

YOU THOUGHT YOU BOUGHT A HEALTHY PET, WHICH TURNED OUT TO BE A LEMON

Breeders and pet stores will give a guarantee that they are selling a “healthy” pet. Obviously, pets are like humans, and we are all subject to age and deteriorating health the longer we might live, so this cannot be taken as a promise of perpetual good health. But what can the new owner do when he or she discovers in the first few days that the pet is not healthy and has severe health issues? Is it buyer beware or is there some obligation to live up to such a promise that the pet was in fact “healthy” when sold?

There is currently no law in Colorado establishing the guidelines for determining the amount a new pet owner can recover for medical expenses incurred after purchasing a sick pet or livestock. However, Colorado pet owners are not left without any recourse. The argument could be made that the seller breached an express or implied warranty to provide a healthy animal. Colorado Revised Statutes §4-2-313(1)(a) provides that any express warranty by the seller to the buyer relating to the goods—and animals are considered goods—must conform to the affirmation or promise. This warranty is meant to determine what the seller has agreed to sell. Additionally, C.R.S. §4-2-314(2) requires that the goods pass under the contract description. If evidence can be presented that shows the health problems existed at the time of sale, an argument could be made for a breach of the implied warranty of merchantability because the animal was not “of fair average quality within the description.” Obviously, if no such promise was made or if all promises were disclaimed in the purchase agreement documents, the buyer may have a harder row to hoe.

Seventeen other states have “pet lemon laws,” which provide coverage for contagious or infectious diseases for ten to twenty days after purchase and coverage for congenital or hereditary defects for up to one year. Additionally, many of these states permit reimbursement of reasonable veterinary bills. California permits recovery of veterinary bills up to one and one-half times the purchase price



of the pet; other states permit recovery of veterinary bills up to the cost of the pet. However, some states do not allow recovery of veterinary expenses at all. Many of these states also limit coverage under their “pet lemon law” to commercial establishments, thereby eliminating the right to recover from individual breeders or private party sales. Colorado does not have a “pet lemon law” specifically defining how damages should be awarded, so the arguments could go either way depending upon the court’s view of general contract law principles.

There is no state that currently permits recovery of all veterinary expenses and a refund of the cost of the pet, so it is unlikely that a purchaser would recover the full amount she is out of pocket. How these arguments would hold up for livestock, such as horse sales, is the basis for another article. **H**

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