



# MFY's Foreclosure Project Takes Aim at Abusive Lenders

*"We thank you for saving our house. Nothing would have happened without your efforts, sacrifice and patience. You are our savior!"*

That was how the Lewanadowskis, a Staten Island couple, expressed their appreciation of MFY's Foreclosure Prevention Project and the work of staff attorney, Adam Cohen. For eight months the working-class couple had attempted to navigate the complex and confusing federal Make Home Affordable Modification Program (HAMP) on their own with Wells Fargo so they could keep their modest home. HAMP is designed to help qualified homeowners restructure their loans so that monthly payments are affordable—not more than 31% of their income. After homeowners successfully make a reduced monthly payment for three months, they are supposed to receive a permanent loan modification. Although the couple did so for eight months—five months past the trial period—Wells Fargo, which was servicing their loan, denied the permanent modification.



*The Lewanadowskis are now secure in their Staten Island home.*

Cohen met the couple at a mandated settlement conference in Staten Island. He and other legal services attorneys are on hand at the courthouse each week to help homeowners facing foreclosure. "It is almost impossible for an average homeowner to understand the intricacies of HAMP, and to figure out whether a bank has done its calculations properly," said Cohen, who has successfully negotiated scores of loan modifications. "You simply can't get one of these modifications without a fight," he said.

And fight he did. In reviewing Wells Fargo's data, Cohen found that the bank had incorrectly programmed its computer system to interpret a federal rule by replacing the word "greater" with the word "lesser," which resulted in the bank's claim that it could not reduce the principal forbearance amount of the mortgage enough to get the mortgage premium down to HAMP levels. After multiple settlement conferences, heated negotiations, and five court appearances, Cohen convinced the judge that the bank had violated HAMP rules by miscalculating the forbearance amount. The court agreed, sanctioned the bank, and Wells Fargo reduced the couple's mortgage payments to \$988.65 from \$2,466.72, a 60% reduction.



*MFY is challenging a security trust's standing to foreclose on Rhoda Carter's Queens home.*

Suspicious that Wells Fargo's miscalculation was not an isolated incident, Cohen sounded the alarm through a national list-serve to foreclosure advocates that banks were routinely violating HAMP rules by improperly calculating the forbearance amount. Advocates from across the country began reporting similar problems, prompting the National Consumer Law Center to raise the issue with the Treasury Department, which eventually agreed to enforce the rule.

## MFY Files Class Action Lawsuit against Bank of America

When negotiation fails, MFY litigates cases. Most recently, MFY filed a class action lawsuit against Bank of America on behalf of a Staten Island homeowner and others who were improperly denied permanent loan modifications after they complied with all the requirements of the HAMP program. Abbey Spanier Rodd & Abrams LLP is co-counseling the case on a pro bono basis. It is one of 12 class action lawsuits that have been filed against Bank of America across the country alleging similar claims.

In this case, the homeowner, who was struggling financially, entered into an agreement with Wilshire, a Bank of America subsidiary that was servicing her loan, for a modification in 2009. She complied with all of HAMP's requirements and made the required monthly payments during the trial modification period. She continued making the payments beyond the trial period, and

*(continued on page 2)*

## Foreclosure *(continued from page 1)*

received a notice that the servicing of her loan would be transferred to BAC Home Loans Servicing, another Bank of America subsidiary. BAC accepted the next payment, but rejected further payments, saying they were insufficient to reinstate the loan and claiming they were not certified. She then received a bill exceeding her adjusted monthly payment, and a few months later was told she was ineligible for HAMP because she had not made all the required payments before the end of the trial period. In the meantime, Citibank, which actually holds the mortgage, initiated foreclosure proceedings.

“Bank of America is making a mockery of the federal HAMP program,” said Cohen. “The banks collect hefty payments from homeowners, then turn around and initiate foreclosure proceedings. Homeowners lose, investors lose, and taxpayers who own many of the mortgage-backed securities lose, but the banks make money.”

