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Adult Home Residents Win Victory in Major Civil Rights Case

After six years of litigation that included a five-week trial in the spring, Federal Judge Nicholas G. Garaufis ruled that New York State's practice of concentrating people with mental illness in large adult homes constitutes discrimination and violates the Americans with Disabilities Act (ADA) and the Rehabilitation Act. In *Disability Advocates v. Paterson* he found that "the overwhelming weight of the evidence demonstrates that Adult Homes are institutions that impede residents' interaction with individuals in the community who do not have disabilities." The suit was initiated by a consortium of advocacy organizations, including MFY Legal Services, Inc., Disability Advocates, Inc., the Bazelon Center for Mental Health Law, New York Lawyers for the Public Interest, the Urban Justice Center, and Paul, Weiss, Rifkind, Wharton & Garrison, LLP.

During the trial, the judge heard from scores of experts as well as current and former adult home residents who painted a stark contrast between the barren environment of most adult homes and the satisfaction of living independently. Ms. K, who recently moved to supported housing after spending 16 years in an adult home, testified that she loves living in her apartment. She explained: "I can limit what I eat or I can expand my choices. I can have as much salad as I like. I can have as little grease as I like. I can eat foods that were not permitted in the home . . . I do my own shopping. I do my own food selection. It's free. It's freedom for me. It's freedom. It's being able to actually live like a human being again."

Judge Garaufis ordered the defendants to submit a plan for providing supported housing for approximately 4,300 adult home residents. In response, the state submitted a plan in November to develop a total of 1,000 beds of supported housing for adult home residents "who qualify," reserving the right to determine who qualified.

"The plan offered by the state is woefully inadequate," said MFY Deputy Director Jeanette Zelhof. "It fails to address the court's concerns and its finding that some 4,300 adult home residents would benefit from supported housing. The court found that adult homes are institutional settings that provide little privacy and few real opportunities for people with mental illness to develop independent living skills and participate fully in the community."

The plaintiffs countered the state's plan by proposing the development of at least 1,500 supported housing units per year for three years in order to create sufficient supported housing units for individuals with mental illness who live in the 28 adult homes at issue in this lawsuit. "By ensuring that no fewer than 4,500 supported housing units are developed, our plan is consistent with the Court's conclusion that 'virtually all' of the approximately 4,300 individuals with mental illness who live in these adult homes are not receiving services in the most integrated setting appropriate to their needs," said Kevin Cremin, MFY senior staff attorney who helped try the case.

Plaintiff's plan would also require defendants to contract with supported housing organizations to provide scattered-site supported housing, to secure needed services for supported housing residents, and to conduct in-reach to current and future adult home residents. In order to make sure the remedy is effective, the plaintiff's proposal specified that in-reach should include a comprehensive effort to assess a resident's interest in supported housing, to confirm eligibility, to develop an individualized service plan, and to provide services to enable residents to transi-

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News from
MFY Legal Services, Inc.
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MFY's Pro Bono Kinship Caregiver Law Project Brings Permanency to Children's Lives



Since launching the Pro Bono Kinship Caregiver Law Project three years ago, MFY has brought greater permanency to the lives of over 200 children. Today, more than 150 volunteer attorneys from 30 firms are helping to stabilize families by representing grandparents and other kinship providers in adoption, guardianship and custody cases.

MFY Legal Services, Inc.

Celebrating 46 years of free civil legal services to low-income New Yorkers.

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In Disability Advocates v. Paterson, the plaintiff successfully argued that adult homes provide scant stimulation or opportunity for residents to develop and maintain independent living skills. Residents have little privacy and few opportunities to interact in a meaningful way with the larger community.

MFY's New Project Aids People with Disabilities Living in Illegal Boarding Houses

With support from the Skadden Fellowship Foundation, MFY launched a new project in September to provide legal assistance to formerly homeless people who have been placed in illegal boarding houses (IBHs)—also known as three-quarter houses—by the Department of Homeless Services and other government agencies. The project educates residents about their rights and addresses dangerous conditions and civil rights violations. The ultimate goal of the project is to end the placement of people, many of whom have mental and physical disabilities, in these illegal facilities and to ensure that they obtain safe and appropriate housing.

"In November a fire in an illegal basement residence killed three immigrant workers in Queens and brought the issue of illegal building conversions to public attention," said Tanya Kessler, the Skadden Fellow in charge of the project. "But the city's own Department of Homeless Services places homeless adults with disabilities in illegally constructed boarding houses with rampant fire hazards and other code violations. The city dumps people in housing with unsafe conditions that puts them, as well as neighboring buildings, at risk.

Most illegal boarding houses are small buildings that were meant for one or two families. Operators illegally subdivide rooms and crowd as many as 30 or 40 adults, mostly men, into one house, often packing four or more people in bunk beds in sleeping rooms. They rent shared rooms to homeless people for profit and purport to provide

supportive and other services. These unlicensed facilities are proliferating in New York City, fed by a flood of referrals from the city shelter system. A 2008 report by the Coalition for the Homeless documented hazardous building code violations in these houses, including collapsing floors and ceilings, illegal conversion, fire safety hazards, leaks, holes in walls, broken windows, infestations of vermin, and lack of heat.

The Coalition found that many homeless adults placed in illegal boarding houses had already been approved for supportive housing, but the city refused to wait for a proper placement to become available. Formerly homeless residents have complained that city employees and shelter staff routinely threaten homeless individuals with ejection to the streets if they do not accept immediate referrals to these facilities.

