also Viscik, 173 N.J. at 16 (noting "[t]he term 'handicapped'" under the "[NJLAD] is not restricted to

'severe' or 'immutable' disabilities and has been interpreted as significantly broader than the analogous provision of the [ADA]"); Tynan, 351 N.J. Super. at 397 ("In contrast to the ADA, the [NJLAD] definition of 'handicapped' does not incorporate the requirement that the alleged handicapping condition result in substantial limitation of a major life activity."); Gimello v. Agency Rent-A-Car Sys., Inc., 250 N.J. Super. 338, 358 (App. Div. 1991) (noting the NJLAD definition of handicapped or disabled does not incorporate the requirement that the condition result in a substantial limitation on "'major life activities'"); Olson v. Gen. Elec. Astrospace, 966 F.Supp. 312, 314-16 (D.N.J. 1997) (finding that although the plaintiff failed to establish a disability within the meaning of the ADA, he was disabled under the NJLAD).

We have held that "ADD and depression, like alcoholism and other psychiatric disorders, qualifies as a 'handicap' under the [NJLAD]." Domurat v. Ciba Specialty Chems. Corp., 353 N.J. Super. 74, 89 (App. Div. 2002). We have also held that "post[-]traumatic stress disorder, depression and anxiety panic attacks" are psychological disorders that qualify as handicaps under the NJLAD. Tynan, 351 N.J. Super. at 398-99. However, in the case of a mental disability, "[w]here the existence of a handicap is not readily apparent, expert medical evidence is required." Viscik, 173 N.J. at 16. In Clowes, our Supreme Court

rejected the plaintiff's alcoholism disability claim because there was no "expert medical testimony" that the plaintiff "had been diagnosed as an alcoholic," only the plaintiff's "own assertion that he was an alcoholic." 109 N.J. at 597-98. Moreover, we have held that "[a] plaintiff claiming a mental disability has the burden to prove that disability," and "the burden to show the extent of the mental disability if the extent is relevant to the accommodations requested or offered." Wojtkowiak v. N.J. Motor Vehicle Comm'n., 439 N.J. Super. 1, 15 (2015) (citing Viscik, 173 N.J. at 16-17).

While not binding, a federal district court has similarly concluded that "depression and mental illness . . . constitute handicaps within the meaning of the [NJLAD]." Olson, 966 F. Supp. at 315. In Olson, the court determined that the report from the plaintiff's doctor diagnosing him with "Multiple Personality Disorder . . . with depressive episodes," which "appear[ed] to be nearly life-long in duration and . . . evidenced in his adult life by several acute psychiatric hospitalizations," revealed "a condition which [was] demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques." Ibid. The court concluded "the plaintiff suffer[ed] from an ailment that [was] generally understood by the medical profession as a disease" and "[the]

plaintiff's ailment [was] a recognized medical condition for which he sought legitimate treatment but with modest success." Ibid.

Here, B.F. was diagnosed by plaintiff's own expert with "bipolar II disorder, major depressive disorder, generalized anxiety disorder, somatoform disorder, compulsive personality disorder, and borderline personality type." Defendants' expert added that B.F.'s psychiatric history included "post-traumatic stress disorder" and "attention deficit disorder." She recounted that B.F. had been undergoing psychiatric treatment, including the administration of medications, since childhood with limited success. The testimony of B.F.'s therapist and psychiatric nurse practitioner supported the experts' accounts. Thus, the unrefuted medical evidence established that B.F. was disabled within the meaning of the NJLAD and entitled to the protections of the NJLAD because she suffered from a mental disability, resulting from psychological conditions, that was "demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques." N.J.S.A. 10:5-5(q).

Despite the plain language of the statute, the judge determined B.F. was not disabled under the NJLAD by focusing solely on the fact that "no aspect of her diagnosed conditions . . . prevented her from the normal exercise of any bodily or mental functions." In so doing, the judge disregarded the disjunctive

element in the statute that allowed B.F. to prove her disability either by showing that it "prevent[ed] the typical exercise of any bodily or mental functions," or that the condition was "demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques." N.J.S.A. 10:5-5(q); see also State v. N.T., 461 N.J. Super. 566, 571 (App. Div. 2019) ("'[T]he word "or" in a statute is to be considered a disjunctive particle indicating an alternative[.]'" (alterations in original) (quoting In re Est. of Fisher, 443 N.J. Super. 180, 192 (App. Div. 2015))). This was a misinterpretation of the statute on the part of the judge. See Cosmair, Inc. v. Dir., N.J. Div. of Tax'n, 109 N.J. 562, 568 (1988) ("[S]tatutes are to be construed to give effect to each provision of the statute . . . .").