### Queens Case Reveals Murky Nature of Mortgage Ownership

**D**uring 2006, the heyday of mortgage securitization, when thousands of mortgages were hastily made and quickly bundled, split and resold to various investment banks as mortgage-backed securities, Rhoda Carter, a Queens homeowner, refinanced her mortgage with what she thought was a reputable company. She lost her job in 2008 but kept up her payments by liquidating a retirement account, borrowing against a life insurance policy and selling an heirloom coin collection. She missed only one payment before getting another job. Still, she is being sued for foreclosure by RMBS, a residential mortgage-backed security trust that actually does not own the loan and therefore has no right to sue. MFY foreclosure attorney Elizabeth Lynch filed a post-foreclosure auction sale motion seeking to vacate the sale on Ms. Carter’s behalf, a remedy rarely attempted. Queens remains the county in New York State with the highest rate of foreclosure.

“The company’s own records show that it does not own the note or the mortgage,” said Lynch. “This case exemplifies the dangers of the system of bundling mortgages into securities with little attention to obligations to homeowners and with an equal disregard for 400 years of settled property law regulating how transfers of real property are made and recorded.”

### MFY Recovers Senior’s Home after Bank Illegally Forecloses

Lilla Roberts, a 73-year-old retired physical therapist, discovered that her home in Jamaica had been foreclosed and sold when she found an eviction notice taped to her front door. She was beside herself with fear. She had been negotiating with her mortgage servicer and had been promised a new payment plan. How could the bank foreclose without notifying her?

Roberts’ troubles started in 2006 when her upstairs tenant moved out and she needed money to renovate the badly deteriorated apartment. She refinanced her mortgage to pay for the renovations and, although her monthly payment increased, the additional rent from the renovated apartment should have covered the differ-

ence. The plan worked until her new tenant stopped paying rent, causing Roberts to fall behind on her mortgage payments.

In 2008 she requested a mortgage modification. For over two years she provided documents to support her request, got short-term modifications, and made payments as required. Sometimes the payments were accepted; other times they were returned. She was told her modification was being considered one day, only to be told

it was denied the next. In March 2010, Bank of America acquired her servicing company. It accepted her payments for two months, then told her not to pay because the bank was about to offer a new repayment plan. Instead, in August the bank foreclosed and turned the property over to Fannie Mae, which guaranteed the mortgage.

She sought help from MFY, and foreclosure attorney Elizabeth Lynch began a long process of unraveling the mess. She found evidence of an improper mortgage transfer and that Ms. Roberts had not been served with foreclosure papers. And although Roberts had faithfully made payments and had a reliable income, it appeared that Bank of America wrote her off as a “deadbeat.” Neither the bank nor Fannie Mae bothered to look at the record.

It is almost impossible to get a foreclosure sale reversed, but Lynch filed papers in court and enlisted the help of *New York Times* business columnist Joe Nocera to publicize the case. Nocero wrote a scathing article on December 4, 2010, detailing the runaround, lies, and deception Roberts had faced for two and a half years. Bank of America immediately offered to rescind the foreclosure and modify the loan. Lynch got the bank to agree to a 40-year mortgage with monthly payments of \$1,140. But Lynch refused to agree to have Roberts pay \$12,000 in unexplained fees. Back in court in January, the judge tossed out the \$12,000 and instructed the parties to work out the details.

Ms. Roberts, who had feared she would wind up in a city shelter, is thrilled that her mortgage nightmare is over. As the *Times’* Joe Nocero pointed out in his article, “Ms. Roberts got a break. Because she had a dogged lawyer, who had the wit to get a *New York Times* columnist interested in her case, a terrible mistake was uncovered. . . . But it has to make you wonder how many other people have lost their homes because of similar mistakes. I can’t bear to venture a guess. It’s too sickening to contemplate.”



*Lilla Roberts outside Queens County Court House after her January hearing.*

# in brief

## **MFY Saves Senior's Apartment after APS Improperly Surrendered It**

While Ms. B, a 78-year-old Upper West Side tenant was hospitalized for surgery, a default judgment was entered against her in a nonpayment proceeding, even though the court had received a letter from the hospital explaining her absence. The city's Adult Protective Services (APS) got involved, securing the wrong amount of arrears and then failing to deliver the check on time. Although APS was not authorized to act on Ms. B's behalf, they appeared in court again, signed a surrender agreement on her behalf and paid even more money to the landlord. Close to a year later MFY got the case and staff attorneys Scott Stamper and Jason Blumberg worked to unravel the facts and draft a motion to vacate the underlying judgment, declare that the landlord had been paid in full, and restore the tenant to her apartment. The original judge, when confronted with the true facts and proof that the landlord had been paid, admitted the court's error and urged the parties to settle. After many months of an uphill battle, Ms. B was restored to her tenancy.

