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Eleventh Circuit Reverses Ruling for Defendant on Reasonable Accommodation Claim

[¶ 11.1] In a decision reversing the district court, an Eleventh Circuit panel held in September that in ruling on a reasonable accommodation claim, a district court must consider whether the accommodation requested by a plaintiff is reasonable on its face even if the defendants had offered another accommodation.

The court made its ruling in a lawsuit filed by Steven Unger, a resident of Majorca at Via Verde in Boca Raton, Florida, against the Majorca at Via Verde Homeowners Association (Majorca). Unger has severe ankylosing spondylitis and could not attend Majorca's homeowners' association meetings. He asked the association to accommodate him either by recording the board meetings or by providing minutes of the meetings to him immediately after the meetings. The board refused his request. It told Unger he could designate a representative to attend meetings and record them or take notes. It also told Unger he could attend meetings on Zoom after it began holding meetings on Zoom because of COVID-19. However, it did not grant him either of the accommodations he had requested.

Unger sued Majorca, alleging that it had violated the Fair Housing Act by failing to grant him his accommodation requests. The district court granted the defendant's motion to dismiss. The district court found that Unger was disabled and an accommodation was necessary but ruled that he was not entitled to the accommodations he requested. It held that Majorca had not refused to grant him reasonable accommodations because it had offered him alternative accommodations that were reasonable.

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In a per curiam opinion, an Eleventh Circuit panel reversed the lower court and ruled that at the motion to dismiss stage, the trial court "must consider first whether the plaintiff's own accommodation seems 'reasonable on its face' before turning to consider a defendant's objections and counterproposals." [*Unger v. Majorca at Via Verde Homeowners Association*, No. 21-13134 (11th Cir. Sept. 29, 2022)]

Counsel: Marcy LaHart, Micanopy, FL (Unger); Therese Savona, Cole Scott & Kissane, PA, Orlando, FL (Majorca)

African American Board Member Does Not State Race Discrimination Claims against Community Association

[¶ 11.2] An African American resident and member of the board of a Florida community association who alleged she was subject to racial discrimination by other board members did not state race discrimination claims under the Fair Housing Act or 42 U.S.C. §§ 1981 or 1982, a federal district judge ruled in October.

Sara Watts owned and lived in a home in a Florida community managed by the Joggers Run Property Association. Watts was a board member for the association. According to Watts, when she joined the board, she was subjected to racial discrimination by other board members, including the board president. Watts alleged, among other things, that board president Elizabeth Keim called non-white persons "monkeys" and that the board delayed opening the community basketball courts and then closed them because "too many people of color" were using the courts. Watts also alleged that other actions were taken against her because of her race and that she was "forced to sell her home and leave the community" because of the alleged harassment.

Watts sued the property association in state court, alleging violations of the Fair Housing Act, 42 U.S.C, Sections 3604(b) and 3617; and 42 U.S.C. Sections 1981 and 1982. The association removed the case to federal court and moved to dismiss the claims.

District Court Judge Aileen Cannon granted the association's motion. Judge Cannon ruled that Watts had not stated a claim under Section 3604 (b) because the injuries that she alleged were not related to the sale or rental of a dwelling. Judge Cannon held that Watts had not stated a claim under Section 3617 because she had not alleged which rights under Sections 3603 -3606 were violated by the association's conduct. Judge Cannon also found that Watts had not stated claims under Sections 1981 or 1982. [*Watts v. Joggers Run Property Owners Association*, No. 22-80121-civ, 2022 U.S. Dist. LEXIS 183100 (S.D. Fla. Oct. 6, 2022)]

Counsel: Jason Remer, Miami, FL (Watts); Eric Sprechman, Cole Scott and Kissane P.A., West Palm Beach, FL (Joggers Run)

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Maryland Non-Profit and Latino Tenants Do Not State National Origin Claims against Operators of Apartment Complexes

[¶ 11.3] A Maryland immigrant advocacy organization and seven tenants of two Prince George's County, Maryland, apartment complexes did not state housing discrimination claims against the owners and operators of the two complexes, a federal district court ruled in September.