Having determined B.F. was a protected person under the statute, we now consider whether plaintiff was required to provide a reasonable accommodation in its rules and regulations by allowing B.F. to keep an emotional support animal that exceeded the weight limit of the Association's pet policy.

In Estate of Nicolas v. Ocean Plaza Condominium Association, 388 N.J. Super. 571 (App. Div. 2006), we held that

> Sections 5-4.1 and 5-12(g) of the [NJLAD] provide[d] a cause of action for disability discrimination based upon the failure of a condominium association to provide a disabled resident, of a multiple unit

> condominium building, a reasonable parking space accommodation sufficient to afford her an equal opportunity to the use and enjoyment of her condominium unit.
>
> [Id. at 575.]

N.J.S.A. 10:5-4.1 provides in pertinent part that "[a]ll of the provisions of [the NJLAD] . . . shall be construed to prohibit any unlawful discrimination against any person because such person is or has been at any time disabled." N.J.S.A. 10:5-12(g)(2) provides in relevant part:

> It shall be . . . an unlawful discrimination . . . . [f]or any person, including but not limited to, any owner . . . or any agent [of any person] . . . [t]o discriminate against any person . . . because of . . . disability . . . in the terms, conditions or privileges . . . of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith.

In Estate of Nicolas, in addition to Sections 5-4.1 and 5-12(g) of the NJLAD, we relied on administrative regulations promulgated by the Division of Consumer Affairs governing a building owner's responsibility to provide accessible parking to disabled residents as evidence of the condominium association's violation of the NJLAD. 388 N.J. Super. at 587.

Similarly,

> [i]n Oras v. Housing Authority of Bayonne, 373 N.J. Super. 302 (App. Div. 2004), we determined that a housing authority's policy, prohibiting a tenant in a

> public housing apartment complex from having a dog weighing over [twenty] pounds, would be inconsistent with N.J.A.C. 13:13-3.4(f)(2), if the pet were a reasonable accommodation to a paraplegic plaintiff's disability. We made clear that a duty to provide a reasonable accommodation for a resident with a disability does not necessarily entail the obligation to do everything possible to accommodate such a person. We determined that "[o]nly after a fact-sensitive evaluation of these factors, when viewed in light of the language and purposes of the relevant provisions of the . . . [NJLAD] and their concomitant regulations, can it be determined if the [Housing] Authority failed to reasonably accommodate plaintiff's disability when it required him to remove [his dog] from his apartment." "The requested accommodation must 'enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.'"
>
> [Est. of Nicolas, 388 N.J. Super. at 587-88 (second, third, fifth, and sixth alterations in original) (emphasis omitted) (footnote omitted) (citations omitted) (quoting Oras, 373 N.J. Super. at 315, 317).]

Adopted under the NJLAD by the Division of Civil Rights, N.J.A.C. 13:13-3.4(f)(2) states:

> [i]t is unlawful for any person to . . . [r]efuse to make reasonable accommodations in rules, policies, practices or services, . . . when such accommodations . . . may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including public and common areas.

"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.'" Oras, 373 N.J. Super. at 317 (quoting Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450, 462 n.25 (D.N.J. 1992)).

"A handicapped [resident] alleging a wrongful denial of a requested accommodation bears the initial burden of showing that the requested accommodation is or was necessary to afford him or her an equal opportunity to use and enjoy a dwelling." Id. at 312 (citing Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment, 284 F.3d 442, 457 (3d Cir. 2002)). In evaluating the request, a court may consider:

> (1) the extent plaintiff's ability to function is facilitated by the accommodation; (2) the training the animal received; and (3) the [defendant's] existing policy of permitting certain [residents] to have dogs, so long as they were under a specific weight. Simply put, whether plaintiff should be permitted to keep the dog requires a "cost-benefit balancing that takes both parties' needs into account."
>
> [Id. at 317 (quoting Bronk v. Ineichen, 54 F.3d 425, 431 (7th Cir. 1995)).]

