IN THE SUPREME COURT OF IOWA

NO. 18-2173

KAREN COHEN,
Plaintiff-Appellant/Cross-Appellee,

vs.

DAVID CLARK,
Defendant-Appellee/Cross-Appellant,

and

2800-1 LLC,
Defendant-Appellee.

DISCRETIONARY REVIEW FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
THE HONORABLE CHAD KEPROS, DISTRICT JUDGE

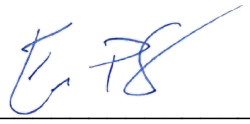
APPELLEE 2800-1 LLC'S FINAL BRIEF

EREK P. SITTIG AT0007271
Holland, Michael, Raiber & Sittig PLC
123 North Linn Street, Suite 300
Iowa City, Iowa 52245
(319) 354-0331 telephone
(319) 354-0559 facsimile
esittig@icialaw.com
ATTORNEY FOR APPELLEE
2800-1 LLC

CERTIFICATE OF FILING AND SERVICE

I, Erek P. Sittig, hereby certify that I filed this Final Brief through the Iowa Judicial Branch Electronic Document Management System on the 15th day of June, 2019.

I further certify that I served this Final Brief on all parties by filing it through the Iowa Judicial Branch Electronic Document Management System on the 15th day of June, 2019.



Erek P. Sittig
Attorney for Appellee 2800-1 LLC

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ROUTING STATEMENT

Appellee 2800-1 LLC concurs with Appellant/Cross-Appellee Cohen and Appellee/Cross-Appellant Clark that this matter should be retained by the Supreme Court pursuant to Iowa R. App. P. 6.1101(2)(c), as it presents substantial issues of first impression in Iowa.

STATEMENT OF THE CASE

Appellee 2800-1 LLC (the Landlord) is satisfied with the Statement of the Case provided by Appellant Karen Cohen (Cohen).

STATEMENT OF FACTS

The Landlord is satisfied with the Statement of the Facts provided by Cohen.

ARGUMENT

I. WAS CLARK'S DOG A REASONABLE ACCOMMODATION FOR HIS DISABILITY WHEN THE EMOTIONAL SUPPORT ANIMAL CAUSED COHEN TO SUFFER REPEATED SEVERE AND AT TIMES LIFE THREATENING ALLERGY ATTACKS AND THUS WAS A DIRECT THREAT TO COHEN'S HEALTH?

A. Standard of Review

The Landlord agrees with the standard of review presented by Cohen.

B. Reasonable Accommodation, Generally

The treatment of people with disabilities in different parts of the American economy is regulated by different parts of federal law. In the realm of employment, the Americans with Disabilities Act (ADA) controls and provides for certain requirements.[1] A different part of the ADA covers public transportation and requires something different.[2] In the world of education and other federally-funded programs, Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 (Section 504) control.[3] Housing is regulated by

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[1] United States Department of Labor, *Americans with Disabilities Act*, https://www.dol.gov/general/topic/disability/ada (last visited May 20, 2019) (hereinafter DOL *Americans with Disabilities Act*).

[2] DOL *Americans with Disabilities Act*.

[3] United States Department of Education, *Protecting Students with Disabilities*, https://www2.ed.gov/about/offices/list/ocr/504faq.html (last visited May 20, 2019) (hereinafter *Protecting Students*).

the Fair Housing Act (FHA), which has other requirements, still.[4] One similarity that runs through all these federal laws is the idea that an employer, or a city bus system, or a school, or a landlord, must make reasonable accommodations to normal rules and regulations that allow persons with disabilities to use the services provided.[5]

The State also regulates conduct related to disabilities. Similar to federal laws, the Iowa Civil Rights Act (ICRA) requires reasonable accommodations to normal rules and procedures to allow persons with disabilities to work,[6] travel,[7] take part in education,[8] and access housing.[9] While the ICRA is not identical to and can be interpreted to require something different than the ADA, Section 504, and the FHA, interpretation of federal law is instructive in interpreting the requirements of the ICRA.[10]

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[4] United States Department of Housing and Urban Development, *Housing Discrimination Under the Fair Housing Act*, https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview (last visited May 20, 2019) (hereinafter *Housing Discrimination*).

