



THE PLOT THICKENS

You may be required to accommodate financial circumstances of disabled residents.

THE FAIR HOUSING Act requires owners to make reasonable accommodations when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

On June 29, the United States District Court for the Eastern District of Pennsylvania denied a motion for summary judgment filed by an owner in a Fair Housing case. The court's decision pertains to the issue of whether an owner is required to change a due date for a resident that receives Social Security Disability Insurance (SSDI) after the first of the month. The decision sheds some light on how owners should react to this relatively common request from residents.

The case and opinion below came from a federal court in Pennsylvania and may or may not be followed by a Texas court, but the law discussed (the federal Fair Housing Act) applies in Texas.

This situation comes up frequently. By understanding the analysis of this court, you may be able to make better business decisions when determining whether to grant similar accommodations.

The Facts

The Fair Housing Rights Center in South-eastern Pennsylvania (FHRC) is a non-profit agency that works to ensure persons with disabilities are provided equal access to housing opportunities. MPMC is a management company that manages over 35,000 rental units in the Northeast, including three properties in the Philadelphia area.

In 2012, FHRC received a complaint from a disabled person who lived at one of MPMC's properties. The complainant was unable to work because of his disability and therefore relied on SSDI to pay his rent. The property's requirement was that all residents had to pay rent on the first day of every month. This was a

problem for the complainant because he did not receive his SSDI check until later in the month.

FHRC Investigation

FHRC opened an investigation into MPMC's business practices to determine if SSDI recipients were being refused reasonable accommodations.

As part of its investigation, FHRC sent testers to four MPMC properties. The testers' job was to contact employees at the respective properties to inquire about the company's policies for adjusting monthly rental due dates for SSDI recipients. Each tester was informed that it was the company's policy not to make an adjustment to the day of the month on which rent was due regardless of disability.

The FHRC investigation revealed that a number of residents were allowed to pay rent after the fifth of the month, however, the company indicated that this was not its policy and these residents were granted this accommodation by mistake. On at least one occasion, a resident's request that her rent due date be changed and late fees be waived because she receives SSDI benefits on the third Wednesday of the month was denied. That resident's request was denied because the request was one for an accommodation relating to a financial need rather than a disability-related need.

The Suit

FHRC brought suit against MPMC and affiliated properties arguing that the company's policy of refusing to permanently adjust the rental due date for SSDI recipients violates the Fair Housing Act.

The Court's Analysis

Burden to show request is reasonable. To determine whether an accommodation is

The Fair Housing Act requires owners to make **reasonable accommodations** when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

"reasonable," the court stated that the person bringing the suit bears the initial burden of showing that the requested accommodation is necessary to afford a handicapped person an equal opportunity to use and enjoy a dwelling. If the complainant carries this initial burden, the burden then shifts to the housing provider to show that the requested accommodation is unreasonable.

The complainant in a reasonable accommodations case must establish a nexus between the requested accommodation and the necessity for providing a handicapped individual an equal opportunity to use and enjoy housing. This may be accomplished by showing that, but for the accommodation, the complainant would likely be denied an equal opportunity to enjoy the housing of their choice.

A request for financial accommodations. MPMC argued that the requested accommodation was not required under the Fair Housing Act because it is meant to accommodate a SSDI recipient's financial hardship rather than actual disabilities. The complainant responded by stating that courts have held that financial circumstances resulting from a disability are relevant to the determination of what is a necessary accommodation.

In a previous ruling, the court held that the Fair Housing Act does not permit consideration of a disabled person's financial circumstances in determining whether a reasonable accommodation is required. However, the court cited cases in which financial circumstances of the requesting party were consid-

ered in determining whether a reasonable accommodation is required.

In one case, the plaintiff became disabled and was unable to work after contracting the AIDS virus, and he began to receive SSDI benefits and housing opportunities for people with AIDS. The plaintiff applied to rent an apartment but was told he had insufficient income. The plaintiff offered to have his mother co-sign the lease and thus meet the income-to-rent requirement, but the housing provider had a policy against permitting co-signers and rejected the plaintiff's application. The plaintiff requested the co-signer policy be waived as a reasonable accommodation because he was disabled and unable to support himself. The housing provider cited its policy and denied the accommodation. The housing provider argued that permitting such an accommodation would show preferential treatment to disabled persons, it would show that the housing provider accommodated the person's poverty and financial situation, and create an unreasonable financial exposure for the housing provider.

The court rejected these arguments as running afoul of binding case law clarifying the "accommodation" concept in the Fair Housing Act. The court held that the co-signer

waiver accommodation was required because an imposition of burdensome policies, including financial policies, can interfere with disabled persons' right to use and enjoyment of their dwellings. The court found that the casual nexus between the apartment building's policy and the plaintiff's disability to be "obvious." The court stated that the plaintiff was unemployed because of his disability and therefore had insufficient income to qualify for the apartment but the plaintiff could qualify for the apartment if his mother was allowed to co-sign.

