

Court Clarifies "Drug-Related" Renter

A recent U.S. Court of Appeals decision clarifies, somewhat, the rationale under which a landlord can deny tenancy or take immediate action to terminate a rental agreement for "drug-related activity."

In United States of America v. Southern Management Corp., the Virginia Community Service Board operated a substance abuse program. When *Southern Management* refused to rent an apartment to the board for one of its clients, the federal Justice Department sued the management firm. The government alleged *Southern* violated the Fair Housing Act by discriminating against a handicapped person.

A lower court earlier ruled that the substance abuse program's clients were handicapped individuals. The jury in that trial awarded the board a total of \$86,280 in compensatory and punitive damages. It further enjoined *Southern Management* from discriminating against handicapped persons.

On appeal to the higher court, the justices reaffirmed that the Fair Housing Act's definition of handicapped individuals includes "recovery addicts" and other former drug users who remain drug-free for at least one year.

This definition, said the court, included clients of the board, who 1) have a physical or mental impairment that substantially limits a major life activity and 2) a record of such an impairment or regarded as having such an impairment.

The appeals court relied on an expanded interpretation of a U.S. Supreme Court decision, which dealt with "limitation on major life activities." The appellate judges ruled that the existence and severity of a prospective renter's functional limitations should not preclude his or her residency.

Moreover, continued the judges, *Southern Management* refused to rent based on the prospective resident's status as a substance abuser and the perception that they would be undesirable tenants.

Buttressing its argument was the Americans with Disabilities Act, which amended the Rehabilitation Act of 1973 "to clarify that current users of illegal drugs would not be covered," but it would not exclude one who "has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or ... is participating in a supervised rehabilitation program and is no longer engaging in such use."

Consequently, participation in a drug rehabilitation program, along with the supposed non-use of illegal drugs, would include the individual under the definition of a handicapped person.

The court concluded, "Congress intended to recognize that addiction is a disease...and that an individual who makes the effort to recover should not be subject to housing discrimination based on society's accumulated fears and prejudice associated with drug addiction."

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Therefore, a determination as to one's status as a former convicted drug abuser will not automatically mean the landlord may reject the application for residency.

In this situation, it is justified for the landlord to inquire further into the applicant's background to determine if the individual is a "handicapped" individual.

What *Southern Management* did wrong, according to the courts, was to merely take an overall or blanket approach to deny residency for all persons who are former convicted drug abusers.

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