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State's Homes for Mentally Ill Adults Violate ADA, Judge Rules

BY MARK FASS

A BROOKLYN federal judge ruled yesterday that New York state's policy of housing mentally ill adults in large "adult homes" violates the Americans with Disabilities Act.

Eastern District Judge Nicholas G. Garaufis declined to issue an injunction until both sides—the state and plaintiff Disability Advocates Inc.—proposed remedies.

Disability Advocates initiated the suit on behalf of more than 4,300 mentally ill people living in 28 New York City adult homes.

The judge found that the failure of the state Department of Health to provide residents with the "most integrated setting"—as defined by federal regulations, "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible"—constituted discrimination.

"[Disability Advocates] has proven that Defendants have discriminated against [its] constituents in violation of the integration mandate of the Americans with Disabilities Act and the Rehabilitation Act," Judge Garaufis wrote in his 210-page decision, *Disability Advocates Inc. v. New York*, 03-CV-3209.

"In carrying out their administration of New York's mental health service system, Defendants have denied thousands of individuals with mental illness in New York City the opportunity to receive services in the most integrated setting appropriate to their needs."

Disability Advocates filed the present action in June 2003. The non-profit agency claimed the New York Department of Health and Office of Mental Health's housing policy unnecessarily segregated the mentally ill in large, socially isolated adult homes.

As defined in the lawsuit, the for-profit adult homes at issue each have at least 120 beds, and at least 25 of their residents or

25 percent of their population, whichever is higher, is mentally ill. The homes, including Belle Harbor Manor, Queens Adult Care Center and Riverdale Manor Home for Adults, are typically located at the far edges of the outer boroughs.

The conditions of the city's adult homes were the subject of a 2002 Pulitzer Prize-winning



Judge Garaufis

Online

A link to the Eastern District decision is posted at nylj.com.

Mentally Ill

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series by the New York Times, entitled "Broken Homes," which detailed the neglect, violence and abuse that, according to the plaintiff's counsel, led to this suit.

In yesterday's decision—at 210 pages with 914 footnotes, the longest issued by Judge Garaufis in his nine years on the federal bench—the judge addressed such issues as the state's "fundamental alteration" defense and the relevant legal standards of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Ultimately, the judge sided with the plaintiffs.

Disability Advocates Inc. (DAI) "has proven that the large, impacted Adult Homes at issue are

not the most integrated setting appropriate to the needs of [its] constituents, especially compared to supported housing, in which individuals with mental illness live in apartments and receive flexible support services as needed," he concluded.

"DAI has also proven that virtually all of DAI's constituents are qualified to receive services in supported housing and are unopposed to receiving services in a more integrated setting."

The judge gave the state until Oct. 23 to submit a proposed remedial plan, and Disability Advocates until Nov. 8 to respond.

Disability Advocates' papers, including its proposed findings of facts, give a preview of what it is likely to request. The group set forth 10 guidelines that, at the end of a four-year transition period,

would guarantee all residents of adult homes who want and are qualified for supported housing be afforded such placement.

The plan would require the development of at least 1,500 supported housing beds per year, and a total of at least 4,500, until there is sufficient supported housing beds for all of Disability Advocates' constituents who desire such housing.

Paul Weiss, Rifkind, Wharton & Garrison served pro bono as lead counsel for Disability Advocates, which was also represented by its own staff attorneys, as well as the Urban Justice Center, MFY Legal Services, the Bazelon Center for Mental Health Law and New York Lawyers for the Public Interest.

Cliff Zucker, the chief executive of Disability Advocates, credited The New York Times series for

inspiring the case and Paul Weiss, which contributed approximately 34,000 staff hours, for winning the case.

"It would be really impossible for an organization like ours to bring a case like this without their generosity," Mr. Zucker said.

Andrew Gordon and Anne S. Raish served as lead counsel for Paul Weiss.

"We've given the court a pretty good sense of what we're looking for in terms of a remedy," Mr. Gordon said. "Obviously it'll be our hope that the court ultimately agrees."

Barbara K. Hathaway and Matthew Silverman of the New York Attorney General's Office defended the state. An office spokeswoman declined to comment.

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