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Plaintiff Prevails in Reasonable Accommodation Case

[¶ 12.1] A federal district court has entered summary judgment for a plaintiff on claims that the operators of her apartment building failed to provide a reasonable accommodation for her disabilities.

Sydney Skochko lives in the Hamilton Apartments in Oakland, California. The Hamilton is operated by the Mercy Management Group and Mercy California (Mercy). Skochko has several physical disabilities and needs to use a hospital bed. When she does not use a hospital bed, she suffers excruciating pain and cannot sleep.

In June 2019, Mercy informed Skochko that she would need to relocate to a hotel temporarily because it had to replace the building’s wheelchair accessible lift. In November 2019, the management again told Skochko she would have to move out of her apartment while the lift was

being repaired. On both occasions, Skochko requested that Mercy either move her hospital bed to a hotel where she could stay or provide her another hospital bed in a hotel that would permit one. Mercy did not arrange for a hospital bed on either occasion, although it did not dispute that Skochko was disabled. Instead of granting Skochko’s requests, Mercy offered three options: she could stay in her apartment and a “runner” could run errands for her; she could relocate to a hotel without a hospital bed; or she could make arrangements herself to bring a hospital bed to her temporary lodgings. Skochko stayed in a hotel without a hospital bed for 66 days beginning in June 2019 and for 15 days in November 2019.

Skochko sued Mercy Management Group, Mercy California, and Mercy Housing Inc., alleging failure to make reasonable accommodations in violation of the Fair Housing Act and Cali-

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for California law. Mercy Housing Inc. is a national organization that is a separate entity from Mercy Management and Mercy California.

District Court Judge Jacqueline Corley dismissed the claims against Mercy Housing Inc. because there was insufficient evidence that it was involved in the operation of the Hamilton. However, Judge Corley entered summary judgment for Skochko on her reasonable accommodation claims against Mercy Management and Mercy California, the building operators. Judge Corley ruled that Skochko had established “as a matter of undisputed fact” that she had a disability; that Mercy knew she had a disability; and that no hospital bed was provided as an accommodation. Judge Corley found that Skochko had met her burden of establishing that her requested accommodation was reasonable and possible and that Mercy had not identified evidence that Skochko’s requests in June and November would have caused undue hardship. [*Skochko v. Mercy Housing, Inc.*, No. 20-cv-08659, 2022 U.S. Dist. LEXIS 145559 (N.D. Cal. Aug. 15, 2022)]

Counsel: Celia McGuinness, Oakland, CA (Skochko); Shirley Wang, Saber Law Group, San Francisco, CA (Mercy)

Tenant With Disability Evicted Because of Felony Conviction And his Partner State Discrimination Claim

[¶ 12.2] A man who is a recovering drug addict and his partner stated

a disability discrimination claim against the operators of an apartment complex who evicted them because the man had a felony conviction on his record, a federal district judge ruled in November.

Wilbert Aron and Katlin Morris lived in an apartment rented by Morris at the Suma Lake apartment complex in Livingston, Louisiana. Aron is addicted to illegal drugs, although he is now drug-free. In 2005, he was arrested for possessing two ecstasy pills and pled guilty to felony possession. He received treatment in 2016 and has been drug-free since then. In 2018, he moved into the apartment at Suma Lake rented by Morris. The Suma Lake operators informed Morris that they did not permit persons with felony convictions to live in the complex. Morris requested that Suma Lake make an exception to this policy as a reasonable accommodation for Aron’s disability, but the operators refused the request and evicted Morris and Aron.

Morris and Aron sued the Suma Lake operators, alleging disability discrimination in violation of the Fair Housing Act and Louisiana law. The defendants moved for judgment on the pleadings. They argued that Aron and Morris had not alleged that Aron had a “handicap” in their complaint and that he was not disabled under the statutes. District Judge Shelley Dick denied the defendants’ motion. Judge Dick ruled that the plaintiffs had, in fact, “sufficiently alleged that Aron has a ‘handicap’ or ‘disability’ under

the FHA and corresponding state law.” [*Aron v. G. Lewis-Louisiana No. 2, L.L.C.*, No. 21-cv-00136, 2022 U.S. Dist. LEXIS 198293 (M.D. La. Nov. 1, 2022)]

Counsel: John Adcock, New Orleans, LA (Aron); Drake Lewis, Livingston, LA (G. Lewis-Louisiana No. 2)

Disabled Condo Owner States Claim against Condo Association

[¶ 12.3] An owner and resident of a lakefront condominium in Osage Beach, Missouri, who was denied permission to use a specific type of boat cover for his boat as an accommodation for his disabilities stated a claim against the condominium owners association, a federal district judge ruled in October.