Like operators of adult homes, owners of IBHs often take financial advantage of their tenants. Typically, they charge residents \$250 per month in rent, the majority of which is directly paid to the operators by the city's welfare agency. Residents with Social Security or other disability benefits are frequently charged higher monthly rents. Operators generally do not provide leases, routinely engage in illegal lockouts and summary evictions, and otherwise deny residents basic tenancy rights established by New York law. MFY's project will focus efforts on central Brooklyn neighborhoods, where at least 90 buildings house an estimated 2,200 residents.

Cremin, "but advocacy organizations and a New York Times editorial have called on the state to focus on complying with the ADA."

For the past 20 years, Jeanette Zelhof, founder and head of MFY's Adult Home Advocacy Project, has led a team of lawyers to expose abuse and neglect and to represent residents whose civil rights were violated. These conditions were documented in *Broken Homes*, a 2003 Pulitzer Prize-winning series in the New York Times that fueled calls for reform and prompted the lawsuit that resulted in Judge Garaufis' ruling.

THANK YOU!

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"Regardless of how long it may take to ultimately win justice for adult home residents, this ruling is a tremendous victory and gives adult home residents real hope that they will be able to move on to a better life, outside the confines of institutions where residents are subject to constant indignities and ostracized from the community," said Zelhof.

in brief

Workplace Justice Project Aids Immigrant Women

Lindsey Schoenfelder, MFY's 45th Anniversary Fellow, has focused her fellowship on defending the rights of low-wage female immigrant workers as part of MFY's Workplace Justice Project. Among the many women Schoenfelder has helped is Ms. E, a cashier and shelf stocker at a large chain pharmacy, who developed a serious case of plantar fasciitis, a painful heel inflammation that is aggravated by long periods of standing in place. When Ms. E documented her condition and requested an accommodation that would allow her to move around more to mitigate the pain, her supervisor ignored the request and assigned her exclusively to cashier duties. As a result, her condition worsened and required two surgeries. She lost two months' salary while recovering, and when she returned to work, her manager took away her 9 to 5 schedule.

MFY filed a complaint with the New York City Division of Human Rights, which prompted settlement negotiations that finally resulted in the employer's agreement to rotate Ms. E's duties, give her breaks when needed, with pay, and over \$10,000 in damages. The store also promised to provide stress mats for cashiers to prevent other employees from developing foot problems.



MFY's Kincare Project Demands Better Services for Kincare Families from City Agencies

In addition to mentoring pro bono attorneys and carrying her own caseload, MFY Staff Attorney Amy Roehl serves as co-chair of the New York City Kincare Task Force, which has launched a campaign to improve services from city agencies for kinship care providers. In June, the Task Force issued *Removing Barriers to Successful Caregiving*, which reported providers' experiences with city agencies and found that most agency workers were poorly informed about the rights of kinship care providers and

the benefits to which they were entitled. As a result, most kinship care providers receive few resources with which to raise the children in their care. In October, Ms. Roehl, along with a dozen other organizations and kinship care providers, testified at a City Council hearing on the city's treatment of kinship care providers, calling for improved training of caseworkers, clear information on the benefits available to kinship care providers, and the creation of specialized kinship care units in key city agencies.

MFY's Consumer Rights Project Speaks at FTC Conference

MFY Senior Staff Attorney Carolyn Coffey shared her expertise on two panels at the Federal Trade Commission's roundtable on *Debt Collection: Protecting Consumers*, held in Washington, D.C. on December 4, 2009. The roundtable focused on key issues affecting consumers, including the large number of default judgments due to improper service; debt collectors' efforts to collect debts that are beyond the statute of limitations; inadequate evidence of debt; and garnishment of federally-exempt funds. Ms. Coffey reported on the findings from MFY's report, *Justice Disserved*, which documented the relationship between rampant "sewer service" and default judgments in debt cases in New York City.

pro bono news

Pro Bono Attorney Prevents Foreclosure of AIDS Victim's Home

Lars Hilton, a pro bono attorney-in-transition who volunteered his time at MFY for eight months, represented Mr. A, who had fallen behind on his co-op mortgage payments after he became seriously ill as a result of HIV/AIDS. The city's HIV/AIDS Services Administration (HASA) had agreed to take over his mortgage payments. However, when HASA failed to remit payments in a timely manner, Mr. A's loan was accelerated and the bank initiated a non-judicial foreclosure in early May 2008. This foreclosure was completed a few weeks later and the bank purchased the co-op shares at the foreclosure auction for the amount of the mortgage, which was considerably less than the value of the apartment.

The bank then instituted eviction proceedings in August 2008, and the client filed an order to show cause in Supreme Court, which the judge granted, staying the eviction proceedings and ordering the bank to give the client a reinstatement quote so that he could sort things out with the bank and HASA. MFY took the case at that point, and Hilton spent months in meetings, court appearances, motions for contempt, and endlessly prodding both the bank and HASA to get each to come to an agreement. MFY Staff Attorney Adam Cohen finalized the settlement, in which the bank reinstated Mr. A's mortgage and HASA agreed to pay it.

"This was an extremely difficult case and we would not have been able to take it without the dedicated pro bono assistance of Mr. Hilton," said Elise Brown, Supervising Attorney of MFY's Foreclosure Prevention Project.

Save the Date!

MFY's 2010 Pro Bono Recognition & Awards Breakfast

Honoring

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Paul, Weiss, Rifkind, Wharton & Garrison
& Our Pro Bono Partners in Justice

Friday, February 26, 2010

Davis Polk & Wardwell LLP
450 Lexington Avenue, NYC

Adult Home Residents

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tion successfully to supported housing.

The case is being watched carefully across the country. The U.S. Department of Justice requested and received the court's permission to intervene in the case, citing its belief that the remedy adopted by New York State might serve as a model for the rest of the nation. "New York State will have the right to appeal Judge Garaufis' decision," said