[5] *See Housing Discrimination*, DOL *Americans with Disabilities Act*, and *Protecting Students*.

[6] Iowa Code § 216.6 (2018); Iowa Code § 216.6A (2018).

[7] Iowa Code § 216.7 (2018).

[8] Iowa Code § 216.9 (2018).

[9] Iowa Code § 216.8 (2018); Iowa Code § 216.8A (2018).

[10] *Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1, 9 (Iowa 2014).

In this case, we're concerned with the housing provisions of the ICRA. While cases and rules related to the ADA and Section 504 might be instructive, the FHA is the controlling federal law and will have the most impact on the outcome.

C. Emotional Support Animals vs. Service Animals

Emotional support animals are not the same as service animals, as described in federal law. According to federal regulation, a service animal is a dog that is individually trained to perform a specific task that helps a person who has a disability.[11] In contrast, an emotional support animal is not limited in species or breed and is not trained to perform any task.[12] The benefit of an emotional support animal is its mere presence, which purportedly allows a person with a mental health disability to function better in society or in some area of their life.[13] As Cohen noted in her brief, the science is mixed on whether emotional support animals are actually effective.[14]

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[11] 28 C.F.R. § 35.104. Miniature horses that are trained to perform a specific task are also required accommodations for state and local government programs under Title II of the ADA, but they are not included in the definition of the term "service animal" in the Department of Justice regulations. 28 C.F.R. § 35.136.

[12] United States Department of Housing and Urban Development, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs* 3 (April 25, 2013) (hereinafter FHEO Notice 2013-1).

[13] FHEO Notice 2013-1 at 3-4.

[14] Appellant's Brief at 21, note 5.

In some federally-regulated areas of society, emotional support animals are not treated the same as service animals. For instance, Department of Justice regulations implementing Title II of the ADA require state and local government programs to allow service animals and miniature horses as reasonable accommodations, but specifically exclude animals whose sole purpose is to provide emotional support to the owner.[15] As such, with few exceptions, a school would be required to allow a member of the general public to bring their service animal to a high school basketball game, but may exclude a person's emotional support animal from the same event. The same would be true for other public accommodations, like restaurants, offices, and professional sporting events.[16]

D. <u>Animals in Federal Housing Law</u>

In the context of housing, the Department of Housing and Urban Development and courts have determined that emotional support animals and service animals (collectively described as "assistance animals") are, essentially, a per se reasonable accommodation.[17] Under federal guidelines,

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[15] 28 C.F.R. § 35.104.

[16] 28 C.F.R. § 36.104. Department of Justice regulations implementing Title III of the ADA define the term "service animal" in the same way as regulations implementing Title II.

[17] *See* FHEO Notice 2013-1 at 2-3 (Where the tenant answers two questions correctly, "the FHAct and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule . . . ."); *Bronk v. Ineichen*, 54 F.3d

when presented with a request for the accommodation of an emotional support or service animal, a landlord may only ask two questions:

> "(1) Does the person seeking to use and live with the animal have a disability…?
>
> "(2) Does the person making the request have a disability-related need for an assistance animal . . . ?"[18]

If the applicant's disability is apparent, the landlord is not allowed to ask for documentation of it.[19] If the applicant's disability is not apparent, the landlord may request additional information about the disability, but may not request to review the applicant's medical records,[20] and may not deny the applicant's request if the landlord believes the need for an emotional support animal is questionable.[21] This differs from case law that emerged earlier in the evolution of the idea of the assistance animal, where an interactive process was favored when a landlord was skeptical of a tenant's claimed disability.[22]

425, 431 (7th Cir. 1995) ("Balanced 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.").

[18] FHEO Notice 2013-1 at 2-3.

[19] FHEO Notice 2013-1 at 3-4.

[20] FHEO Notice 2013-1 at 4.

[21] FHEO Notice 2013-1 at 3.

[22] *See Auburn Woods I Homeowners Ass'n v. Fair Emp't and Hous. Comm'n*, 18 Cal.Rptr.3d 669, 683 (Ct. App. 2004).