## **MFY Paralegal Wins MCI Reduction**

When a Lower Manhattan landlord attempted to pass on the cost of some \$97,000 in alleged major capital improvements to his low-income tenants, MFY paralegal Fanny Chan meticulously challenged the landlord's claim for one tenant and convinced DHCR to approve only \$4,400 of those costs. Thanks to Ms. Chan, the increase was only \$2.85 per month, instead of the \$62.91 the landlord wanted. Even better, the ruling applied to 12 other rent-regulated tenants in two buildings, saving them about \$14,000 per year for the remainder of their tenancies.

## **MFY Thwarts Employer's Attempt to Avoid Paying Back Wages**

After MFY won a back wage claim of \$17,000 for two employees of a small catering business, the employer failed to appear in court and later went out of business. While obtaining a transcript of the judgment in order to file a lien on the owner's house, MFY attorney Rachel Spector found that the owner had transferred the house to his wife's name. Spector then filed a fraudulent transfer action in Queens Supreme Court, claiming that the husband had transferred the house to his wife in order to avoid judgment creditors. The case settled and the workers received the wages owed.

## **Advocacy Stops Adult Home Evictions**

Soon after getting an eviction dismissed for a resident of an adult home, MFY attorney Shelly Weizman learned that a dozen or more tenants had received similar eviction notices. Adult home residents' rent is primarily paid with Supplemental Security Income (SSI), and under New York State law the homes must provide case management services for residents to help them resolve problems with their benefits and other issues. Upon further investigation,

## **MFY Brings Class Action Lawsuit Against Three-Quarter House Operators**



MFY Staff Attorney Tanya Kessler spoke to press at a rally organized by MFY, the Three-Quarter House Organizing Project (TOP), and Neighbors Together, a community-based organization in Brooklyn, to protest illegal evictions and the failure of three-quarter house operators to deliver on promises of services. The Dec. 15, 2010 rally was held the day after MFY filed a class action lawsuit and obtained a temporary restraining order against several operators of three-quarter houses, alleging that they engaged in deceptive practices, pressured tenants into signing away their rights, violated the rent stabilization code and unlawfully evicted tenants onto the street when they became unprofitable. Tenants, most of whom are recruited from shelters, hospitals, and rehab facilities, are promised counseling, other support services and assistance finding permanent housing and jobs. Patterson Belknap Webb & Tyler LLP is co-counseling the case.

"The operators take in thousands of dollars a month while creating a revolving door of homelessness for people who are desperate for a place to live. It's another example of the city's failure to develop affordable housing for homeless people," said Kessler.

Since launching the Three-Quarter House Project in September 2009, MFY has trained hundreds of residents on their rights and provided advice, counsel or representation to over 375 tenants to prevent illegal lock-outs and evictions, address building violations, end landlord harassment, and secure public benefits.

Weizman found that the home had not provided the mandated services, directly leading to problems with rent payment. Instead of going to court, Weizman worked with the Coalition of Institutionalized Aged & Disabled (CIAD) and the State Ombudsman to complain to the New York State Department of Health (DOH), which regulates the homes. The strategy was successful. DOH investigated and ordered the home to cease all court proceedings against residents, to provide case management services to help residents resolve issues with government agencies, and to consult with DOH before taking any further legal action.

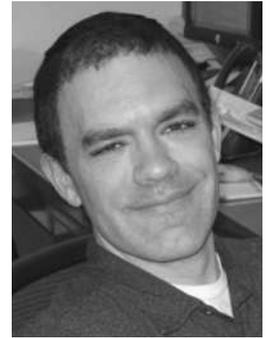
## Post-Graduate Fellows Help MFY Expand Services to Clients



Before entering law school at Georgetown, **EMILY WARNER** imagined herself pursuing a career in clinical psychology. She had always been interested in mental illness and disability rights, and after counseling troubled teens at a residential psychiatric treatment facility, Emily understood the plight of the institutionalized. "I was disheartened by psychiatric treatment models and I knew that I wanted to advocate on behalf of these individuals," Emily said.