"'[E]motional support animals provide very private functions for persons with mental and emotional disabilities,'" and "'by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress.'" Warren v. Delvista Towers Condo. Ass'n, 49 F. Supp. 3d 1082, 1087 (S.D. Fla. 2014)

(quoting Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63,834, 63,836 (Oct. 27, 2008) (codified at 24 C.F.R. pt. 5)). Although no reported New Jersey case has addressed whether the NJLAD provides a cause of action for disability discrimination for a condominium association's failure to allow an emotional support animal in a home as a reasonable accommodation for a disabled person, federal courts have interpreted the FHA to support such a cause of action.

Under the FHA, "discrimination includes . . . 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." 42 U.S.C. § 3604(f)(3)(B). In Revock v. Cowpet Bay West Condominium Association, 853 F.3d 96, 110 (3d Cir. 2017), the Court of Appeals for the Third Circuit held that "[a] reasonable accommodation under the [FHA] may include the use of an emotional support animal in one's home, despite the existence of a rule, policy or law prohibiting such an animal." In Revock, two residents "sought accommodations for their disabilities in the form of emotional support animals, which were not permitted under the rules of their condominium association." 853 F.3d at 99. The residents, who were each "prescribed an emotional support animal," alleged "violations of their right to a

reasonable accommodation of their disabilities," to which they were each entitled under the FHA. Id. at 99-100. Other federal courts have concluded that a condominium association's refusal to allow a resident to keep an emotional support dog in his or her condominium unit in violation of the association's pet policy as a reasonable accommodation for a psychological disability was unlawful under the FHA. See, e.g., Castillo Condo. Ass'n v. U.S. Dep't of Hous. & Urb. Dev., 821 F.3d 92, 98 (1st Cir. 2016); Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1281, 1289 (11th Cir. 2014).

Here, although the unrefuted medical evidence established that B.F. suffers from various psychological disorders, and B.F.'s mental health professionals testified that Luna ameliorated certain symptoms of B.F.'s disability, we cannot say that the judge erred when she found there was insufficient proof that having a dog that exceeded the weight limit in the Association's pet policy "was necessary to afford [B.F.] an equal opportunity to use and enjoy" the condominium unit. Oras, 373 N.J. Super. at 313. Critically, as the judge found, no medical or mental health professional had "recommended" or "prescribed an emotional support animal." Instead, "this was something that [B.F.] herself decided might help her."

Further, there was no medical evidence "that [B.F.] needed a dog larger than [thirty] pounds" to alleviate her symptoms, or explanation why a smaller dog permitted by the Association's policy would not suffice. Indeed, Dr. Siegert testified that there was no "scientific, medical, [or] psychological evidence" that correlated the relief B.F. experienced to the size of the dog. As the judge noted, B.F. chose Luna based on two factors: "[Luna] was the only dog not barking when she went to the shelter," and "she had previously had a large dog . . . when she was living at her parents' home." Thus, viewing the record "in light of the language and purposes of the relevant provisions of the . . . [NJLAD] and their concomitant regulations," we conclude the Association was relieved of its obligation to provide the requested accommodation. Oras, 373 N.J. Super. at 317. Accordingly, the judge properly dismissed defendants' counterclaim. In light of our decision, we need not address the parties' remaining arguments.

Affirmed.

GUMMER, J.A.D., dissenting in part.

Luna may be a good dog that doesn't bark but those characteristics do not give defendants the right to carve out an exception to the Association's lawful and enforceable rules and regulations regarding pet ownership.

My colleagues affirm the trial court's dismissal of the counterclaim. I join in that portion of the opinion. I respectfully dissent from their conclusion in section II of the opinion that the trial judge acted "well within her discretion" in holding defendants could keep an animal in direct contravention of the Association's rules.

The trial judge correctly concluded the Association's rules and regulations regarding pet ownership were valid and that the Association had not violated New Jersey's Law Against Discrimination, N.J.S.A.10:5-1 to -42, by enforcing them. With that finding, there was nothing left for the trial judge to do; there was no wrong done to defendants for which she needed to craft a remedy. Yet, with no citation to any law giving her the authority to do so, the trial judge nevertheless decided to "mak[e] an allowance for [B.F.] to keep this dog." In awarding defendants a remedy when they had no wrong to right, the trial judge abused her discretion. See Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 222 (App. Div. 2013) (rejecting the plaintiffs'

request for equitable relief because "there is no 'wrong' to remedy through law or equity"). Indeed, the only wrong found by the trial court was defendants' knowing violation of the Association's rules. And the remedy for that wrong was to enforce the rules.