CASA de Maryland and seven Latino tenants of Bedford Station and Victoria Station sued Arbor Realty Trust and other entities connected to the complexes. The plaintiffs alleged that the defendants discriminated against the individual plaintiffs, who are Latino, through the deficient maintenance and repair of their apartments. They argued that practices of the defendants had a disparate impact on Latinos; that the defendants intentionally discriminated against Latinos; and that the defendants' practices perpetuated segregation.

District Court Judge Deborah Chasanow dismissed these claims. She ruled that the plaintiffs had not provided the level of detail necessary to support their claim of disparate impact and that they also had not stated claims of disparate treatment either through direct evidence or by creating an inference of discriminatory intent. In addition, she ruled that the allegations in support of the perpetuation of segregation claims were "insufficient." [*CASA de Maryland v. Arbor Realty Trust, Inc.*, No. DKC 21-1778, 2022 U.S. Dist. LEXIS 161260 (D. Md. Sept. 6, 2022)]

Counsel: Jonathan Nace, Rockville, MD (CASA de Maryland, Inc.); Ray McKenzie, WTAII PLLC, Arlington, VA (Arbor Realty Trust Inc.)

Plaintiffs Are Not Required to Submit Fair Housing Claims to Arbitration

[¶ 11.4] A federal district judge ruled in September that the plaintiffs in a case that involved a mandatory arbitration agreement were not required to submit their Fair Housing Act claims to arbitration.

Victor Cagara Ortiguerra and the other plaintiffs in a lawsuit filed against Grand Isle Shipyard, LLC are Filipino nationals who came to the United States to work as welders and fitters on oil rigs. When the workers took the jobs with Grand Isle and came to the United States, they signed employment contracts that had mandatory arbitration provisions. They lived in housing furnished by Grand Isle.

Ortiguerra and the other plaintiffs sued Grand Isle under the Fair Labor Standards Act, alleging that they were not paid the minimum wage or overtime. In June, the plaintiffs amended their complaint and added claims for violations of the Fair Housing Act. Among other things, the plaintiffs alleged that Grand Isle discriminated against them on the basis of national origin in violation of the Fair Housing Act when it assigned Filipino workers

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"overcrowded, dangerous, and isolated" bunkhouses and quarantine vessels that were not assigned to similarly situated workers of different races and national origin. They also charged that the defendants refused to allow them to evacuate during and after Hurricane Ida in 2021 and required them to live in a damaged house while non-Filipino workers were allowed to leave.

Grand Isle moved to dismiss the lawsuit, arguing that the plaintiffs were required by their contract to submit their claims to binding arbitration. District Judge Carl Barbier denied Grand Isle's motion with regard to the Fair Housing Act claims. He found that the arbitration clause only "reache[d] disputes 'arising from' the Plaintiffs' employment, rather than all claims related to or connected with the employment." He ruled that the Fair Housing Act claims, as well as an additional claim of violations of the Trafficking Victims Protection Act, "could be maintained independently of [the plaintiffs'] employment so these claims do not fall within the scope of the narrow arbitration clause here." [*Ortiguerra v. Grand Isle Shipyard, LLC,* No. 22-309, 2022 U.S. Dist. LEXIS 173772 (E.D. La. Sept. 26, 2022)]

Counsel: Kenneth Bordes, New Orleans, LA (Ortiguerra); David Korn, Phelps Dunbar, LLP, New Orleans, LA (Grand Isle Shipyard, LLC)

Separation of Luxury Condominiums from Affordable Units Does Not Violate Fair Housing Act

[¶ 11.5] The developers and operators of a mixed-used building that contained both market rate condominiums and affordable rental units did not violate the Fair Housing Act when they separated the condominiums from the affordable housing by providing different entrances and addresses for the condominium section and the affordable housing section of the building, a federal district judge ruled in August.

The three plaintiffs, who are Black, had been selected via lottery for affordable housing at 15 Hudson Yards in Manhattan. At 15 Hudson Yards there are separate lobbies, addresses, and elevators for the condominium section and the affordable housing section; and units have different amenities. Chanel Moody and the other plaintiffs decided not to rent in the building after learning of the differences. They sued the owners and operators, alleging that they had discriminated on the basis of race by separating the affordable units from the condominiums in violation of the Fair Housing Act and New York law. The defendants filed a motion to dismiss the claims.