Burton Kirsten has a unit at the Cape Royale at Ski Harbor Condominium. Kirsten keeps a boat at Cape Royale. He has a neurological disorder which he alleges prevents him from covering his boat manually so he uses a special device known as a drop down boat cover. This device allows him to cover his boat without requiring him to move in a manner that could be harmful to his health. It is connected to tracks attached to an awning. According to the homeowners association, such a boat cover is prohibited by association policy “due to weight and wind issues.” After the association asked Kirsten to remove the boat cover, he sued the association, alleging that its refusal to modify its policy violated the Fair

Housing Act. He also alleged intentional infliction of emotional distress. The association moved to dismiss the claims.

District Court Judge Douglas Harpool granted the association’s motion to dismiss the claim of intentional infliction of emotional distress. However, Judge Harpool held that Kirsten had alleged sufficient facts to state a claim under the Fair Housing Act. [*Kirsten v. Cape Royale at Ski Harbor Condominium Owners Association*, No. 2-22-cv-04109, 2022 U.S. Dist. LEXIS 186254 (W.D. Mo. Oct. 12, 2022)]

Counsel: John MacKenzie, Maddin, Hauser, Roth & Heller, P.C. Southfield, MI (Kirsten); Richard Lombardo, Shaffer Lombardo Shurin, Kansas City, MO (Cape Royale at Ski Harbor)

Mississippi Man Who Burned Cross on Lawn of Black Neighbors Pleads Guilty to Hate Crime

[¶ 12.4] Axel Charles Fox has pled guilty to violating the hate crime provisions of the Fair Housing Act by burning a cross on his front yard in Gulfport, Mississippi, and using threatening and racially derogatory language to intimidate Black neighbors who lived next door. According to DOJ, Cox faces a maximum prison sentence of up to ten years and a fine of up to \$250,000. [*United States v. Cox*, Criminal No. 1:22cf124 (S.D. Miss

Nov. 21, 2022) (plea agreement filed)]

Counsel: Noah Coakley, Dept. of Justice, Washington, DC (United States); James L. Davis III, Gulfport, MS (Cox)

Court Awards Damages in Pennsylvania Disability Case

[¶ 12.5] A federal district court has ordered a Pennsylvania township to pay almost \$30,000 in damages to a non-profit corporation that was denied an occupancy permit for a residence for people with disabilities.

Horizon House, Incorporated bought a single-family house in East Norriton Township, Pennsylvania, for use as a residence for up to three persons with disabilities. The East Norriton zoning code permits unrelated persons with disabilities to live together in the district as a functional family equivalent. Nevertheless, the township initially denied Horizon House's application for a certificate of occupancy, and only issued one after a state court ruled that the township had erred in finding that Horizon House's proposed residence was not a single-family dwelling.

Horizon House sued the township in federal court, alleging disability discrimination. District Court Judge Harvey Bartle III granted summary judgment on liability to Horizon House in July. [See FHFL, ¶ 7.9, July 2022.] In November, Judge Bartle entered judgment in favor of Horizon House and ordered East Norriton Township to pay damages totaling \$29,943.91. [*Horizon House, Inc. v. East Norriton Township*, No. 19-

1252, 2022 U.S. Dist. LEXIS 202032 (E.D. Penn. Nov. 7, 2022)]

Counsel: Guy Vilim, Media, PA (Horizon House, Inc.); Harry Mahoney, Deasey Mahoney Valentini North LTD, Philadelphia, PA (East Norriton Township)

National Fair Housing Alliance Releases Fair Housing Trends Report

[¶ 12.6] The National Fair Housing Alliance (NFHA) has released its annual Fair Housing Trends Report, a report based on data collected from private fair housing groups and government agencies.

According to the report, 31,216 housing complaints were reported to have been filed in 2021. This is an 8.7 percent increase over the number of complaints filed in 2020, although seven fewer agencies reported data in 2021. More than half the filings were complaints of disability discrimination. The second most reported type of discrimination was race discrimination, which made up 16.79 percent of the complaints. The third and fourth highest numbers of complaints were of sex and familial status discrimination.