According to HUD, a landlord may deny an application for an assistance animal, but only if that specific animal poses a threat to other residents, or the animal would cause substantial damage to the property and the Landlord is unable to mitigate the threat with other reasonable accommodations.[23] When assessing the threat an animal poses, the Landlord may consider only documented incidences of behavior by the specific animal, and may not consider generalized threats, such as allergies to the species involved.[24] The landlord may not charge an additional deposit or more rent as a result of an assistance animal being allowed as a reasonable accommodation, but the owner of the animal can be held responsible for damage that the animal causes.[25]

E. <u>Animals in State Civil Rights Law</u>

Under state law, the ICRA requires that a landlord "shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of the tenant."[26] Discrimination includes "[a] refusal to make reasonable accommodations in rules, policies, practices,

[23] FHEO Notice 2013-1 at 3.
[24] FHEO Notice 2013-1 at 3.
[25] FHEO Notice 2013-1 at 3.
[26] Iowa Code § 216.8A(3)(b) (2018).

or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling."[27]

Iowa Courts have held that the ICRA includes the requirement that assistance animals be accommodated. In *State ex rel. Henderson v. Des Moines Municipal Housing Agency*, the Iowa Court of Appeals considered whether the District Court was correct in directing a verdict for the Des Moines Municipal Housing Agency when it refused to waive its rule against dogs weighing more than 25 pounds in its units.[28] The Court held that there were fact questions for the jury and the District Court should not have directed a verdict in favor of the defendants.[29]

In reversing the District Court, the Court of Appeals noted that "[c]ompanion animals may be necessary accommodations,"[30] and cited to and quoted extensively from a number of federal cases finding that assistance animals were reasonable accommodations.[31] Included in those authorities was

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[27] Iowa Code § 216.8A(3)(c)(2) (2018).
[28] *State ex rel. Henderson v. Des Moines Mun. Hous. Agency*, No. 07-707/09-1905 (Iowa Ct. App. 2010) (hereinafter *Henderson*). It's unclear from the opinion if the Court considered Ms. Henderson's dog a service animal or an emotional support animal. Facts in the opinion indicate Ms. Henderson claimed to have trained the dog to perform certain functions for her, *Henderson* at 4, but the Court refers to it as her "service/companion animal". *Henderson* at 2.
[29] *Henderson* at 26.
[30] *Henderson* at 18.
[31] *Henderson* at 18-22.

the statement that "[b]alanced against a landlord's economic and 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."[32] The Court cited another case for the proposition that

> Even if the 'no pet' rule is itself imminently reasonable, nothing in the record rebuts the reasonable inference that the Authority could easily make a limited exception for that narrow group of persons who are handicapped and whose handicap requires . . . the companionship of a dog.[33]

Other Iowa cases interpret the reasonable accommodation requirements of the ICRA,[34] but none others the undersigned has found address assistance animals in the housing context.

Regardless of whether the HUD guidance is correct under federal law,[35] the Iowa Legislature recently enacted and the Governor signed Senate File

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[32] *Henderson* at 19 (quoting *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (emphasis in original).
[33] *Henderson* at 23 (quoting *Majors v. Housing Authority*, 652 F.2d 454, 455 (5th Cir. 1981).
[34] *See, e.g., Bearshield v. John Morrell & Co.*, 570 N.W.2d 915 (Iowa 1997) (discussing the ICRA in the workplace); *Frank v. Amer. Freight Systems, Inc.*, 398 N.W.2d 797 (Iowa 1987) (discussing an earlier version of the ICRA in the workplace); *Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1 (Iowa 2014) (discussing the ICRA in the workplace).
[35] Properly enacted federal regulations promulgated under rule-making authority granted in federal statutes have the force and effect of law, unless it can be shown that a regulation is contrary to legislative intent. *Chrysler v. Brown*, 441 U.S. 281, 295-296 (1979).

341, which modifies the requirements related to assistance animals in housing under the ICRA.[36] New Sections 216.8B and 216.8C essentially codify as state law the guidance HUD has previously issued related to the FHA.[37] As a result, the Landlord treats the HUD guidance in effect when the events of this case occurred as an accurate statement of the law in Iowa.

