

## CONDOMINIUM AUTHORITY TRIBUNAL

**DATE:** November 28, 2023

**CASE:** 2022-00183N

**Citation:** York Condominium Corporation No. 435 v. Karnis et al., 2023 ONCAT 181

Order under section 1.44 of the Condominium Act, 1998.

**Member:** Stephen Roth, Member

**The Applicant,**

York Condominium Corporation No. 435

Represented by Erik Savas, Counsel

**The Respondents,**

Monika Karnis, Dana Karnis and Lawrence Karnis

Represented by Marc Kemerer, Counsel

**Hearing:** Written Online Hearing – June 15, 2022 to October 30, 2023

### **REASONS FOR DECISION**

#### **A. INTRODUCTION**

- [1] This is an application brought by York Condominium Corporation No. 435 ("YCC435") asking that Monika Karnis' ("Ms. Karnis") sixty-pound White German Shepherd service dog, Sophie, be permanently removed from her unit pursuant to subparagraph 1.44 (1) 2 of the Condominium Act, 1998 (the "Act") and YCC435's governing documents.
- [2] Ms. Karnis resides in the unit with her husband and brother. Her parents, Dana Karnis and Lawrence Karnis own the unit. Lawrence Karnis was added as a party at the commencement of the hearing on consent of all parties. Mr. Kemerer confirmed he represented Lawrence Karnis.
- [3] As a preliminary matter, the Respondents asked the Tribunal to adjourn this case while Ms. Karnis' application to the Human Rights Tribunal of Ontario ("HRTO") proceeded. After receiving submissions from the parties, I released a decision dated August 12, 2022, dismissing Ms. Karnis' request and ordering that the CAT case proceed.
- [4] This was a very lengthy hearing, in part because the parties requested time on two occasions to try to resolve the dispute. I played no role in these negotiations, and

they do not factor in my decision-making. Their efforts in this regard were unsuccessful and the hearing resumed.

- [5] YCC435's declaration prohibits all dogs in the high-rise unit where Sophie resides. The Respondents submit that Sophie should be allowed to remain in the unit despite the "no pets" rule as an accommodation under the *Ontario Human Rights Code* ("the Code").
- [6] While YCC435 accepted that Ms. Karnis has a disability as defined in section 10 of the *Code* and requires a service dog as accommodation, it objects to Sophie's size and breed. YCC435 supports her having another breed of dog, which it considers safer.

## **B. ISSUES**

- [7] Given that YCC453 acknowledges that Ms. Karnis requires accommodation, does it have a legal basis to reject Sophie on the basis of weight or breed?
- [8] Should Sophie be removed from Ms. Karnis' unit?
- [9] Would YCC435 suffer undue hardship if Sophie remained in the unit?

## **C. EVIDENCE AND ANALYSIS**

- [10] The Applicant called two witnesses. YCC435's condominium manager, Ovidiu Floroiu testified. Mr. Floroiu served as the day-to-day manager from March 2021 to December 2022. Additionally, Annie Imer, officer and director of YCC435, provided testimony. She serves as president of YCC435 and owns and occupies a unit in the complex.
- [11] Ms. Karnis testified on her own behalf. Elizabeth Baker, the owner and lead trainer at Thames Centre Service Dogs "(TCSD)" where Ms. Karnis obtained Sophie, also testified for the Respondents.
- [12] Ms. Karnis testified that that on August 16, 2021, she qualified to obtain a service dog from TCSD, an organization that specializes in breeding and training dogs for those with disabilities. She testified that she informed the lead trainer, Ms. Baker, that she suffers from a condition that can lead to vertigo, dizziness and therefore instability when walking. She testified that her application to TCSD included a July 7, 2021, medical report from Dr. Linder who supported her application. I have reviewed the report, which is brief, and indicates Dr. Linder supported her application stating that a service dog would provide significant benefit for Ms. Karnis' condition. Ms. Karnis testified that a service dog's role was to support her

and steady her during periods of instability. Ms. Karnis could grab the dog's harness and steady herself by holding the dog. She also testified that Sophie was trained to use her sense of smell to touch her with her nose and alert her of an impending medical event. Ms. Karnis testified that Elizabeth Baker recommended a White German Shepherd to accommodate her because this breeding line was calm, had submissive personality, would weigh at least 1/3 of her own weight and because of the breed's strong training abilities. Ms. Karnis testified that no other breed was recommended.

