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News from **MFY LEGAL SERVICES, INC.**

FALL 2012

Helping People with Criminal Records to Enter the Workforce

MFY Removes Barriers to Employment

"I have never had an option in my life. Now I have options." That was Jared's (not his real name) reaction when MFY Attorney Bernadette Jentsch called to tell him he had won his appeal to the New York Department of State and had been granted a license to work as a security guard.

A year earlier Jared had worked successfully as a security guard for several months but his employer could not offer him a permanent job until he secured a license. Since he had a past criminal record, he had to show that he was rehabilitated and was otherwise eligible to be licensed despite his convictions.

Jared's life had been difficult. He had periods of homelessness and several violations and misdemeanors. Despite these obstacles, he was working hard to get his life together. He had a clean record for the past four years and was employed part-time at an overnight delivery company. With help from MFY, he was able to document rehabilitation and present credible testimony at his hearing. For Jared, having another employment option was a new and welcome experience.

MFY's work to help ex-offenders re-enter the workforce is part of a larger commitment to economic justice that takes many forms, from securing unpaid wages for workers whose employers have violated federal and state wage and hour laws to defending low-income consumers from unscrupulous debt collectors. In tough economic times, when competition is stiff even for low-wage jobs, protecting workers' right to be properly paid is even more important.

MFY's work to remove barriers to employment has had a particularly profound and lasting impact

on the lives of people with criminal records who are trying hard to secure jobs that will give them a new start in life. Begun several years ago as a small part of MFY's Workplace Justice Project, the program has grown in both size and scope as more people seek assistance to secure licenses as security guards or taxi drivers or to remove errors from their records so they get a security clearance in order to work.

A License to Work

"Many young people wind up with criminal records simply because they exercised poor judgment," said Ms. Jentsch. That was the case of James (not his real name) who came to MFY seeking help to become a Licensed Practical Nurse (LPN). Eleven years earlier, as a college freshman, he was intoxicated and wound up in someone else's apartment. Although nothing was stolen, he was given five years' probation for burglary. After working in several retail jobs and as a certified nurse's assistant, he completed an LPN program and had a job offer pending approval of his license. MFY helped James craft his license application statement in which he explained his single offense, helped him gather proof of rehabilitation and represented him at the initial investigative interview. His license was approved and he is happy to finally be working in a field he enjoys



that offers a decent salary and opportunities for advancement.

A Ticket Turns into A Crime

Carlos (not his real name), who lives in Brooklyn, worked as a security guard in New Jersey for several years. When he applied for a New York security guard license he was denied because his record showed he had been arrested for bail jumping in New Jersey, which the New York State Department of State considered a criminal conviction and a basis for the denial. It turns out that Carlos had received a summons because he had fallen asleep on the PATH train after working the night shift, missed his stop, and had an expired train ticket. Since he was not able to pay the fine immediately, he called the number on the sum-

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Home Care Workers Win \$1 Million in Class Action Wage and Hour Settlement

In the first case of its kind in New York State to reach classwide settlement, hundreds of women who care for New York City's elderly and infirm will share a \$1,090,000 settlement in a groundbreaking class action lawsuit against McMillan's Home Care Agency. The suit alleged that the for-profit company consistently underpaid its workers and never paid overtime, despite frequently asking that employees work more than 60 hours per week.

In 2010, Josefina A. Toledo Montero, a Harlem resident who had

worked as a home health aide for three years, came to MFY complaining that McMillan's was not paying proper wages, not paying overtime, and requiring workers to cover the costs of cleaning their uniforms and purchasing certain supplies. MFY Attorney Lindsay Rothfeder recognized that Ms. Montero's situation was typical of many workers at McMillan's and the suit was initiated as a class action.

Judge Paul Wooten of the New York State Supreme Court, New York County, approved the settle-

ment in early July, which will give each worker a pro-rata share based on overtime hours worked and not paid. The settlement also prohibits McMillan's from retaliating against employees who complain about wages and hours and requires the company to appoint an administrator to handle complaints about payment of wages or reimbursement of expenses.

At the final court hearing, several former McMillan's employees spoke movingly about their need to be justly compensated and what it personally

meant to them to have their hard work recognized by the settlement.

There are some 250,000 home care workers in New York State, and a projected need for another 100,000 over the next decade. In New York City, one in seven low-wage workers is a home care worker, providing crucial care for elderly and infirm patients in and around New York City.