F. Application of the Law to the Facts of this Case

It's against this backdrop that the Landlord was approached by Clark with a request to waive the "no pets" rule in his lease to accommodate his disability.[38] The Landlord markets the building as a "no-pets" building

[36] An Act Relating to Assistance Animals and Service Animals in Housing, Service Animals and Service-Animals-in-Training in Public Accommodations, and Misrepresentation of an Animal as a Service Animal or a Service-Animal-in-Training, Providing Penalties, and Including Effective Date and Applicability Provisions, S.F. 341, 88th General Assembly of Iowa (2019) (hereinafter Senate File 341.

[37] New Section 216.8C(3) provides for the Iowa Civil Rights Commission to create a form for health care providers to complete when they are asked by a patient for a finding that the patient has a disability for which an assistance animal is a necessary accommodation. Senate File 341 at Sec. 3. "The form must contain only two questions regarding the qualifications of the patient or client, which shall be whether a person has a disability and whether the need for an assistance animal or service animal is related to the disability." Senate File 341 at Sec. 3. This mirrors the questions a landlord may ask under FHEO Notice 2013-1. FHEO 2013-1 at 2-3.

[38] Trial Transcript at 27:13-27:15, January 24, 2018 (hereinafter Trial Transcript), Appendix p. 62.

because there are potential tenants who don't want to live in the same building as animals and there are potential tenants who are allergic to animals.[39]

Clark was renting Unit 2821, which is at one end of the building on the third floor.[40] Cohen was renting Unit 2824, which is also on the third floor, toward the opposite end of the building from Clark's apartment.[41] The apartments open into the same hallway, but there is an entrance stairway between them near the center of the building.[42]

The Landlord notified others in the building that it was attempting to make a reasonable accommodation and Ms. Cohen objected to the animal, citing her severe allergies.[43] After consulting with staff for the Iowa Civil Rights Commission, the Landlord felt it had no choice but to allow the animal into the building and also try to accommodate Cohen's allergies.[44] Indeed, given the language of federal guidance available, the Landlord risked violating federal law if it chose to deny the accommodation.

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[39] Trial Transcript at 26:17-27:2, Appendix pp. 61-62.
[40] Common Exhibit Two at 2 (hereinafter Clark Lease), Appendix p. 30; Defendant 2800-1 LLC's Exhibit E (hereinafter Exhibit E), Appendix p. 35.
[41] Common Exhibit One at 2 (hereinafter Cohen Lease) Appendix p. 27; Exhibit E, Appendix p. 35.
[42] Exhibit E, Appendix p. 35.
[43] Trial Transcript at 27:19-28:5, Appendix pp. 62-63.
[44] Trial Transcript at 28:6-28:25, Appendix p. 63.

Upon meeting with both Clark and Cohen, the Landlord instructed Clark to use only the center stairway to enter and exit the building with his dog.[45] This stairway was the closest to Clark's apartment and between the two units.[46] The Landlord instructed Cohen to use the other stairway, which is at the opposite end of the building from Clark's unit.[47] The Landlord also bought for Cohen an air purifier.[48] Soon after these attempts to accommodate both tenants, Cohen contacted an attorney.[49]

The Landlord considered other options to accommodate both tenants, but they were extremely costly. For instance, it could have sealed the hallway to keep pet dander out of the portion of the hallway Cohen used at a cost of more than $80,000.00, but the Landlord found that to be an unreasonable amount to accommodate one or two units.[50]

Under the framework the Landlord had, Clark's dog was a reasonable accommodation under the ICRA.

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[45] Trial Transcript at 29:1-29:18, Appendix p. 64.
[46] Exhibit E, Appendix p. 35.
[47] Trial Transcript at 29:12-29:15, Appendix p. 64; Exhibit E, Appendix p. 35.
[48] Trial Transcript at 29:15-29:18, Appendix p. 64.
[49] Trial Transcript at 29:19-29:22, Appendix p. 64.
[50] Trial Transcript at 30:3-30:25, Appendix p. 65; Defendant 2800-1 LLC's Exhibit D (hereinafter Exhibit D), Appendix p. 34. The undersigned notes that the Trial Transcript refers to Exhibit E here, but the reference is clearly to Exhibit D.