- [13] I have reviewed a December 9, 2021, letter from specialist Dr. J. Rosenblut supporting a service animal for Ms. Karnis. Dr. Rosenblut confirmed that a service dog would be trained to alert Ms. Karnis and to provide immediate support. I have also reviewed an August 2022 report from Dr. Linder indicating that Ms. Karnis "requires a service dog that is large enough for mobility work, specifically steadying her when she feels dizzy or is experiencing vertigo."
- [14] The Applicant argued that a service dog is needed only in a stabilizing role and does not accept an alerting role. Given Ms. Karnis's testimony and Dr. Rosenblut's report, I find that Sophie's role extends to both a stabilizing and a preventative alert role.
- [15] Sophie was born on August 17, 2021. Ms. Karnis made her first payment of \$2000 to TCSD on September 18, 2021 for Sophie's breeding and training. Training began immediately after payment. In total, Ms. Karnis testified that she paid \$15,000 for Sophie and her training.
- [16] There is no dispute that Ms. Karnis first advised YCC435 of her intention to acquire a service dog by email on September 23, 2021, three days after she made her first payment. She stated as follows:
- Hello, I have been approved for a service dog by my physician and a training school that specialises in my disability. The training school's website is below. I am not yet sure when I will receive the dog, it may be the end of October or in the new year, depending on where it is in its training. Please let me know if you have any questions or concerns.
- [17] YCC435 acknowledged receipt on the same date and Ms. Karnis was advised that the matter would be discussed with the board at its September 29<sup>th</sup> meeting and that management would respond with updates.
- [18] In response, Ms. Karnis offered to speak with the board and answer any questions. This offer was politely declined with the explanation that communication

from the board would be relayed through the condominium manager.

[19] Between Ms. Karnis' first email of September 23 and mid-December 2021, Ms. Karnis and Mr. Floroiu exchanged several emails addressing the threshold question as to whether the board accepted that Ms. Karnis had a disability requiring a service dog. The board was not satisfied that the first medical reports established the need for a service dog and eventually hired counsel to address Ms. Karnis' request. While this delay frustrated Ms. Karnis, by mid-December 2021 the board accepted Ms. Karnis' disability and the need for a service dog. At the commencement of the hearing, counsel for the Applicant confirmed that Ms. Karnis' need for a service dog was accepted and not an issue in dispute.

[20] Ms. Imer testified that on December 15, 2021, the board sent Ms. Karnis a letter confirming its agreement to accommodate by allowing a service dog and that the Board would also be sending a draft accommodation agreement ("AA") to her after the January 5, 2022 Board meeting to sign.

[21] Having not yet received the draft AA, Ms. Karnis emailed Mr. Floroiu on January 8, 2022, referencing the delay and complaining of the ongoing maintenance and training costs she was incurring:

The board was to send me an accommodation agreement for my medical needs on the fifth. Could you ask them to send it as it is now three days late, and five days late by Monday. These constant delays and late responses from the board are distressing. I have been made to pay large amounts of money monthly for the dog's maintenance and training, which I could be providing at almost no cost if I was allowed to implement my plan shown to the board. This process has been invasive and degrading. I understand the need for due diligence, but I am disappointed with the lack of decency shown by the board.

[22] On January 10, 2022, Ms. Karnis' counsel advised YCC435 that Ms. Karnis would be bringing the dog home and that the AA would be negotiated in good faith. At this time, the dispute related to the breed and weight of the dog had not yet arisen.

[23] It was not until January 22, 2022 when Ms. Karnis was presented with a draft AA containing a provision prohibiting certain breeds considered dangerous by the board, including German Shepherds, and a weight restriction of twenty-five pounds, that the dispute became apparent.

[24] In response, Ms. Karnis' counsel sent a letter to the Applicant dated January 25th, 2022, advising that Ms. Karnis intended to acquire a White German Shepherd dog and objected to the weight restriction and characterization of that breed as dangerous. Additionally, the letter indicated that the board knew of the breed

previously and raised no complaint. On January 27, 2022, Ms. Karnis counsel emailed YCC435s counsel indicating that Ms. Karnis would be proceeding with bringing Sophie home, and that in the meantime, on a without prejudice basis, Ms. Karnis agreed to abide by the AA terms as amended other than breed and weight restrictions.

[25] On January 28, 2022, YCC435's counsel advised Ms. Karnis's counsel that it did not accept the German Sheppard breed and that there was no evidence that a service animal of a different breed couldn't satisfy her request for accommodation. Furthermore, Ms. Karnis was advised that YCC435 does not have an obligation to provide MS. Karnis with her preferred method of accommodation.

[26] Ms. Karnis brought Sophie home on or about February 1, 2022.

