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## Suit Proceeds Over N.Y. Policies For Housing the Mentally Ill

BY MARK FASS

A LAWSUIT asking the federal court to require New York to reform its housing system for the mentally ill will go forward following a judge's denial of the state's motion for summary judgment.

Eastern District Judge Nicholas G. Garaufis rejected all of the state's key contentions, including that the plaintiff lacked standing and that the private housing at the center of the dispute—so-called “adult homes”—are not subject to the Americans with Disabilities Act (ADA).

Judge Garaufis ruled that the plaintiff's claims represent exactly the type of inequalities barred by Title II of the ADA, which prohibits discrimination in access to public services.

“In sum, Plaintiff alleges that Defendants' administration of services discriminates against adult home residents by unnecessarily segregating them, and claims that if Defendants allocated their resources differently, adult home residents could receive services in a more integrated setting,” Judge Garaufis wrote in his 112-

page decision, *Disability Advocates v. Paterson*, 03-CV-3209. “This claim falls squarely under Title II of the ADA.”

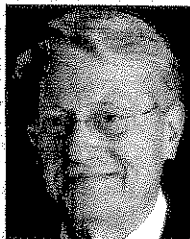
The present action was filed by Disability Advocates in 2003 on behalf of more than 4,000 mentally ill people living in 21 New York City adult homes.

According to the complaint, the New York State Department of Health and Office of Mental Health refer mentally ill residents to privately run adult houses, typically after they are released from psychiatric institutions.

The homes are licensed by the state to provide long-term care to people with mental illness.

The complaint's central contention is that the state's system unnecessarily isolates the homes from the greater community. The adult houses are segregated settings, according to the plaintiff, resembling psychiatric institutions.

Because many of the residents



Judge Garaufis

are qualified for “supported housing”—individual apartments scattered throughout the city—the housing violates Title II, according to the complaint.

The plaintiff sought declaratory and injunctive relief requiring the state “to take such steps as are necessary to enable Plaintiff's constituents to receive services in the most integrated setting appropriate to their needs.”

The state opposed the action on several grounds.

First, it asserted that Disability Advocates lacked standing.

Judge Garaufis disagreed, finding that the organization is specifically authorized to do so under 42 U.S.C. §10801, the Protection and Advocacy for Individuals with Mental Illness Act.

The state also contended that, because the adult homes are privately run and because the state does not require anyone to live in such homes, they are not subject to the ADA.

Judge Garaufis rejected those arguments as well.

“These contentions » Page 4

The Eastern District decision is posted at [nylj.com](http://nylj.com).

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are without merit,” he wrote. “[I]t is clear that Defendants are required by State law to determine the settings in which New York provides and funds mental health services. Defendants do so by controlling the State's funding for services in various settings, including adult homes and supported housing, and effectively control how many adults receive services in any particular setting.”

Disability Advocates was joined by attorneys from the Bazelon Center, MFY Legal Services, New York Lawyers for the Public Interest, the Urban Justice Center and Paul, Weiss, Ruskoff, Wharton & Garrison.

John A. Gresham of New York Lawyers for the Public Interest called Judge Garaufis' holding regarding the applicability of the ADA the most important aspect of the lengthy order.

“The thing that probably has the most practical effect is that Title II applies,” he said.

“Although these are private institutions, they are part of a state system [that] the state plans and funds. The way the state sets things up by statute, it relies heavily on private as well as public entities.”

Beth Susan Frank, Barbara K. Hathaway and Amy Marie Held of the Attorney General's Office represented the state. Calls to the office were not returned.

A trial schedule has not yet been set.

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