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Fair Housing Newsletter

Keeping you current on fair housing news and issues

LAW OFFICE OF
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$635,000 Judgement for Denial of Companion Animal

A federal judge in Nevada has awarded a homeowner $635,000 in compensatory and punitive damages against a Homeowner Association after it denied the homeowner access to the HOA clubhouse with her support animal.

This case involves three incidents between 2009 and 2011, during which the homeowner attempted to enter the HOA clubhouse with the her service animal, a Chihuahua named Angel. On each of these three occasions, the homeowner was denied access to the clubhouse while accompanied by Angel. The homeowner and her husband sued alleging violations of the Fair Housing Act.

The questions for the Court were: (1) whether the HOA clubhouse was a place of public accommodation under the Americans with Disabilities Act, and (2) whether the homeowners requested, and were ultimately refused, a reasonable accommodation under the FHA.

The Court held the clubhouse was not a place of public accommodation under the ADA. The Court found that the entire community including the clubhouse was a private establishment. Although members of the public were invited to stay overnight in a model home and were permitted to use the clubhouse during their stay, the general public did not have unrestricted, general or even limited access to the clubhouse. Members of the community could only access entry by use of a transponder to open the gates.

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Note From the Editor: Spring arrives on March 20. Time for spring cleaning. Wondering how long you should keep those resident documents? Give me a call!

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Non-resident access to the community, including the clubhouse, required either obtaining permission for limited access from the community office, being escorted by a member of the community, or being provided access by a member of the community. For those members of the public that participated in the "Stay and Play" and "Taste of the Good Life" programs where they stayed in model homes, there was a condition imposed on their stay — those guests had to explicitly indicate an interest in purchasing a home within the community prior to staying in the model home and obtaining access to the clubhouse. The homes used for these programs, and the clubhouse access provided with the programs, were not open to the public as they would be for a hotel. Thus they are not considered to be a place of public accommodation under the ADA.

Next, the Court found that Angel qualified as a service animal under the Fair Housing Act, and Angel's entry into the clubhouse was a reasonable accommodation for the homeowner. Angel assisted the homeowner with her acute pain attacks and with retrieving her walker. The Court found that the HOA Board members understood and knew that Angel provided these services. The HOA Board members also knew that Angel did not pose a risk or threat of harm to anyone in the clubhouse or in the community.

In this case, there was a clear nexus between the homeowner's disability and the services Angel provided. The homeowner's disability involved difficulty walking and acute and debilitating pain attacks. Angel was trained and offered assistance with both of these aspects of her disability. Angel assisted the homeowner with the alleviation of pain during an acute attack. Angel assisted the homeowner with having constant and easy access to her walker since she is unable to walk without her walker.

The Court found in favor of the homeowners. The Court awarded $350,000 in compensatory damages for pain and suffering, humiliation, and emotional distress due to being driven out of their home, facing death threats and harassment from community members, being undermined publicly and privately by the HOA Board, having to file bankruptcy, and being unable to use and enjoy the clubhouse facilities with Angel for several years. The Court also awarded the homeowners $285,000 in punitive damages and an amount for attorneys' fees to be determined.

Lesson Learned: While support animals cases may be settling for $8,000 to $10,000, the cost of going to court will be much higher. Not only can a judge or jury award extraordinary amounts, the cost of attorneys fees may exceed $500,000 once you pay the cost of defense and the Plaintiff's attorney fees if you lose.

HOUSING CROSSROADS
WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

Making the Right Choice-
A Review of Your Selection Criteria

Wednesday, March 27, 2019

10:00 am to 11:30 am Central

Landlords know that doing the work on the front end saves you time and money on the back end, especially when it comes to the selection of residents. However, in today's legal environment, landlords are under more scrutiny than ever. Every question you ask may have fair housing implications. Knowing what to ask is vital. In this webinar, we will discuss the most common criteria landlords are using to make resident selection decisions. Our discussion will include:

- Income
- Employment
- Criminal Background
- Marital Status
- Children in Household
- Former Landlord References

$34.99
Register

Housing Crossroads webinars give participants a realistic view of issues facing landlords today and how the issues can run afoul of landlord tenant and fair housing laws.

Nathan Lybarger
Law Office of Hall & Associates

Speakers

Angelita Fisher
Law Office of Angelita E. Fisher

HUD Cuts Notice for Inspections to 14 Days

The U.S. Department of Housing and Urban Development announced it is reducing the advance notice it intends to provide to public housing authorities and private owners of HUD-subsidized apartment developments before their housing is inspected to ensure it is decent, safe and healthy. HUD's new standard provides PHAs and private owners of HUD-assisted housing 14 calendar days' notice before an inspection. This is a significant reduction from the past when it provided notice up to four months before an inspection.

The reduction is designed to encourage year-round maintenance instead of 'just-in-time' repairs to properties. According to the HUD news release, "It's become painfully clear to us that too many public housing authorities and private landlords whom we contract with were using the weeks before their inspection to make quick fixes, essentially gaming the system," said HUD Secretary Ben Carson. "The action we take today is part of a broader review of our inspections so we can be true to the promise of providing housing that's decent, safe and healthy to the millions of families we serve."