Through a post-graduate fellowship offered by Georgetown, she came to MFY last September to work with the Adult Home Advocacy Project (AHAP), where she has conducted client intake, assisted with residents' rights trainings in adult homes, conducted research and drafted legal memos on various aspects of ongoing litigation. "It has been interesting to witness the evolution of intake calls into civil rights claims" Emily said. "I like that AHAP is always looking for innovative ways to advocate on behalf of people with mental illness. It has been great being a part of that."

When **STEVEN DiBASIO** completed his studies at Fordham Law School last spring, he began looking for a fellowship opportunity that would allow him to develop his skills as a budding attorney. He sought out work with MFY's Seniors Project because he was excited by the prospect of helping elderly clients navigate New York's complex housing court system. Since last September, Steven has conducted client interviews and has received significant experience in motion practice. He was glad to be given the opportunity to interact extensively with clients, which he was unable to do in law school. Steven has especially enjoyed the independence he has been given in his work at MFY. "It's great to not have my hands held so much," he said. "At the same time, whenever I need any guidance, my supervisor is always there." In addition to learning procedural and practical skills as an attorney, Steven noted that his work at MFY has taught him about substantive housing law issues, which he had little knowledge of prior to working with MFY.



## Patterson Belknap Webb & Tyler's Tireless Commitment to Helping People with Mental Illness

**P**atterson Belknap Webb & Tyler LLP has a long history of providing pro bono legal services to people with mental illness. In a recent case, Patterson agreed to help Helen, a woman with untreated schizophrenia, who was facing eviction. Patterson attorney Steven Vollins took the case and determined that Helen needed a guardian *ad litem* (GAL) to help her, and he began a long effort to get Adult Protective Services (APS) to appoint one. Although APS' own psychiatrist supported the appointment, the agency resisted. After Vollins left the firm, another Patterson attorney, Muhammad Faridi, continued the work and after tireless advocacy persuaded APS to move for appointment of a GAL. Faridi warned APS that its documentation was over a year old and unlikely to be sufficient, but APS refused to update it. As expected, in November 2009 the judge refused to go forward with the case until new documentation was presented.

The problem was that APS had been serv-

ing as Helen's representative payee for years, but in December 2008, the agency inexplicably dropped her from the program. When Faridi requested reinstatement, APS refused. Without help to manage her finances, rent arrears accumulated and in late 2009 the landlord brought a new court case to collect the rent. Since filing the second case vitiated the first one, Patterson could have bowed out at that point, but the firm was committed to making sure Helen had a roof over her head.

**W**hen an Administrative Law Judge failed to rule on the complaint that APS had failed to appoint a GAL, Faridi persisted in advocating with APS, and at the end of 2010 the agency finally agreed to authorize \$16,000 in rental arrears, which ended the pending eviction case. After Faridi and his team at Patterson drafted an appeal to the New York Supreme Court to compel APS to pay rent arrears and resume financial management, the agency produced new documen-

tation of Helen's disability, and began the process of reinstating financial management.

**T**hanks to the efforts of the Patterson team, which included Matthew Webb, A. Leah Vickers, Ian Dumain, Lisa Cleary, Alanna Kaufman, Joyce Addae, JeAnna Moseslogan, and Sandy Stemm, Helen has remained housed for four years. Her case is one of dozens of cases for people with psychiatric disabilities that attorneys from Patterson have pursued over the years.

But the struggle continues. The landlord recently served a new notice of termination re-alleging nuisance behavior. But Helen will have amazing resources on her side yet again. Muhammad Faridi has agreed to serve as her guardian *ad litem* in the new case.



Muhammad Faridi

# MFY Bids Farewell to Andy Goldberg

Every team needs a utility player—someone who can play a variety of positions well and do what has to be done whenever a need arises. MFY has been lucky to have its own star utility player, Andy Goldberg, who has spent 27 years in public interest law, over 18 of them at MFY Legal Services.