[27] There is disagreement between the parties as to when the Board first became aware that Ms. Karnis' service dog was a White German Shepherd. Ms. Karnis testified that she advised Mr. Floroiu verbally during a telephone conversation on October 19, 2021. She testified that during this conversation, Mr. Floroiu was condescending and stated to her that "anyone can get a doctor's note" and "we can't have dogs in here willy-nilly." She testified that she had to correct Mr. Floroiu when he repeated back to him German Shepherd by stating that the service dog was a White German Shepherd. Mr. Floroiu testified that when he spoke to Ms. Karnis by telephone on October 19, 2021, and November 8, 2021 that Ms. Karnis never mentioned the breed on either occasion. Mr. Floroiu testified that when he first learned of the intent to acquire this breed from the January 25, 2022 letter from Ms. Karnis' counsel, he immediately informed the Board. Ms. Imer testified that the Board first became aware of the breed when it received the January 25, 2022, letter.

[28] I accept Ms. Karnis' testimony. I find it more likely that the White German Shepherd breed was mentioned to Mr. Floroiu on October 19, 2021, but that this information was not passed onto the Board because the Board was still addressing the threshold issue of the need for accommodation.

[29] Ms. Imer testified and acknowledged that Ms. Karnis advised YCC435 that she had been approved for a "service dog" by her physician and a training school that specialized in her disability. She was aware that a dog may arrive by the end of October 2021 or in early 2022. However, Ms. Imer pointed out that the email chain between Ms. Karnis and the condominium management firm did not indicate the size and breed of the dog.

[30] Ms. Imer acknowledged receiving the "Q and A' document from Ms. Karnis in her

email dated September 28, 2021. Ms. Karnis argues that the following passage referencing large dogs put the Applicant on notice that she was obtaining a large dog:

Q. Are you able to care for a service dog in a condo living situation?

A. I have grown up with large dogs and am very familiar with their needs. However, a service dog is an animal that may have an accident in public areas. I am perfectly willing and capable of cleaning up any messes that may happen.

- [31] I find that providing this document is evidence that Ms. Karnis was not hiding the fact that she was obtaining a large dog. However, this document does not indicate the exact size or breed.
- [32] It is evident that the board never made inquiries with Ms. Karnis on breed and weight prior to sending the draft AA in January 2022. The Applicants' witnesses made no such assertion. While YCC435 is critical of Ms. Karnis for not raising the breed before January 2022, the Board was aware that Ms. Karnis had been approved for a dog from TCSD and that the dog could arrive as early as October 2021. It is not clear when the board turned its collective mind to this issue of restricting breed and weight, but it was likely first meaningfully discussed at its January 5<sup>th</sup>, 2022 Board meeting after YCC435 had accepted Ms. Karnis' need for a service dog.
- [33] While the parties argued strenuously about when the board first became aware of the White German Shepherd breed, I find it inconsequential. In either version, Ms. Karnis first became aware that breed and weight were at issue in January 2022. By then, Sophie was several months into her specialized training and Ms. Karnis had committed substantial financial resources to training and boarding her service dog. While the board's awareness of breed is imputed by their agent's knowledge (Mr. Floriou), had the Board had actual knowledge at the end of October 2021, I find that the crystallization of the issue and the impasse between the parties would simply have arisen earlier, but not likely soon enough to result in a resolution between the parties.
- [34] YCC435 argued that Ms. Karnis unilaterally proceeded to bring Sophie home knowing the board's objection, rather than engaging with YCC435 in the accommodation process as required. I do not agree. Rather, I find that the parties were quickly at an impasse. The Board was not going to accept a White German Shepherd with a weight of about sixty pounds. Ms. Karnis was not prepared to abandon Sophie's training, accept a delay to find and train another dog with

potential inferior results, and suffer the negative financial consequences of that decision.

- [35] The context of when Ms. Karnis first entered into an agreement with TCSD and notified YCC435 of her disability and intention to bring home a service dog is important. In September 2021, YCC435 had one Rule that touched on accommodation for disability. In her testimony, Ms. Imer referred to YCC435's Rule 1(g), effective September 20, 2018, which states, "No dogs are allowed in the high-rise units or on the common elements, unless licensed as a guide dog."
- [36] On its face, this Rule addressed service dog accommodation because of visual impairments. This Rule was not broad enough to address the wide variety of disabilities that YCC435 may have to accommodate under the *Code* by permitting a service dog. It was not broad enough to capture Ms. Karnis' disability, which was eventually accepted by the board. Significantly, the Rule in effect at the time contained no weight or breed restrictions for service dogs for visual impairments.
- [37] The nature of Rule 1(g) is relevant in that when Ms. Karnis proceeded to commit financial and time resources to purchase and train Sophie in September 2021, there was no indication that weight and breed would be restricted by inference to Rule 1(g). It is uncontested that she only became aware that breed and weight were contentious when the draft AA was sent to her on January 12, 2022. When Ms. Karnis was asked why no reference to breed or weight existed in the email exchanges between September 23 and December 2021, she testified that she was not aware these would be contentious issues. I accept this testimony.
- [38] I find that when Ms. Karnis committed to Sophie, she was relying on YCC435's anticipated duty to accommodate that was not restricted to a visual impairment disability. No Rule was in place at the time putting her on notice that the board would restrict weight and breed when fulfilling its obligation to accommodate with a service dog.
- [39] In April 2022, YCC435 passed a new Rule that prohibited a number of breeds including German Shepherds and dogs weighing in excess of 25 pounds when accommodating. Counsel for YCC435 advised me at the commencement of the hearing that it would not be relying on this Rule because it was not in effect when Ms. Karnis brought Sophie home. As such, the validity and reasonableness of this Rule was not before me, nor have I considered it as to the merits of the case.