The time change will begin 30 days after publication of the notice which was announced on February 20, 2019. After that time, HUD employees and contract inspectors acting on behalf of HUD shall provide property owners and their agents 14 calendar days of notice prior to their inspection. If an owner/agent declines, cancels or refuses entry for an inspection, a presumptive score of "0" (zero) will be recorded. If the second attempt results in a successful inspection within seven calendar days, the resulting score will be recorded.

DOJ Files Lawsuit Alleging Disability-Based Discrimination Against Texas Landlord

The U.S. Department of Justice has filed a federal civil rights lawsuit against the owners of an apartment complex located in Galveston, Texas, as well as a licensed engineer whose primary place of business is Texas City, Texas. The lawsuit alleges that owners and engineer failed to design and construct an eight-building addition and associated rental office at the apartment complex, to make them accessible to persons with disabilities in compliance with the Fair Housing Act's accessibility requirements and the Americans with Disabilities Act.

The suit, alleges that the apartment complex addition and rental office, designed and built by the owners and engineer, have significant accessibility barriers that inhibit access to the 24 ground-floor units and the associated public and common-use areas at the property. Those barriers include: multiple steps on walkways throughout the property; multiple steps leading to ground-floor unit entrances; barriers at property amenities such as the mail centers, the pool, the rent drop box at the rental office, and the trash dumpster; inaccessible parking, bathrooms, kitchens, thermostats and electrical outlets; and door knobs at all unit entrances that make those entrances inaccessible to many people with disabilities.

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DOJ Lawsuit: Continued from Page 3

The lawsuit began when a former disabled resident filed a complaint alleging she had to move because she could not get from her apartment to the parking area unassisted. The lawsuit seeks a court order prohibiting the owners and engineer from designing or constructing future residential properties in a manner that discriminates against persons with disabilities. The lawsuit also seeks an order requiring the owners to bring the apartment complex into compliance with the FHA and the ADA, as well as monetary damages for persons harmed by the lack of accessibility.

Fair Housing Webinar

Understanding VAWA

Wednesday, April 10, 2019
10:00 a.m. - 11:00 a.m. Central

$24.99

Domestic violence is an issue almost every landlord has been forced to face. Can you evict? Do you need to get involved at all? Why is the resident looking to you for help?

Whether you're a federally funded property, a tax credit property, or accept a Section 8 voucher, you must comply with the Violence Against Women Act. Every landlord should know the rules on when the Act applies, transfers, documentation, and liability. In this webinar, we will discuss:

- Recognizing when the VAWA May or May Not Apply
- Sorting out the Paperwork
- Requesting Documentation
- Transfers
- Liability
- Recent Cases

Register Now

Did You Know?

The majority of those who report domestic abuse are women.

Court Dismisses Fair Housing Lawsuit Based on Criminal Records

An Ohio Federal Judge has dismissed an Applicant's fair housing lawsuit against an apartment complex alleging it discriminated against him based on his disability and race when it denied his application citing a past felony criminal record.

The Applicant in this case alleged he filed two applications with the apartment complex and was turned down each time. He alleges he was informed that his application was denied on the basis of his prior felony conviction, credit report, past evictions and inaccurate or misleading information on his application. He appealed the denial of those applications and provided evidence to support his claim that he was not evicted. The decisions, however, were upheld on the basis of the felony conviction. The Applicant filed a lawsuit alleging fair housing violations.

The Applicant believed the apartment complex engaged in discriminatory housing practices, including refusal to rent, discrimination in rental terms and refusal to make reasonable accommodations in rules, policies and practices, in violation of the Fair Housing Act. He further alleged he has a disability which substantially impairs major life functions, but he did not elaborate on what his disability is. It appeared he may have been suggesting his prior conviction is a disability. He contends the apartment complex failed to make a reasonable accommodation in their rules and policies to allow him to rent from them, again in violation of the Fair Housing Act. This denial has caused him to remain in a state of homelessness in violation of the Due Process Clause of the United States and violates the Eighth Amendment.

The apartment complex asked the court to dismiss the case and the court granted their request. The Court held that the apartment complex did not deny the Applicant's housing applications on the basis of race, color, religion, gender, familial status, national origin or disability. As stated in the complaint, the apartment complex denied the applications because the Applicant had been convicted of a second degree felony. Having a felony criminal record is not a characteristic protected by the FHA and it does not qualify as a disability. He failed to state a claim for relief under the FHA.

Caution: Some state and municipal laws limit the number and kind of felonies a landlord may consider. Additionally, HUD guidance outlines a claim of disparate impact discrimination in cases where landlords have a blanket no-felony policy.

Key to the Gate May be a Reasonable Accommodation

A New Jersey Federal Judge has refused to dismiss a complaint filed by two residents alleging they should have been allowed a key to an emergency gate as an accommodation. If not settled, a jury will decide.

The residents in this case are two Orthodox Jews who are amputees and use wheelchairs. Because of their religious beliefs, they cannot use automobiles on the Sabbath or on Holy Days. The residents wanted to visit close family relatives and attend prayer meetings on these days.