The report noted that private fair housing organizations processed 72.64 percent of the complaints, more than 2.6 times the number of complaints processed by state, local, and federal agencies combined, although private organizations receive only half the amount of federal funding that state and local agencies receive. In the report, NFHA recommends increased funding for private and government agencies.

The report may be found at <https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-Fair-Housing-Trends-Report.pdf>. (Note: NFHA is the publisher of Fair Housing–Fair Lending)

HUD News

HUD Charge

[¶ 12.7] HUD has filed the following charge.

■ HUD has charged Vernon Morgan, the owner of a house in Greeley, Colorado, with sex discrimination. According to the charge, Morgan discriminated against a female tenant by engaging in harassing conduct throughout her tenancy. The conduct included inappropriate sexual comments, gestures, text messages, and stalking. After the tenant filed for a protection order in state court, Morgan served her with an eviction notice. The complainant, who no longer lives in the house owned by Morgan, seeks damages for out-of-pocket expenses and emotional distress. [*HUD v. Morgan*, FHEO No. 08-21-2376-8 (HUD Office of Administrative Law Judges Dec. 7, 2022)]

Conciliation Agreements

[¶ 12.8] The following conciliation agreements have been reached.

■ HUD announced in November that the Housing Authority of the City of Atlanta has agreed to a conciliation agreement resolving claims that it failed to comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act by

“inadequately monitoring its recipient housing providers” who did not adequately respond to requests for reasonable accommodations and kept insufficient records of such requests. HUD made its findings following a review of policies, procedures, and practices related to reasonable accommodations and reasonable modifications at 60 properties between January 1, 2018, and September 30, 2020.

Under the terms of the agreement, the housing authority will appoint a compliance administrator and will make extensive changes to its monitoring and oversight practices and procedures. It will create a \$2 million dollar fund to compensate persons whose reasonable accommodation requests were unreasonably delayed or denied. [*Voluntary Compliance Agreement between HUD Office of Fair Housing and Equal Opportunity and the Housing Authority of the City of Atlanta, Georgia*, HUD No. 04-21-R001-4 (HUD Nov. 22, 2022) (compliance agreement announced)]

■ The owners and management of Aspen Grove Apartment Homes in Warminster, Pennsylvania, will pay a total of \$450,000 in damages and legal fees under the terms of a conciliation agreement resolving claims of national origin, race, and familial status discrimination.

A HUD complaint was filed by a Latino couple and the Housing Equality Center after the couple’s application for housing was denied because the woman complainant, who had recently arrived from Colombia, did not yet have a Social Security number. The Housing Equality Center conducted an investigation. Accord-

ing to the Center the “residential Management’s policies and practices at Aspen Grove and their other rental complexes were discriminatory on several bases,” including national origin, race, and familial status.

Under the terms of the conciliation agreement, the respondents will make payments to the family and the Housing Equality Center. They have also agreed to revise their policies and procedures. [*Conciliation Agreement Between Zuniga Complainants and CM Bucks Landing 120, LLC*, FHEO No. 03-20-6098-8 (HUD Sept. 19, 2022) (conciliation agreement announced)]

Counsel: Sara Pratt, Relman Colfax, PLLC, Washington, DC (Zuniga)

■ HUD has entered into a voluntary compliance agreement with Aboussie Pavilion Apartments in St. Louis, Missouri, after conducting a compliance review of its marketing and rental procedures. Aboussie participates in the Section 8 program and receives HUD funding. According to HUD, its review “revealed disparities in the Property’s tenant screening practices related to credit history and criminal records which disproportionately impacted Black applicants.”

Aboussie has agreed to create a fund of \$156,000 to compensate persons who were denied tenancy due to credit history or criminal records during the review period. It will also revise all policies that include an evaluation of credit or rental history to ensure that the policies comply with civil rights law and HUD’s guidance. In addition, Aboussie will create a new waitlist; conduct marketing

aimed at those least likely to apply; and commit at least \$10,000 to outreach and advertising. [*HUD Office of Fair Housing and Equal Opportunity and Aboussie Pavilion St. Louis LP*, HUD No. 07-21-R001-6 (Title VI) (HUD Dec. 8, 2022) (agreement announced)]

Letter of Findings

[¶ 12.9] HUD has issued the following letter of findings.

■ HUD announced in November that it has issued findings following an investigation of claims that Cushing Housing, Inc. and Oklahoma Property Management had failed to adequately respond to serious racial harassment of tenants at Cimarron Tower in Cushing, Oklahoma, a HUD funded multi-unit development.