#### **Does Ms. Karnis require a service animal of Sophie's Size?**

- [40] Ms. Karnis described herself as 5 foot 7 inches tall and weighing 195-200 pounds.

She testified that Sophie's weight fluctuates between 60 and 65 pounds.

[41] The Applicant submits that the medical reports do not prescribe the size and breed of dog required to meet Ms. Karnis's needs.

[42] Elizabeth Baker testified for the Respondents. She has held the position of owner, director and lead trainer at TCSD for twenty years, from 2003 to 2023. She testified that she had a specialty in training service dogs for persons with brain injuries, psychiatric and autistic conditions. She currently has forty-five White German Shepherds working with individuals with disabilities. Additionally, she testified that she has trained guide, hearing, and diabetic service dogs. She identifies as self-taught. She lists extensive speech engagements, published articles, teaching assignments and media experiences related to dogs and service dogs on her curriculum vitae. She testified to being a member of numerous organizations related to service animals such as the Canadian Association of Professional Dog Trainers. She stated she has trained approximately 450 service dogs during her career.

[43] Ms. Baker is a participant witness who had a commercial relationship with Ms. Karnis prior to the dispute between the parties. The parties had an opportunity to make submissions on whether Ms. Baker was qualified to provide opinion evidence related to service dogs. I find that Ms. Baker possesses the skill, expertise and knowledge to provide an opinion on issues related to Sophie and her ability to accommodate Ms. Karnis' disability. Ms. Baker was not retained solely for the purpose of providing an independent expert opinion. This is similar to a family doctor in a therapeutic relationship providing evidence on behalf of a patient. While the witness can provide opinion evidence, a relationship pre-existed the dispute. I agree with the Applicant's submission that some of Ms. Baker's tone suggested advocacy. However, this is insufficient for me to reject Ms. Baker's evidence on these three key points:

- 1) She recommended the White German Shepherd as the best breed to accommodate Ms. Karnis' disability.
- 2) A full-grown dog of Sophie's weight was necessary to stabilize Ms. Karnis' weight when unsteady.
- 3) A full-grown dog of Sophie's height was necessary so that Ms. Karnis could easily grab Sophie's harness when unsteady.

[44] Ms. Baker's evidence is unchallenged by any competing qualified medical or service dog trainer witness.



- [45] Ms. Baker testified that potential clients undergo an interview process to qualify to obtain one of TCSD's service dogs. She stated that White German Shepherds, like Sophie, are an ideal breed for Ms. Karnis' condition as they are calm, emotionally intelligent, sensitive and loyal, and are not suited to work as police dogs because they are less aggressive than regular German Shepherds. She explained that Ms. Karnis required a dog of at least one-third of Ms. Karnis' weight and that Sophie weighs 55-60 pounds fully grown and stands twenty-five inches tall. Furthermore, she stated that Sophie was trained specifically to focus on caring for Ms. Karnis and avoiding interactions with other people. She stated that a dog of twenty-five, or even forty pounds was not suitable because of the size requirements. Additionally, she stated that the Standard Poodle breed, for example, has a fine bone density and would not be able to safely and adequately support Ms. Karnis' weight. She testified that she recommended and chose this specific breed after considering Ms. Karnis' requirements. She stated that White Shepherds have a higher intelligence than other breeds, are less social and do not break free to seek attention from others. I accept Ms. Baker's testimony.
- [46] I have considered that Ms. Baker recommended Sophie to Ms. Karnis prior to the parties' dispute, satisfying me that her recommendation was based on her skill and experience without influence of litigation advocacy. She could have recommended any breed. The Applicant argues that Ms. Baker had a vested interest in recommending this particular breed because she was only training White German Shepherds when Ms. Karnis applied for her service dog. I am not persuaded that Ms. Baker would have recommended a White German Shepherd if it was not optimal for Ms. Karnis' condition. I am satisfied that Ms. Baker's evidence carries sufficient objectivity and impartiality for me to rely on her evidence.
- [47] Ms. Baker testified that Ms. Karnis qualified to have a trained service dog in August 2021. Throughout the process, she stated that she was not contacted by YCC435.
- [48] The evidence is clear that Ms. Karnis' medical condition can result in a loss of balance and requires Sophie to help stabilize herself. Ms. Karnis' counsel argues that Ms. Baker, who has in excess of twenty years specializing in training and providing service dogs, has confirmed that a White German Sheperd is the best service animal for Ms. Karnis. He argues that this type of opinion is beyond the expertise of medical doctors. I agree.
- [49] Ms. Imer conceded in testimony that the Board did not consult with any medical or dog training/breeding experts before making its determinations. She agreed that she had no experience, training or education in service dogs for disabled persons.