After graduating from Cardozo Law School in 1984, Andy clerked for a year in federal court, then spent three years as a staff attorney at Bronx Legal Services, handling welfare, Medicaid, SSI and other public benefits cases. In 1985, while helping a Bronx family whose children had been poisoned by lead, Andy's 20-year battle to end lead poisoning began.

He brought a case on behalf of the Bronx family, *NYC Coalition to End Lead Poisoning v. Koch*, demanding that the city enforce a 1982 law that required landlords to remove lead paint. The case traveled with him from job to job for the next 20 years, as did eight boxes of files (that still sit in the corner of his office at MFY).

MFY became lead counsel on the case when Andy joined MFY's staff in 1989, working in the Chinatown office on a wide range of issues, while continuing to pursue lead paint litigation and becoming an expert on housing quality standards. When federal restrictions barred MFY from participating in class action suits, other counsel continued the fight. In 1998 Andy became General Counsel of the New York Public Interest Research Group (NYPIRG) and worked on the lead poisoning case for another five years there. After dozens of motions, three contempt citations, and litigation to get the courts to throw out a landlord-friendly law passed in 1999, in 2004 the City Council overrode a mayoral veto and passed new legislation to protect children from lead paint. After 20 years the court battle was over and advocates turned their attention to pressing for enforcement. In 2006, the New York City Bar presented Andy with its Legal Services Award, citing his tenacity and persistence in leading the legal battle against lead poisoning and his work at MFY.

When Andy returned to MFY in 2002, he supervised MFY's Mental Health

Law Project, the nation's largest civil legal practice for people with psychiatric disabilities who live in the community. A staunch believer that legal services providers should use all legal means at their disposal to secure justice for their clients, Andy supported MFY's decision to become independent of federal restrictions by withdrawing from Legal Services of New York. During the transition, Andy handled everything from lease negotiations with the landlord to building a new client database.

When MFY expanded its practice to include employment and consumer issues, Andy stepped up, supervising both projects since 2006 and challenging a cadre of young lawyers to take risks and be creative in combining individual legal assistance with policy advocacy and law reform.

"Because of his guidance, I am more than simply an employment attorney; I've learned more and more on how to tackle the variety of issues that my low-income clients face on a day to day basis," said Magdalena Barbosa, an MFY staff attorney. "One of Andy's greatest lectures is that as legal services attorneys we are responsible for reminding the judiciary, up to the highest courts, that they are not only charged to serve the interests of the wealthy and privileged, but have an equal interest in doing the work of the people we serve—that our clients' cases should garner the same respect and attention as any multimillion dollar lawsuit on their docket."

Under Andy's leadership, MFY's Consumer Rights Project became one of the fastest growing projects at MFY, and was quickly flooded with more cases than it could ever hope to handle. Recognizing that a direct service model alone would not put a dent in stopping abusive debt collectors, Andy led his team on a campaign to help level the playing field for low-income New Yorkers by challenging how debt collectors operate. The first salvo came with *Justice Disserved*, MFY's 2008 groundbreaking report on the extent of "sewer service" in the city, and public testimony challenging the Department of Consumer Affairs to take action. The report drew press attention, and the project brought its findings to the attention of the Attorney General (AG). Momentum started to build,



with the AG bringing charges against a notorious debt collector and later bringing suit to vacate thousands of default judgments obtained with "sewer service." He encouraged his team to propose a new law to the City Council to strengthen regulations on process servers, which was passed last year.

Consumer rights attorney Anamaria Segura said: "One of my favorite things about Andy as a supervisor is his ability to think out of the box and come up with creative strategies for addressing systemic issues our clients face. So much of the success of MFY's Consumer Rights Project is owed to these ideas and initiative. *Justice Disserved* and the new New York City process server law are just two examples."

MFY Deputy Director Jeanette Zelhof summed up how everyone at MFY feels about Andy: "He's is a great lawyer and a generous colleague. He is always there to help puzzle through complicated or thorny legal issues and to help in any way he can to advance our clients' interests. I've relied upon Andy for everything from discussing legal theories to moving office furniture! He is smart, supportive and perpetually upbeat, and will be greatly missed."



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