A white mother and her daughter, who lived at Cimarron Tower, filed a HUD complaint. According to HUD, a group of tenants seriously harassed the complainants after the daughter was seen dating a Black man. The harassment, which took place over a six-month period, included verbal and physical assaults. When the family complained, the respondents illegally retaliated by issuing a notice to vacate, while the perpetrators were issued new leases.

In a “Letter of Findings of Non-compliance with Title VI,” HUD stated that the recipients would be required to undertake corrective actions, including providing monetary and other relief to the complainants; taking all actions to prevent recurrence of any discriminatory or other

unlawful conduct; implementing training for employees; and appointing a fair housing and civil rights coordinator. [*Complainants v. Cushing Housing Inc.*, HUD No. 06-17-8923-6 (HUD Oct. 26, 2022) (Letter of Findings of Noncompliance issued)]

Recent Publications, Podcasts, and Documentary Video

[¶ 12.10] The following publications, podcasts, and video may be of interest to our readers.

Recent Publications

■ Consumer Financial Protection Bureau; *Consumer Snapshot: Tenant Background Checks*; Nov. 2022; https://files.consumerfinance.gov/f/documents/cfpb_consumer-snapshot-tenant-background-check_2022-11.pdf;

Tenant Background Checks Market; https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf

■ Howell, Junia, and Korver-Glenn, Elizabeth; *Appraised: The Persistent Evaluation of White Neighborhoods as More Valuable Than Communities of Color*, Nov. 2022; <https://www.eruka.org/>.

■ National Community Reinvestment Coalition; *Faulty Foundations: Mystery-Shopper Testing in Home Appraisals Exposed Racial Bias Undermining Black Wealth*, Nov. 2022; <https://ncrc.org/faulty-foundations-mystery-shopper-testing-in-home-appraisals-exposes-racial-bias-undermining-black-wealth/>.

■ PRRAC; *Housing Mobility Programs in the U.S. 2022*, Nov. 2022; <https://www.prrac.org/wp-content/uploads/2022/11/HousingMobilitySurvey2022.pdf>.

■ Raghunathan, Abhinav; *The State of Mortgage Fairness Report*; Fair Play, Nov. 2022; <https://assets.fairplay.ai/wp-content/uploads/2022/11/24073636/The-State-of-U.S.-Mortgage-Fairness-A-FairPlay-Report.pdf>.

Podcasts

■ The Power is Now, 2022 Fair Housing Series Featuring Ed Delgado; <https://podcasts.google.com/feed/aHR0cHM6Ly9wb2RjYXN0LmxcZ2h0Y2FzdC5jb20vNzJoeDF4bXc0L2ZlZWQ/episode/NDgyNzYx?hl=en&ved=2ahUKEwjzxcS4ptH7AhWQMVvKFHRykB04QjrkEegQIBRAI&ep=6>

■ National Low Income Housing Coalition; *The History of Fair Housing*; <https://nlihc.org/resource/osah-campaign-releases-new-podcast-episode-history-fair-housing-act>

■ The Takeaway, WBUR; *Deep Dive: Fair Housing*; <https://www.wnycstudios.org/podcasts/takeaway/segments/deep-dive-fair-housing>

Video Documentary

■ Our America: LOWBALLED; <https://abc7ne.ws/3VOkXyq>

(Fair Housing Council of Central Indiana clients and staff are highlighted in this documentary about appraisal bias.)

In This Report

The following opinions are among the matters discussed in this issue:

Federal Court Decisions

- *Skochko v. Mercy Housing, Inc.* [¶ 17,949] – disability; reasonable accommodation
- *Aron v. G. Lewis-Louisiana No. 2, L.L.C.* [¶ 17,950] – reasonable accommodation
- *Kirsten v. Cape Royale at Ski Harbor Condominium Owners Association* [¶ 17,951] – disability; reasonable accommodation
- *United States v. Cox* [¶ 17,952] – race; hate crime
- *Horizon House, Inc. v. East Norriton Township* [¶ 17,953] – disability; damages

FILING INSTRUCTIONS

File this report bulletin on top of Bulletin 11.

Fair Housing-Fair Lending invites and welcomes submissions from our readers. Please send recent decisions, settlements, other news of interest, and suggestions to Carolyn Bayer, Editor; FHFL@nationalfairhousing.org; 1331 Pennsylvania Ave., NW, Suite 650, Washington, DC 20004; Fax (202) 371-9744. If possible, please include the case name, number, and court, and the names of the attorneys involved.

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