## **Is Sophie dangerous and menacing?**

- [50] Ms. Imer testified that within days of Ms. Karnis' counsel's letter of January 25th, 2022, Ms. Karnis was observed in the condominium lobby with Sophie.
- [51] Ms. Karnis testified that Sophie is a calm and well-trained service dog.
- [52] Ms. Imer referred to a February 10, 2022 Facebook post by Ms. Karnis posted in a condominium resident run group where Ms. Karnis introduced Sophie and the dog's role to help manage her disability. Ms. Imer referred to a portion of the post that indicated that Sophie had not yet been fully trained. Ms. Karnis acknowledged writing the post. Additionally, Ms. Karnis testified that she printed and distributed notices to the other units on her floor about Sophie's presence. I view Ms. Karnis' actions as a transparent attempt to alert fellow residents as to why she has a dog in a "no pet" complex.
- [53] Ms. Imer testified that the board became aware that Sophie was observed leaping or jumping onto residents in the lobby. The details of these incidents, or who observed them, including the nature and frequency were not included in her evidence. Ms. Imer testified that the board also became aware of a note that Ms. Karnis wrote to another resident apologizing that her dog had "got out of the unit" and that Sophie had startled the resident. She stated that Ms. Karnis apologized in the note for her dog's "bad manners."
- [54] Ms. Imer testified that on February 15, 2022, the board became aware of an email complaint from another resident about "irritating" noises from Ms. Karnis' unit in what sounded like a steel ball bouncing on hardwood floor and rolling from a pet playing with it.
- [55] In testimony, Ms. Karnis addressed the instances referred to by Ms. Imer. Ms. Karnis testified that she brought Sophie home agreeing to abide by the remainder of the AA terms and specifically that she would not allow Sophie to unreasonably bark or cause a disturbance. She testified that she has abided by these terms. She acknowledged that two weeks after bringing Sophie home, on February 16, 2022, Sophie slipped out her door and ran down the hallway as an elderly woman was opening her door. She acknowledged that the woman was startled but she was not injured. She stated that she was able to get Sophie under control immediately. She wrote to this neighbour to apologize. She states that Sophie was a five-month-old puppy in a new home at the time this incident occurred. She described this as one instance and not reflective of Sophie's general behaviour and temperament and that Sophie continued to be trained after this incident.

- [56] Ms. Karnis also acknowledged the noise complaint and testified that the complaint was isolated to one occasion. She is not aware of any other issues with Sophie's behaviour other than the two described. She testified that Sophie has fully completed her training. Since she brought Sophie home, she has devoted hundreds of hours to Sophie's training to perform her duties and not be distracted by food, people or loud noises. She said that by May of 2022, Sophie achieved a success rate of 80-90% on behavioural first commands. As of October 2022, she described Sophie as being fully trained.
- [57] Ms. Imer testified that the board considered the German Shepherd breed to be dangerous and could inflict severe or fatal wounds on a resident if attacked. Additionally, the board considered the breed to be intimidating and/or menacing to residents given its breed or size. It was the Board's view that Sophie was a very large and intimidating dog and would cause severe harm to a person if she attacked. She stated the breed is objectionable based on its size, weight, ability to frighten or intimidate residents, and ability to cause very serious harm to a person if it attacked, especially in confined areas in the condominium. Furthermore, Ms. Imer stated that Sophie is considered by the board to be an undue hardship for the corporation and its residents.
- [58] I find that Sophie has been trained specifically to perform as a service dog for Ms. Karnis. Both Ms. Baker and Ms. Karnis describe her as a well-trained dog with a gentle disposition. I find their evidence persuasive and on a balance of probability to be reliable and true. The behaviours described by Ms. Imer do not lead to a reasonable inference that Sophie is dangerous or menacing and such a conclusion is untenable and patently unreasonable. I accept that Sophie startled a neighbour soon after Ms. Karnis brought Sophie home. I accept that another neighbour complained of noise on one occasion. I have insufficient evidence to connect either of these issues specifically to the breed or weight of the dog. I find that these two incidences occurred in the very early stages of Sophie's arrival and there is no evidence of repeated or ongoing issues. It appears that Sophie is living in reasonable harmony in the complex with the other residents.
- [59] The Applicant explained of the board's concern that Sophie could seriously injure someone on account of her size and breed. I have no expert evidence before me on what basis the White German Shepherd breed is more dangerous than other dogs of a similar size that the board would permit. But more importantly, the evidence sways me that Sophie poses minimal risk. The board focused on the breed rather than Sophie. While it is not evident to me that the board turned its collective mind and distinguished the White German Shepherd breed from the general German Shepherd breed, it is not evident that the board turned its mind to