II. SHOULD THE BENEFITS AND BURDENS TO ALL AFFECTED PARTIES, INCLUDING THE DISABLED PERSON, LANDLORD, AND AFFECTED CO-TENANTS, BE CONSIDERED WHEN DECIDING IF AN ACCOMMODATION IS REASONABLE?

A. The Burden on the Landlord

The Landlord was unable to take any action. It couldn't remove the dog because nothing about the individual dog's conduct was concerning.[51] It also had a contract with Cohen to provide a specific housing unit, so it couldn't require Cohen to move.[52] The Landlord's only option was to keep to the guidance it was provided and allow the dog to stay.

But it doesn't appear much thought has gone into the actual burden landlords bear when they accommodate animals. In *Henderson*, the Iowa Court of Appeals quoted with approval two different federal appeals court cases that referred to how easy it is for a landlord to accommodate an animal.[53]

But in this case, the Landlord provided evidence of the actual cost of dealing with animals, whether they're assistance animals or not. The Landlord's agent testified that he managed around 2,000 residential units and had worked in the rental housing industry for about 22 years.[54] He is able to

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[51] *See* FHEO Notice 2013-1 at 3.
[52] *See* Cohen Lease, Appendix pp. 26-28.
[53] *Henderson* at 19; See further discussion of *Henderson* at Section I.E of this Brief.
[54] Trial Transcript at 24:8-24:15, Appendix p. 59.

tell a difference when an animal has lived in a unit compared to a unit that has been animal-free.[55]

He testified about the actual cost to deal with an animal in a unit. For only a partial restoration of the floors and fixing other damage to a specific unit, the cost was close to $2,000.00, and would be much higher if there was damage to the entire unit.[56] The Landlord has received complaints from later tenants who claim they're having allergic reactions because the previous tenant kept an animal in the unit.[57] The Landlord has also experienced an explosion of flea infestations over the same time period when the number of emotional support animals has skyrocketed, leading to higher costs for pest control.[58]

In addition, though the Landlord wants to be able to serve potential tenants who have allergies or simply prefer to live in an animal-free building,[59] it does not believe any of its units is actually animal-free.[60] Under the current regulations and the massive increase in accommodation requests, no building can be guaranteed as animal-free.

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[55] Trial Transcript at 33:20-33:25, Appendix p. 68.
[56] Trial Transcript at 34:3-35:25, Appendix pp. 69-70.
[57] Trial Transcript at 37:9-37:16, Appendix p. 72.
[58] Trial Transcript at 31:16-32:20, Appendix pp. 66-67; Trial Transcript at 36:6-36:15, Appendix p. 71.
[59] Trial Transcript 26:17-27:2, Appendix pp. 61-62.
[60] Trial Transcript 37:17-38:2, Appendix pp. 72-73.

Suffice it to say that the Landlord does not find it as easy as courts have implied it is to accommodate animals in its buildings.

B. Appropriate Standard for Assessing Assistance Animals

The clash of assistance animals versus people with allergies and those who just don't want to live with animals is not going away. The Landlord began keeping records of emotional support animal requests around 2015, when it had nine such requests for the entire year.[61] At the time of the small claims hearing in January 2018, the Landlord had received more than 350% more requests in half of a lease year.[62] It had received requests for pigs, rabbits, and snakes, and didn't believe it was allowed to deny any of them.[63]

Inevitably, more people with animal allergies will be affected by animals brought into buildings otherwise advertised as "no-pets" buildings. Not only people who are tenants concurrently with the person who brings in an animal, but those who come after. Pet dander can remain in a home for months or a year after the pet is removed.[64] A new tenant moving into a unit where an

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[61] Trial Transcript at 31:16-32:20, Appendix 66-67.
[62] Trial Transcript at 31:16-32:20, Appendix p. 66-67.
[63] Trial Transcript at 32:21-33:5, Appendix pp. 67-68.
[64] American Lung Association, *Healthy Air: Pet Dander*, https://www.lung.org/our-initiatives/healthy-air/indoor/indoor-air-pollutants/pet-dander.html (last visited May 21, 2019) (hereinafter *Healthy Air*).