District Judge Valerie Caproni granted the defendants' motion. Judge Caproni found that the luxury condominium owners were not similarly situated to the affordable housing tenants and that the plaintiffs' "factual allegations do not make it possible to infer that the disparate treatment is related to Plaintiffs' race, color, or national origin." She also ruled that the plaintiffs had not stated a claim of disparate impact because they had not alleged any facts from which she could infer that the defend-

ants' policies had a disparate impact on any particular racial or ethnic group or that there was a causal connection between the defendants' racially neutral policy and "the adverse impact about which [the plaintiffs] complain." [*Moody v. Related Co. L.P.*, No. 21-CV-6238, 2022 U.S. Dist. LEXIS 142983 (S.D.N.Y. Aug. 10, 2022)]

Counsel: Mark Shirian, New York, NY (Moody); Randy Mastro, Gibson, Dunn & Crutcher LLP, New York, NY (Related Companies)

Recent Settlements

[¶ 11.6] The following settlements have been reached.

■ The Justice Department announced in October that SSM Properties LLC, Steven and Sheila Maulding, and James Roe will pay $110,000 in damages and attorneys' fees to four Black testers who conducted testing for the Louisiana Fair Housing Action Center. The tests were conducted at rental property in Jackson, Mississippi, owned by SSM and the Mauldings and managed by Roe.

The Justice Department sued the defendants after Roe told one of the African American testers when he met her in person that she was not what he expected; that he did not know why she was there; and that there were no units available. He also told a Black tester "I can't put you at Pearl Manor. Them old men will have a heart attack. They'll be thinking I'd done let the zoo out again." He told a white tester that apartments were available.

In August, Judge Carleton Reeves entered summary judgment for the United States. [See FHFL, ¶ 9.7, Sept. 2022.] In October, DOJ announced that the parties had agreed to a consent decree. The defendants agreed to pay damages, attorneys' fees, and civil penalties. Roe is prohibited from working at any residential rental properties. SSM and the Mauldings will hire an independent leasing manager, implement non-discriminatory practices, and participate in fair housing training. [*United States v. SSM Properties, LLC*, No. 3:20-CV-00729, (S.D. Miss. October 17, 2022) (consent decree filed)]

Counsel: Max Lapertosa, Dept. of Justice, Washington, DC (United States); Deshun Martin, Jackson, MS (SSM Properties, LLC)

■ Three real estate companies that owned and operated nearly 1,000 apartments in twelve buildings in Washington, DC, and five individual defendants will pay a total of $10 million in civil penalties to resolve claims that they discriminated against persons using housing vouchers and other forms of housing assistance in violation of District of Columbia law.

The District of Columbia sued Daro Realty, Daro Management Services, and Infinity Real Estate in DC Superior Court, alleging that they "perpetuated a scheme that limited affordable housing opportunities based on applicants' source of income and removed affordable housing from the market . . ." in violation of the District of Columbia Human Rights Act and the District of Columbia Consumer Protection Procedures Act.

In October, District of Columbia Attorney General Karl Racine an-

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nounced that the parties had agreed to a settlement. In addition to paying civil penalties, the principals of Daro Management agreed to divest their ownership in the company. Daro Realty will retain an independent management company to manage the properties. Daro Management President Carissa Barry will surrender her DC real estate license. The defendants will comply with DC law in any real estate leasing activities in which they are involved. [*District of Columbia v. Daro Realty, LLC*, No. 2020 CA 001015 B (D.C. Superior Court Oct. 20, 2022) (consent order announced)]

Counsel: Alicia Lendon, Office of the DC Attorney General (District of Columbia)

Recent Filings

[¶ 11.7] The following cases have been filed.

■ The Justice Department has filed a disability discrimination lawsuit against the owners, developers, and builders of the Bridgewater Residences Apartments in St. Louis, Missouri. According to the complaint, LJLD, LLC and Westminster Properties violated the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act in the design and construction of the complex, which was first certified for occupancy in 2016. [*United States v. LJDL, LLC dba Debrecht Properties*, No. 4:22-cv-1012 (E.D. Mo. Sept. 26, 2022) (complaint filed)]

Counsel: Andrea Steinacker, Dept. of Justice, Washington, DC (United States)

