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Second Circuit Revives Fair Housing Disability Bias Suit

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In a very significant move, earlier this week the U.S. Court of Appeals for the Second Circuit (the "Second Circuit") reinstated a Fair Housing Act ("FHA") lawsuit and held that there was sufficient evidence to defeat summary judgment in a case of a couple who was allegedly denied a lease renewal based on the disability of their 11-year-old daughter, A.R.

By way of brief background, in 2010 Heidi and Juan Rodriguez were informed that their rental home in Saugerties, New York, owned by Donnie Morelli ("Morelli") was being sold. Village Green Realty, and its agent, Blanca Aponte ("Aponte"), informed the family that the prospective buyer was willing to continue renting to them, but at an increased rate. On multiple occasions between January 2, 2011, and February 4, 2011, Aponte attempted to reach the family to see if they would accept the new terms of the lease agreement (and the increase in rent) or if they would be vacating the premises by March 15th. However, Aponte was unsuccessful in connecting with the Rodriguez family and the sale of the property continued to progress.

On February 6, 2011, A.R. suffered two grand mal seizures and the Rodriguez family telephoned Morelli from the hospital telling him that now was "not the time" to be negotiating their new lease. Aponte responded and stated that she "would be proceeding with legal action to remove you [the Rodriguez family] from the premises.". In response, Rodriguez then texted that the road to the house was poorly maintained and icy and it could be difficult to get an ambulance to the house if one was needed for A.R. Aponte replied that the new owner "is very concerned with [your child's] medical situation and will probably not want to rent to you. I think we need to let you know that we will not be renting to you." Aponte also asked for documentation that A.R. was sick and said the new owner thought that Heidi's comment about ambulance access was a "major concern as to liability."

A few months later, the Rodriguez family vacated the premises and sued for violations of the FHA, a federal law that prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, national origin, religion, sex, disability or familial status. see Rodriguez *v. Village Green Realty*, 13-4792-cv. U.S. District Judge Thomas McAvoy granted summary judgment for the real estate agency on the grounds that there was insufficient evidence about A.R.'s alleged disability as defined by the FHA. The family then appealed to the Second Circuit and oral arguments were heard by Judges Debra Ann Livingston, Christopher Droney, and Alison Nathan.

The three-judge panel unanimously reversed on Tuesday and in doing so further elucidated the law on disability discrimination under the FHA. Specifically, the court found that obtaining housing is a "major life activity" and

that the FHA's ban on discriminatory statements based on an individual's disability can be violated even if the person does not technically qualify as a handicapped person under the FHA. In other words, the Second Circuit found that the family had presented enough evidence to create a genuine dispute as to whether the A.R. was "substantially limited" in her ability to learn. Notably, the court found that "[t]he ability to obtain shelter is among the basic of human needs and this is a 'major life activity' for purposes of the FHA." Therefore, A.R.'s "impairment made her an undesirable tenant, restricted in her ability to obtain housing because property owners would not wish to rent to her."

Finally, the Second Circuit stated that the lower court erred in concluding that, under §3604 of the statute, "an ordinary listener" could not have understood Aponte's statements to indicate a preference based on disability. The court stated that "it is not determinative that the individual being addressed is or is not disabled under the FHA. What matters is whether the ordinary listener would understand the statements as considering her as such and expressing discrimination or a preference on that basis."

In sum, the Second Circuit's holding, in this case, has the potential to broaden the scope of FHA liability. Landlords, developers, businesses, financial institutions, and housing officials must keep a close eye on the course of this case, as it has the ability to have practical as well as legal implications.

If you or your institution has any questions or concerns regarding related issues, please contact Hayley B. Dryer at hdryer@cullenanddykman.com or at 516-357-3745.

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