animal had been could suffer allergy attacks, even if there isn't noticeable damage from urine or feces.[65]

Cohen argues for a balancing test between the interests of the people seeking to have assistance animals, other tenants in the building, and landlords.[66] She argues that each landlord should review each individual case and make a factual determination of whose interests outweigh the others'.[67] She also argues that, if a person with allergies is already living in a building, that person's interests should be weighted higher than a person who wants to bring in an animal.[68]

Clark suggests that past interpretation of the law should remain: landlords should be required to accommodate all assistance animals, regardless of the needs of others in the building.[69]

The Landlord does not believe either option is workable. There were roughly 10.6 million landlords in the United Sates in 2015,[70] likely thousands in Iowa. If a person asked thousands of landlords to weigh the same set of

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[65] *Healthy Air.*
[66] Appellant's Brief at Section IV.D.
[67] Appellant's Brief at Section IV.D.
[68] Appellant's Brief at Section IV.D.
[69] Appellee/Cross-Appellant's Brief.
[70] United States Department of Housing and Urban Development, Message from PD&R Senior Leadership, https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-061118.html (last visited May 21, 2019).

interests against each other, it seems reasonable to expect thousands of different results. What a landlord in Davenport[71] finds reasonable might not be the same as what a landlord in Rock Valley[72] finds reasonable. A landlord managing 2,000 units might find something reasonable that a landlord managing two units does not.

"Reasonableness" is not universal, and a balancing test leaves landlords and tenants without real guidance as to how to act. In addition, there's now potential criminal liability at stake if a landlord chooses incorrectly. Senate File 341 includes new Section 216.8B(4), which states that "[a] person who knowingly denies or interferes with the right of a person with a disability under this section is, upon conviction, guilty of a simple misdemeanor."[73]

Adopting a balancing test for landlords to use means that a landlord's criminal liability under the new statute could turn on whether they correctly balanced the interests of the various tenants involved in a certain situation. For a landlord to "knowingly" deny or interfere with the right of a person with

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[71] Davenport's population in 2010 was 99,685 people. United States Census Bureau, American Fact Finder, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk (last visited May 21, 2019).

[72] Rock Valley's population in 2010 was 3,354 people. United States Census Bureau, American Fact Finder, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk (last visited May 21, 2019).

[73] Senate File 341 at Sec. 3 (2019).

a disability, the landlord must have a conscious awareness that he or she is denying or interfering with the right of a person with a disability.[74] This is different from acting "with the intent to" deny or interfere with the right of a person with a disability, where the landlord acts with the specific purpose of denying or interfering with the rights of a person with a disability.[75]

Putting aside the question of when a person's right to a reasonable accommodation actually attaches,[76] in this instance the Landlord had to choose between the rights of a person who needed an assistance animal and the rights of a person who suffered because of the presence of the assistance animal. The Landlord was consciously aware that it couldn't act without denying or interfering with the rights of one of the two tenants.[77] In a similar situation under the new statute, would the Landlord be criminally liable if it

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[74] Iowa State Bar Association, *Iowa Criminal Jury Instructions*, Inst. No. 200.3 (December 2018).

[75] Iowa State Bar Association, *Iowa Criminal Jury Instructions*, Inst. No. 200.2 (December 2018).

[76] A person with a disability has a right to a reasonable accommodation, but does that person's right attach upon knowing the accommodation is necessary or only if the accommodation is determined to be reasonable? *See Henderson* at 16-24 (discussing the elements of a claim for failure to make a reasonable accommodation and the difference between a necessary accommodation and a reasonable one).

[77] It's clear from the record that the Landlord knew accommodating Clark's animal would cause issues for Cohen, hence the attempts to ameliorate the effects by requiring each to use different entrances and buying an air purifier for Cohen. Trial Transcript at 29:1-29:18, Appendix p. 64.

chose to deny Clark's request for an emotional support animal because of Cohen's allergies?