■ The Fortune Society, a non-profit organization that serves formerly incarcerated people and their families, has filed a housing discrimination lawsuit against iAfford NY, LLC. According to the complaint, iAfford NY is an official marketing agent for New York City's Department of Housing Preservation and Development and manages the selection process for city-assisted affordable housing units in more than 100 developments in the city. The Fortune Society alleges that iAfford NY has a practice of rejecting all applicants with a criminal record and that this practice "has the purpose and effect of discriminating against Black and Latino prospective applicants" in violation of the Fair Housing Act and New York law. [*The Fortune Society, Inc. v. iAFFORD NY, LLC*, No. 1:22-cv-06584 (E.D.N.Y. Oct. 28, 2022) (complaint filed)]

Counsel: John Relman, Relman Colfax PLLC, Washington DC (The Fortune Society)

HUD News

HUD Charges

[¶ 11.8] HUD has filed the following charges.

■ HUD has filed a charge against the owners and operators of rental housing in Dallas, Texas, alleging disability discrimination. HUD alleges that Brockbk JV LLC, Dallas Redevelopment Equities LLC, and other respondents refused to adjust their monthly rent payment date and waive late fees to accommodate two tenants with disabilities who use Social Secu-

rity Disability Income to pay their rent. [*HUD v. MA Partners 2*, FHEO No. 06-19-5626-8 (HUD Office of Hearings and Appeals Oct. 4, 2022) (charge announced)]

■ The operators of a 556-unit condominium in Long Beach, California, have been charged with disability discrimination. HUD charged that the Aqua 388 Community Association, First Residential California LLC, and three other respondents discriminated against a resident with disabilities by refusing to provide her a permanent parking space to accommodate her wheelchair-accessible van. [*HUD v. Aqua 388 Community Association*, FHEO No. 09-18-1943-8 (HUD Office of Hearings and Appeals Sept. 27, 2022) (charge filed)]

■ HUD has charged Madison Property LLC, the owner of an apartment complex in Winona, Minnesota, and manager Andrew Brenner with disability discrimination. According to the charge, Brenner refused to rent an apartment to a woman with a disability because she had a cat as an assistance animal. [*HUD v. Brenner*, FHEO No. 05-21-3146-8 (HUD Office of Hearings and Appeals Sept. 21, 2022) (charge announced)]

■ HUD has filed a disability discrimination charge against Lily and Shahram Daneshgar, the owners of a New York cooperative apartment. According to the charge, the Daneshgars violated the Fair Housing Act by refusing to sublet their apartment to an applicant with disabilities who has an assistance dog. The Daneshgars told the applicant that Lily Daneshgar was allergic to dogs. [*HUD v. Daneshgar*, FHEO No. 02-21-8145-8 (HUD Office of Hearings and Appeals Sept. 30, 2022) (charge filed)]

Recent publications

[¶ 11.9] The following publications are available.

■ Hussaini, S.M Qasim et al., *Association of Historical Housing Discrimination and Colon Cancer Treatment and Outcomes in the United States*; Journal of Clinical Oncology, Volume 40, Issue 28: October 1, 2022

■ Knudsen, Brian, *Expanded Protection for Families with Housing Choice Vouchers,* https://prrac.org/pdf/soi-voucher-data-brief.pdf, September 2022

■ Kodros, J.K., Bell, M.L., Dominici, F. et al. *Unequal airborne exposure to toxic metals associated with race, ethnicity, and segregation in the USA.* Nature Communications, 13, 6329 (2022). https://doi.org/10.1038/s41467-022-33372-z

■ *State and Local Source-of-Income Nondiscrimination Laws: Protections that Expand Housing Choice and Access*, https://www.prrac.org/appendixb/ (PRRAC, Updated June 2022)

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In This Report

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

Federal Court Decisions

■ *Unger v. Majorca at Via Verde Homeowners Association* [¶ 17,944] – disability; reasonable accommodation

■ *Watts v. Joggers Run Property Owners Association* [¶ 17,945] – race

■ *CASA de Maryland v. Arbor Realty Trust, Inc.* [¶ 17,946] – national origin

■ *Ortiguerra v. Grand Isle Shipyard, LLC* [¶ 17,947] – arbitration

■ *Moody v. Related Co. L.P.* [¶ 17,948] – race

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File this report bulletin on top of Bulletin 10.

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