Sophie's personality, behaviour and training apart from the breed, but focused solely on her breed. Appropriate due diligence requires the board to consider these factors. Rather, the evidence from Ms. Imer is the bald statement that it considers Sophie dangerous given her size and breed. Given that I have found that a dog of Sophie's size is required, I have been provided with no rationale why the board would not come to the same conclusion with another breed of similar size. The board cannot insulate itself from scrutiny when addressing accommodation requests without providing a cogent rationale for its position after using reasonable diligence. I have been presented with insufficient evidence that the board took reasonable steps to fully inform itself and investigate Ms. Karnis' request and specifically, whether Sophie posed an unreasonable risk.

[60] I cannot conclude that Sophie generally exhibits menacing behaviour. I accept that she has been trained for a specific purpose and objectively is not an animal that has a propensity to be unsafe anymore than any other dog would. Realistically, the extensive nature of her training should provide comfort to the board. To restrict Sophie on the basis that she is presumed dangerous, or menacing based on nothing more than her breed and size is patently unreasonable.

[61] The Applicant argues that Ms. Karnis cannot provide assurances that Sophie will not harm another person or dog. However, the Applicant also submits that any type of dog comes with risk by stating "a dog is a dog, and its good and decent behaviour cannot be assured." This argument seemingly applies to all dogs, even a Labrador Retriever or a Poodle, which the board is prepared to accept. Asking for a guarantee is an impossible burden which Ms. Karnis is not required to meet.

### **The Business Judgment Rule and the Duty to Accommodate**

[62] The Applicant relies on the business judgment rule as justification for removing Sophie. It is argued that board members are in a far better position than a court or tribunal to determine what is in the best interest of their community. It is submitted that as long as the board acts reasonably and in good faith, it should not be second guessed. Otherwise, it is submitted that the CAT runs the risk of supplanting the judgement of elected board members and managing the business affairs of the condominium. Unless patently unreasonable, it is argued that decisions of the Board should be upheld since the board is not acting judicially but rather in a policy making role. It is argued that the business judgment rule protects decisions of the board from exacting scrutiny provided they are a product of reasonable conduct of good faith judgment. It is argued that deference should be accorded to a board in enforcing its declaration and Rules where the interpretation adopted is a reasonable one and made in good faith. It is further submitted that

when extending accommodation under the *Code*, the board has latitude under the business judgment rule to attach reasonable conditions to its accommodations in the interests of the condominium and its members as a whole. It is further argued that the board does not have to offer an evidentiary basis for adopting a particular Rule.

[63] In *Hanley v. Heritage Court Kingston Ltd*, 2013 HRT0 808, The Ontario Human Rights Tribunal described both the procedural and substantive duty to accommodate:

...duty to accommodate up to the point of undue hardship consists of two elements, one is procedural and the other is substantive...The procedural element requires an individualized investigation of accommodation measures and an assessment of the applicant's needs. The substantive element requires a consideration of the accommodation offered or a respondent's reasons for not providing accommodation.

[64] In *Central Okanagan School District v. Renaud*, 1992 CanLII 81 (SCC), at para. 984, the Supreme Court of Canada noted that the duty to accommodate requires "more than mere negligible effort."

[65] YCC435 was established by the declaration as a "no pets" building and the board is required to ensure that the rules are applied, and owners and residents are required to follow the rules as set out in the declaration. A blanket prohibition against pets could be discriminatory if an owner or resident has disability-related needs and requires an animal because of those needs.

[66] The Act and its governing documents are subject to the rights accorded owners and occupants of condominium units under the *Code*. Those rights and entitlements to accommodation are not limitless or unfettered. Accommodation must reasonably meet disability needs and must not result in undue hardship to the Applicant. These are well settled principles.