My colleagues rely on equity to justify the trial judge's decision. But a court's equitable authority is not boundless. "[I]n all cases, equity follows the law." West Pleasant-CPGT, Inc. v. U.S. Home Corp., 243 N.J. 92, 108 (2020) (quoting Berg v. Christie, 225 N.J. 245, 280 (2016)). "[E]quity follows the law" is an "equitable maxim . . . which instructs that as a rule a court of equity will follow the legislative and common-law regulation of rights, and also obligations of contract." Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 183 (1985). "[E]quity will generally conform to established rules and precedents, and will not change or unsettle rights that are created and defined by existing legal principles." West Pleasant-CPGT, 243 N.J. at 108 (quoting Dunkin' Donuts, 100 N.J. at 183); see also Natovitz v. Bay Head Realty Co., 142 N.J. Eq. 456, 463 (E. & A. 1948) (finding "[e]quity may not indulge in arbitrary action. The statute and the contract are binding alike upon courts of law and equity"); Dunkin' Donuts, 100 N.J. at 183 (finding "a court of equity cannot change or abrogate the terms of a contract"); Impink ex rel. Baldi v. Reynes, 396

N.J. Super. 553, 561 (App. Div. 2007) (finding "it is well-established that 'equity follows the law,' particularly where a statute is involved").

In the New Jersey Condominium Act, N.J.S.A. 46:8B-1 to -38, the Legislature expressly gave condominium associations the authority and obligation to adopt and enforce "rules governing the use and operation of the condominium and the condominium property . . . ." N.J.S.A. 46:8B-14(c). As my colleagues note, "[p]rior to closing, K.P. executed several documents and agreed to be bound by the Association's rules and regulations, including the pet policy." Ante at 3-4. The trial judge's determination to allow "[B.F.] to keep this dog" is contrary to the Association's statutory right and authority to adopt rules and enforce them and the parties' contract.

In Dunkin' Donuts, our Supreme Court rejected the trial court's attempt to "fashion[] its own remedy on the basis of equitable considerations to replace the 'disproportionately harsh' legal remedies set forth in the [parties'] agreements." Id. at 173; see also Berg, 225 N.J. at 280 (Court "decline[s] to provide a remedy in equity that is not available under the law"). In In re Estate of Shinn, 394 N.J. Super. 55, 67 (App. Div. 2007), we reversed a trial judge's equity-based decision "because the trial judge overlooked the maxim that 'equity follows the law,' and, thus, mistakenly allowed his personal sense of fairness to override the statutory

consequence of [a party's] failure to comply with [statutory law]." As we recently held in Board of Education of East Newark in the County of Hudson v. Harris, 467 N.J. Super. 370, 382 (App. Div. 2021),

> Although "the maxim [equity follows the law] does not bar the crafting of a remedy not recognized by legislation or found in the common law, . . . it does prevent the issuance of a remedy that is inconsistent with recognized statutory or common law principles." [Shinn, 394 N.J. Super. at 67]. Stated differently, equity may "soften[ ] the rigor of the law," Giberson v. First Nat'l Bank of Spring Lake, 100 N.J. Eq. 502, 507 (Ch. 1927), but "will not create a remedy that is in violation" of it. Shinn, 394 N.J. Super. at 67. "Undoubtedly, equity follows the law more circumspectly in the interpretation and application of statute law than otherwise." Giberson, 100 N.J. Eq. at 507. "Were it otherwise, a judge's personal proclivities alone could negate the will of the Legislature." Shinn, 394 N.J. Super. at 68.

The trial judge's personal belief that it would not be "beneficial to force [B.F.] to abandon the dog" is not and cannot be the polestar that decides this case. Having determined the Association did not violate defendants' rights by applying its rules regarding pet ownership, the trial judge had an obligation to enforce those rules and had no authority – not in law or in equity – to order the Association to exempt defendants from those rules.

For these reasons, I respectfully dissent from section II of the opinion and the affirmance of paragraphs 1 and 4 of the December 7, 2020 order. I concur with the affirmance of the trial court's dismissal of the counterclaim.