

## Handicap Discrimination Under The Fair Housing Act

A recent federal court case in Pennsylvania illustrates some of the issues that may arise in a handicap discrimination claim under the Fair Housing Act.

In *Congdon v. Strine*, the court was faced with a handicapped resident who lived on the fourth floor of an apartment building. She could only reach her residence by use of a stairway or an elevator. The woman lived there for approximately ten years and had been on a month-to-month tenancy for over nine years. The resident suffered from a number of debilitating diseases. Since 1992 she had been confined to a wheelchair.

The elevator in the apartment building experienced recurring breakdowns. It was alleged the mechanical problems caused the resident to use the stairs. This increased physical activity resulted in additional physical problems.

The resident filed a complaint with the U.S. Department of Housing and Urban Development. She alleged a violation of the Fair Housing Act. Shortly thereafter, the landlord sent her a 30-day notice informing her that he would not renew the month-to-month tenancy agreement.

Even though the resident failed to vacate the premises, the landlord did not take further action to evict her. Moreover, the landlord even offered the woman a ground floor apartment at the community or an apartment in another building owned and operated by the landlord. The resident rejected both offers.

The first issue the court examined was whether there can be a violation of the Fair Housing Act when there is no actual denial of housing. The resident had continued to reside in the apartment, but she claimed the threatened eviction and refusal to provide reasonable accommodations violated the Fair Housing Act.

The court did not agree that the threat of an eviction can be equated to the denial of housing. Also, it did not believe that the failure to satisfactorily repair the elevator, provide a new elevator or offer another apartment acceptable to the resident constituted a denial of housing.

The court went on to consider whether the landlord violated the provision of services under the Fair Housing Act. Essentially, the resident claimed the landlord had discriminated against her by providing unreliable elevator service, which caused more hardship for a handicapped resident than it did to non-handicapped tenants.

The court said in order to make a case under the Fair Housing Act, it must be shown that the landlord's actions constituted either a discriminatory treatment or effect.

As for the discriminatory treatment allegation, the resident had to establish that the elevator maintenance policies were done with the intent to discriminate against the handicapped resident. The plaintiff could not prove such a motive.

Regarding discriminatory treatment, the resident had to establish that the elevator maintenance had a discriminatory effect on her. The court agreed that the elevator breakdowns affected the

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handicapped resident to a greater degree than the non-handicapped tenants due to her difficulty in utilizing the stairs as an alternative to reach her apartment.

But the court then said the landlord had an elevator maintenance contract and there was no evidence to support the allegation he kept the elevator in a state of disrepair solely because of the disability of the resident. The court added it did not benefit the landlord by perpetuating faulty elevator service. Finally, the court felt it could not compel the landlord to repair the elevator so that it always worked properly. Nor could it order him to replace the existing elevator with a new one or provide her another apartment to her liking.

The final factor the court reviewed was whether the landlord violated the Fair Housing Act by failing to provide reasonable accommodations. The court cited another decision, which defined a reasonable accommodation in the following manner: "...changing some rule that is generally applicable to everyone so as to make its burden less onerous on the handicapped individual.

In this case, the handicapped resident claimed that reasonable accommodations were not provided because the landlord (1) failed to keep the elevator in good working condition, (2) did not replace the elevator, or (3) offer the handicapped resident an apartment to her liking..

The landlord, in turn, argued he had made reasonable accommodations. He produced an elevator maintenance contract and said he offered the woman a first-floor apartment in the same building or an apartment in another building that contained two elevators. The landlord further argued that requiring him to install a new \$70,000 elevator was an undue financial burden and would not be a reasonable accommodation for a month-to-month resident. The court agreed with the landlord's position and found that there was no violation of the reasonable accommodation requirements of the Fair Housing Act.

This case illustrates a number of principles that must be considered in connection with any fair housing claim brought by a handicapped resident. However, it must be emphasized that the conclusion that there was violation of the Fair Housing Act in this case was in the absence of any punitive action taken by the landlord. It can only be speculated that had the landlord taken action to evict the handicapped resident in this case based upon a 30-day notice to terminate, a different conclusion could have been reached by the court. It is recommended that in all such instances involving handicapped residents when any allegations of this sort have been made, that a close analysis be made of all the facts and circumstances surrounding the matter before any punitive action is taken.

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