[67] In part, the Applicant argues there is no basis for Sophie to remain in the unit under the *Code*. Essentially, the Applicant argues that the White German Shepherd is Ms. Karnis' preferred breed. The Applicant frames the issue as whether any other permitted breed exists other than a White German Shepherd that is reasonably capable of meeting Ms. Karnis' accommodation needs. The Applicant argues that an accepted breed such as the Labrador Retriever could accommodate Ms. Karnis'.

[68] The Applicant refers me to the Ontario Court of Appeal decision *3716724 Canada Inc. v. Carleton Condominium Corporation No. 375*, 2016 ONCA 650, in reference

to the business judgment rule. In this matter, the Respondent condominium board refused to approve changes for an owner who wanted to rent out his commercial parking spots on an hourly versus monthly basis unless the owner provided 24-hour security because trespassers could more easily enter the building. The court indicated that the jurisprudence has occasionally recognized that decisions rendered by boards of condominium corporations should be shown some deference, however the topic had not been addressed in great detail:

As representatives elected by the unit owners, the directors of these corporations are better placed to make judgments about their interests and to balance the competing interests engaged than are the courts. For instance, in this case the security concerns arose in part as a result of the condominium's location, and the Board members' knowledge of that area is clearly an advantage that they enjoy over any court subsequently reviewing their decision.

[69] The Court went on to explain:

the first question for a court reviewing a condominium board's decision is whether the directors acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If they did, then the board's balancing of the interests of a complainant under s. 135 of the Act against competing concerns should be accorded deference. The question in such circumstances is not whether a reviewing court would have reached the same decision as the board. Rather, it is whether the board reached a decision that was within a range of reasonable choices. If it did, then it cannot be said to have unfairly disregarded the interests of a complainant.

[70] Ultimately, the Court concluded the Board acted in good faith, was transparent as to the nature of its concerns, concluding that the condominium was in a high crime area and its decision was reasonable.

[71] The Applicant also referred me to the Tribunal decisions *Martis v. Peel Condominium Corporation No. 253*, 2021 ONCAT 60, and *Simcoe Condominium Corporation No. 89 v. Dominelli*, 2015 ONSC 3661), where it was found there was no evidence that the resident medically required a dog in excess of the condominium's weight restriction for pets. I find these cases of limited value as I have concluded based on Ms. Baker's evidence that Ms. Karnis requires a dog that weighs in the 60-pound range. The Applicant further refers to *Martis* and the Tribunal's finding that in extending accommodation to a resident under the *Code*, the board has latitude under the business judgment rule to attach reasonable conditions to its accommodation in the interests of the condominium and its members as a whole.

- [72] The first question I am to answer in reviewing the board's decision is whether the Board acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. There may have been an element of skepticism when Ms. Karnis first approached the board; but, I have no evidence of bad faith when the board investigated Ms. Karnis' need for a service animal. However, I conclude that the board did not exercise the care, diligence and skill that a reasonable board would exercise in comparable circumstances before rejecting Sophie.
- [73] Unlike in *3716724 Canada Inc. v. Carleton Condominium Corporation No. 375*, a commercial matter where an owner desired the board to amend its Rules so that the owner could use parking spots more profitably, Ms. Karnis' has requested accommodation in accordance with the *Code* based on the principles of dignity, individualization, integration and full participation. The extent to which the board is required to exercise its care, diligence and skill needs to reflect the importance of these principles. Accommodation is necessary to ensure that people with disabilities have equal opportunities. Responding to and investigating Ms. Karnis' request to reside in the condominium complex safely requires a degree of due diligence and skill that reflects the weighty nature of this request. Generally, the more at stake requires a higher level of due diligence and skill by the board.
- [74] The nature of Ms. Karnis' request is individual to her. Her request was straightforward: She asked to house a White German Shepperd who weighs approximately 60 pounds and had been trained specifically for her condition. When balancing the needs of the condominium with that of Ms. Karnis, the board must weigh all relevant factors. It has a positive duty to seek out and consider relevant information. Ms. Karnis asked if it was possible to meet with the board to discuss her request. This was denied. The board did not take the opportunity to explore the White German Shepherd breed with Ms. Baker or why Ms. Baker recommended Sophie. Ms. Imer provided testimony that suggests the board took insufficient steps to investigate if Sophie posed a real danger. I find that the board took only negligible steps.
- [75] The board was aware by at least January 8<sup>th</sup>, 2022, that Ms. Karnis had been made to pay large amounts of money monthly for the dog's maintenance and training. When balancing the needs of Ms. Karnis and the condominium, it had an obligation to exercise a higher level of diligence.
- [76] YCC435's rationale for rejecting Sophie is essentially the following:
- The Board considers the breed dangerous

- It considers Sophie menacing and dangerous and capable of causing serious harm if Sophie attacked someone
- It considers Sophie a preference and that other less dangerous dogs are capable of meeting Ms. Karnis needs.