The court joined other courts in recognition that *"exceptions to neutral policies may be mandated by the Fair Housing Act where disabled persons' disability-linked needs for alterations to the policies are essentially financial in nature."* The court in the FHRC case found that financial circumstances of disabled residents and prospective residents may be considered in determining the necessity of a requested accommodation.

The court concluded that FHRC presented substantial evidence to support its argument that, but for MPMC's refusal to make the accommodation of altering the rental due date, SSDI recipients would likely be denied an equal opportunity to rent at the properties.

Since these potential residents were not requesting a lower rent, the court felt that this request was no different than a request to waive a policy of prohibiting co-signers (like the other court decision).

Reasonableness of Requesting Rental Due Date Changes. In order to establish that the accommodation is not reasonable, a housing provider must prove that they cannot grant the accommodation without: (i) imposing undue financial and administrative burdens on the housing provider; (ii) imposing an undue hardship on the housing provider; or (iii) requiring a fundamental alteration in the nature of the housing provider's business.

The court stated that, in this case, while the company argued that FHRC's requested accommodation would cause them to suffer an undue financial hardship and make fundamental changes to their business practices, FHRC argues that the evidence shows that the company is already making essentially the same accommodation for numerous other residents and the company's business practices and financial bottom-line would be relatively unchanged if they made this accommodation for SSDI recipients.

/ See Law, Page 69



WE INSTALL COUNTERTOPS!



MAKE AN IMPACT ON YOUR RESIDENTS!

Discover the Impact Floors Difference with:

- 7-day Turnaround
- Competitively Priced Quartz
- 3 cm Granite
- Metal Sink Clip Mounts
- Old-Fashioned Customer Service

IMPACT FLOORS NOW INSTALLS QUARTZ & GRANITE COUNTERTOPS!

Call: 800-951-9462 or Visit impactfloors.com

Law, continued from Page 12

The company argued that allowing these recipients to have an altered due date would result in an increased administrative burden because of the need for manual reversals of late fees. However, the court stated there was clear evidence the company already allowed many residents to have their late fees manually reversed without penalty, both as a matter of negotiated arrangements and on an ad hoc discretionary basis. The court stated it was therefore difficult to accept the argument that allowing the accommodation would be unduly burdensome.

The company also argued that property managers would be deluged with court filings and would be overburdened by having to travel to the courthouse many different times during the month (since different residents would have different due dates for rent payments). However, company representatives testified the time spent filing charges against residents is a small fraction of their work load, and the company offered little evidence to suggest that this would change if SSDI recipients were allowed to pay rent at other times of the month.

The company also made the case that their properties must pay its mortgages and other bills, which are usually due on the first of the month and require a certain amount of cash on hand and must be planned for according to the rental income. The court stated this would be a compelling argument if enough residents paid after the first of the month. However, the company submitted no evidence that would allow the court to weigh the significance of those concerns (e.g. no hard numbers as to the mortgage payments, how much cash the company kept on hand to pay the mortgages or how many renters with hypothetically later rental due dates it would take to affect those cash reserves).

What Can we Learn?

1. The court makes it clear that persons who are recipients of SSDI are disabled under the Fair Housing Act. Therefore, when a request for a reasonable accommodation is made by a recipient, the question becomes does the recipient have a disability-related

The court has clarified that, although financial circumstances in and of themselves do not warrant an accommodation, **exceptions to policies may be mandated** when the disabled persons' disability-linked needs for alterations to the policies are essentially financial in nature.

need for the accommodation?

2. The court has clarified that, although financial circumstances in and of themselves do not warrant an accommodation, exceptions to policies may be mandated when the disabled persons' disability-linked needs for alterations to the policies are essentially financial in nature.

3. When a request for an accommodation is made, careful thought should be given to how your response is crafted. If you are hesitant to grant the request, it would be beneficial to have the response in writing, well-reasoned and made in consideration of the logic presented by the court in this case. 🏠

Want to see current and previous issues of ABODE online? Go to http://issuu.com/haa_abode.



Rental Credit Reporting

Rental Credit Reporting (RCR) was established in 1977 to solve screening problems the Houston Apartment Association founders felt plagued the local apartment industry. RCR has unsurpassed data on resident rental histories in the Houston region. The Houston Apartment Association and CoreLogic are partnered to expand RCR and include numerous searches in one bundled report with immediate and unlimited inquiry access.

To learn more and subscribe, call RCR at 713-595-0300, email rcr@haaonline.org or visit www.haaonline.org.



"The Family that Renovates your Multi Service needs"

Exterior painting
Carpentry
Door change outs
Resides



713 • 266 • 9100
Toll Free: 1 877 • 343 • 6800

"The Family that Renovates your Multi Service needs"