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Key: Continued from Page 6.

However, both a grassy plot of land and a fence with a gate separates their housing development from the road on which the temple is located and where their relatives live. This makes the most direct route inaccessible to the residents. Therefore, they must travel the long way around the property, which is more than a mile "over dangerous and difficult roads that contain heavy, fast moving traffic and without sidewalks for long stretches" If a wheelchair-accessible path were constructed and the gate unlocked, the residents could reach their desired locations in 0.3 miles.

The residents asked the HOA Board to provide a Sabbath-usable key to the gate and to install a wheelchair-suitable path. The Board refused, stating that the "gate in question was never intended to be a regular access point in this gated community," and "it [is] not in the best interests of the community as a whole, and the residents whose homes are adjacent to this access gate, to create a public pedestrian entrance to the community behind that area." The residents repeated their request, and were told "[T]he site plan for the community indicates . . . (a) [that] the gate is an access point for construction and other emergency vehicles, (b) that the area between the gate and [Plaintiffs' street] contains an easement for emergency vehicles, (c) that the location was not "intended" for "regular vehicular traffic or pedestrian traffic," and (d) that the Association "does not intend" to open the emergency access to general access for the community.

The residents filed a lawsuit alleging that the HOA violated the Fair Housing Act. The complaint alleged: (1) the HOA refused to construct a path, and (2) the HOA refused to provide a key to a gate to allow the residents easy egress from one community to another as an accommodation.

The first allegation was dismissed. The residents did not allege that the HOA refused to permit them to construct a wheelchair-accessible path. Rather, it alleged that the HOA refused to construct the path themselves. Because the FHA does not impose liability for a failure to construct a modification, but only for refusal to permit a resident to construct one, the Complaint fails to state a claim under this allegation.

However, the gate key allegation was not dismissed. Unlike construction of a path, providing a key would not require serious physical changes to the premises and thus is best described as an accommodation in the HOA "rules, policies, practices, or services." The cost, if any is paid by the landlord unless the cost is unreasonable. The Complaint therefore successfully states a claim based on the HOA's refusal to provide a key. A jury will decide - unless the parties agree to settle.

Rhode Island Non-Profit Releases Report on Voucher Discrimination

SouthCoast Fair Housing, a non-profit organization, has released a report entitled "It's About the Voucher: Source of Income Discrimination in Rhode Island." Research for the report focused on participants in the Housing Choice Voucher Program. According to the report, in Rhode Island, the voucher program makes 34 percent of rental options affordable to recipients. But, income-based discrimination against voucher recipients reduces their options to seven percent of houses on the market.

Voucher Discrimination: Continued on Page 8.

Voucher Discrimination: Continued from Page 7.

SCFH began conducting research on income-based discrimination in February, 2018, and then continued their research in November, 2018, by investigating five online rental advertisements. They looked for evidence of discrimination and then conducted phone calls to housing providers selected from the online sample. The team found that 34 percent of houses available for rent across five websites "should have been affordable to a tenant with a voucher." But "more than six percent explicitly discouraged applications from voucher recipients, usually with statements like 'no government programs' or 'I don't take vouchers of any type.'"

SCFH then conducted a phone audit because they suspected that the remaining 27 percent availability of houses still "likely didn't tell the entire story." After following up on these listings — which, from their online advertisements, appeared to be affordable and free of discriminatory language or standards — the team found that 63 percent of those landlords refused to accept an application from a tenant with a voucher. "[W]hat those combined numbers mean is that of all those original listings we observed online, a Rhode Island tenant (with a voucher) will ultimately be shut out of 93 percent of units," according to the report.

While Rhode Island law and federal law do not currently prevent landlords from discriminating on the basis of income, this type of discrimination could result in a disparate impact on women and families with children

DOJ Files Sexual Harassment Lawsuit Against Connecticut Landlords

The U.S. Department of Justice and the U.S. Attorney's Office have filed a lawsuit in the District of Connecticut alleging that female tenants and applicants of residential rental properties in and around New London, Connecticut, were subjected to sexual harassment, coercion, intimidation and threats, in violation of the Fair Housing Act.

The lawsuit alleges that from at least 2011 through 2016, an owner sexually harassed female tenants and applicants of rental properties. The owner was also the property manager employed by a company he owned with his ex-wife. According to the complaint, the owner engaged in harassment that included making unwelcome sexual advances and comments; engaging in unwanted sexual touching; demanding or pressuring female applicants to engage in sexual acts to obtain rental privileges; evicting or threatening to evict female tenants who objected to or refused sexual advances; entering the homes of female tenants without their consent; asking to take and taking pictures and videos of the bodies of his tenants and their female children; and establishing, maintaining and forcing his tenants and their minor female children to view "dungeons" or "sex rooms" in the rental properties.

The owner has been incarcerated at the Federal Correctional Institute at Otisville since 2017. On May 8, 2017, he pleaded guilty and was sentenced on Sept. 28, 2017, to 16 years in federal prison in the United States District Court for the District of Connecticut for producing child pornography in one of the properties owned by the company he and his ex-wife owned, with one of the minors who resided in one of properties also owned by the company.