[77] I find the board failed to reasonably investigate and consider Ms. Karnis's individualized request to house Sophie and whether doing so would cause undue hardship.

[78] Respondent's counsel argues that a new service dog would take years to obtain and come at a significant cost given that \$15,000 was spent on training Sophie. While it is not exactly clear how long the delay would be, I agree that the delay would be significant and come at considerable cost.

[79] Given the lack of diligence and given that Sophie poses minimal threat, I do consider it patently unreasonable to order her removal.

[80] Human rights case law makes it clear that the purpose of the *Code* is to accommodate a person's needs, not their preferences. Based on Ms. Baker's testimony, I find that a dog weighing approximately 60 pounds is a need. Also based on her testimony that the White German Shepherd breed is the recommended and best breed for Ms. Karnis' condition, I find that this breed is also a need. Ms. Baker provided persuasive rationale why the White German Shepherd breed was superior to the Poodle and Labrador Retriever breeds, two breeds that the Applicant argued could have accommodated Ms. Karnis.

### **Undue Hardship**

[81] The Applicant has a duty to accommodate, unless it would result in undue hardship. Section 17(2) of the *Code* places the onus on the Applicant to show that accommodation would cause undue hardship.

[82] The Applicant refers me again to the business judgment rule. The Applicant argues that the board's opinion on what is an undue hardship should be given substantial weight.

[83] While the Applicant has argued undue hardship, no evidence or persuasive argument has been put forth to substantiate undue hardship. There is no evidence that Sophie's presence creates a financial/cost hardship, requires outside sources of funding or requires any health and safety requirements. I accept that some residents may be leery or even afraid of dogs generally, and perhaps more so with large dogs. I appreciate that some residents may have decided to live at this



condominium because of its” no pets” status. I find that that these considerations in of themselves do not rise to undue hardship.

### **Remedy Requested**

[84] YCC435 asks that Sophie be removed. If I find that Sophie is not to be removed, the Applicant alternatively requests that the Respondent enter into the AA consistent with the version supplied on January 28, 2022, modified to provide for a White German Shepherd dog weighing 60 pounds. Ms. Karnis’ counsel submitted that his client is willing to negotiate an AA but submits that only if the parties come to an impasse in this negotiation, should the CAT become involved in the dispute. This, of course, would require a new Application.

[85] I do not order the parties to enter into an AA. It shall not be a condition of accommodation. However, I encourage the parties to be considerate and cooperative. Ms. Karnis’ counsel has stated she is willing to enter into an AA. I expect that if the Applicant makes reasonable requests, she will endeavour to cooperate, as she has been doing. Regardless of whether the parties enter into an AA, I order that Sophie shall, at all times while on the common elements, wear a service animal vest to help ensure that other residents are aware of the reason for the exemption allowing her to reside in the condominium.

### **Costs**

[86] The Tribunal’s Rule 48.1 provides:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT member makes a final Decision, the unsuccessful Party will be required to pay the successful Party’s CAT fees unless the CAT member decides otherwise.

[87] The Applicant was not successful in obtaining the order it desired, so it is not entitled to its incurred fees of this application.

[88] Both Parties requested costs.

[89] Rule 48.2, provides:

The CAT generally will not order one Party to reimburse another Party for legal fees or disbursements (“costs”) incurred in the course of the proceeding. However, where appropriate, the CAT may order a Party to pay to another Party all or part of their costs, including costs that were directly related to a Party’s behavior that was unreasonable, undertaken for an improper purpose, or that caused a delay or additional expense.

[90] I find that none of the parties' behaviour during the course of the hearing was unreasonable, undertaken for an improper purpose, and did not cause any delay or additional expense. I award no costs.

[91] Costs for the period before the Application was filed may be awarded where the declaration and/or rules provide for indemnification of such costs. The declaration in this case includes a general indemnification provision. The Applicant seeks those costs; however, given I have found that Sophie can remain, I award no indemnification costs.

**D. ORDER**

[92] The Tribunal orders:

1. Ms. Karnis may keep Sophie with her on the condominium property as a manner of accommodation in relation to her disability.
2. Ms. Karnis shall ensure Sophie shall at all times wears a service animal vest while on the condominium's common elements.

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Stephen Roth  
Member, Condominium Authority Tribunal

Released on: November 28, 2023