The current rule that animals are essentially per se reasonable accommodations is clearly wrong. Continuing with such a rule inevitably leaves those persons who are allergic to certain animals with nowhere to live without suffering the effects of their allergies, and requires landlords to incur substantial costs, depending on how well the owners of the animals care for them and how well-housetrained those animals are. The costs can far exceed the maximum deposit of two-months rent a landlord can require for a single apartment.[78] Such a rule might also save the criminal portion of Senate File 341 from being void for vagueness.[79]

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[78] "A landlord shall not demand or receive as a security deposit an amount or value in excess of two months' rent." Iowa Code § 562A.12(1) (2018).

[79] When a landlord is choosing between the rights of a disabled person with an assistance animal, the rights of other tenants, and their own rights, making a reasonableness determination between the three (or more), how are they to know whether they are interfering with the rights of a person with a disability? *See American Dog Owners Ass'n, Inc. v. City of Des Moines*, 469 N.W.2d 416, 417-418 (Iowa 1991) ("Due process requires that a penal enactment must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so he or she may act accordingly. Due process also requires that a penal enactment must provide explicit standards for those who enforce it, *and must not delegate basic policy matters to police officers, judges and juries for resolution on an ad hoc and subjective basis*." (emphasis added) (citations omitted).

A less desirable alternative would be to hold that an assistance animal is not a reasonable accommodation where another tenant in the building provides credible evidence that they are allergic to the sort of animal proposed. The landlord argued for this standard below, but Senate File 341 has changed the landscape, to some extent, making any discretion on the part of a landlord unworkable.

III. SHOULD THE DISTRICT COURT HAVE DISMISSED COHEN'S CLAIMS DUE TO THE UNCERTAIN STATE OF THE LAW?

Cohen argues that her claim should not have been dismissed because of uncertainty in the law.[80] Cohen claims *Weitl v. Moes* supports her argument because the Iowa Supreme Court there remanded a case where it recognized a new common law tort.[81] In *Weitl*, the Court was reviewing the District Court's grant of a motion to dismiss two parts of the petition.[82] At the time of the appeal in *Weitl*, no factual record had been established and there was nothing on which the Court could base an opinion as to whether damages should be awarded, so the case needed to go back to the District Court for trial.[83]

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[80] Appellant's Brief at Sec. V.
[81] Appellant's Brief at Sec. V.
[82] *Weitl v. Moes*, 311 N.W.2d 259, 261 (Iowa 1981).
[83] *Weitl v. Moes*, 311 N.W.2d at 261 and 273.

Here, the District Court had a full factual record to review and determined that Cohen's claim for damages should be dismissed.[84] Though the Landlord admitted it had breached the "no-pets" provision of Cohen's lease, the District Court found that the breach was acceptable because of the state of the law requiring the Landlord to accommodate Clark's animal.[85] The Court's dismissal should be affirmed.

[84] Ruling on Appeal, December 10, 2018, Appendix pp. 179-184.
[85] Ruling on Appeal, December 10, 2018, Appendix pp. 179-184.

CONCLUSION

Clark's dog was a reasonable accommodation under the current rubric of disability rights under the Iowa Civil Rights Act. The Landlord should not be penalized for recognizing those rights and following the law as it has been interpreted by courts and federal agencies. But the balancing test proposed by Cohen is not an effective way to view these sorts of cases going forward, especially with the advent of criminal ramifications under Senate File 341.

The Court should do away with any notion that an animal is a per se or an easy accommodation to make, and recognize that, in a lot of instances, an animal is not a reasonable accommodation at all. Landlords who wish to market their buildings and units to people with allergies and people who don't want to live with animals should be able to do so without the requirement that the promises they've made will be broken. People with allergies should be able to feel comfortable in the homes they've chosen to rent based on the promise of a no-pet building.

The Court should affirm the District Court's dismissal of this action and let landlords and tenants breathe easier.

REQUEST FOR ORAL ARGUMENT

Appellee requests that, upon submission of this matter, it be granted oral argument.

EREK P. SITTIG AT0007271
Holland, Michael, Raiber & Sittig PLC
123 North Linn Street, Suite 300
(319) 354-0331 telephone
(319) 354-0559 facsimile
E-mail: esittig@icialaw.com
ATTORNEY FOR APPELLEE 2800-1 LLC

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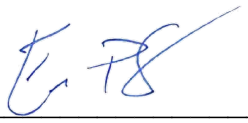

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