Abbey Spanier Rodd & Abrams, LLP and the National Employment Law Project co-counselled the case with MFY.

MFY Seeks Justice for New Yorkers with Disabilities

Over the past year, MFY has intensified its efforts to protect the rights of people with disabilities, filing cases on behalf of tenants with physical disabilities and residents of adult homes with mental illness.

NYCHA Ignores Persistent Complaints about Dangerous Ramp

MFY is representing three tenants in a suit against the New York City Housing Authority (NYCHA) for failing to repair a ramp that is too dangerous for people using wheelchairs, motorized scooters or walkers to use safely, rendering the entrance inaccessible. Filed in U.S. District Court, Southern District of New York, the suit seeks declaratory and injunctive relief as well as compensatory and punitive damages under the Americans with Disabilities Act, the Rehabilitation Act, and the New York City Human Rights Law.

“The ramp is so dangerous that these women can’t navigate it on their own. Even when they have help, there have been accidents and close calls,” said Orier Okumakpeyi, the MFY attorney representing the tenants. “NYCHA has agreed that the ramp needs to be fixed, but after six years of complaints, it still has done nothing.”

On one occasion a 67-year-old tenant who has multiple health problems that require her to use a motorized wheelchair traveled down the steep ramp accompanied by her home attendant. Near the bottom, the wheelchair tilted sideways with one set of wheels becoming airborne and the other set sliding out of control toward the metal railing and concrete wall. The tenant, who has suffered three heart attacks and three strokes, was deeply shaken and only averted physical harm when several people nearby caught the wheelchair before impact.



Judge Allows Blind Resident’s ADA Lawsuit against NYCHA to Proceed

In another suit, a federal judge in Brooklyn ruled that a suit brought by a NYCHA tenant who is blind may proceed despite NYCHA’s efforts to have the matter dismissed. In 2010 the tenant sued NYCHA for terminating his tenancy when he failed to respond to written notices, even though NYCHA was aware that he was blind and could not read the notices without assistance. Although the agency subsequently reinstated his Section 8 housing and promised to provide future notices on audio disks, it has failed to do so more than 18 months later.

In denying NYCHA’s motion, the court emphasized that the harm the tenant faces is not only loss of his housing subsidy, but NYCHA’s discriminatory treatment. The suit seeks an order that NYCHA cease its discriminatory practice by providing him with notices in an accessible format. Such an order would ensure that hundreds of others like him will not face homelessness because they cannot read notices.

In addition to MFY, the tenant is being repre-

sented by Staten Island Legal Services, Legal Services NYC, and Patton Boggs LLP.

Class Action Lawsuit Challenges Department of Health’s Complaint Process

The New York State Department of Health (DOH) oversees adult homes throughout the state and is charged with addressing complaints from residents, the majority of whom are people with mental illness.

“The consensus among residents is that their complaints are not addressed,” said Norman Bloomfield, a resident of the Surf Manor Home for Adults in Brooklyn and lead plaintiff in the case. “Nine residents have died

this year, there are outbreaks of bed bugs and scabies, the facility is in serious disrepair. The inspectors’ response is always ‘give the administration more time’ or ‘they’re trying’ when residents are bitten by bed bugs every night. No one should have to live like this. What’s more, the Department is not doing anything about complaints it has substantiated which affect residents’ health and safety.”

In his complaint, Mr. Bloomfield claims that the DOH complaint process excludes residents. The complaint further alleges that the Department has failed to officially promulgate its appeal rules and that it abuses its discretion in ways that allow adult home operators to violate residents’ rights with virtual impunity.

MFY is also representing Mr. Bloomfield and other residents in a separate class action lawsuit against Surf Manor seeking injunctive relief and damages to remedy hazardous conditions in the home and require Surf Manor to provide residents with services to which they are entitled under the law. DLA Piper LLP is co-counseling both of these cases with MFY.

MFY Legal Services, Inc.

Celebrating 50 years of providing free civil legal services to low-income New Yorkers.

Jeanette Zelhof, Executive Director

Elise Brown, Deputy Director & Director of Litigation for Housing & Economic Justice

Kevin Cremin, Director of Litigation for Aging & Disability Rights

Carolyn Coffey, Ramonita Cordero, Mallory Curran, Kenneth Lau, Christopher Schwartz

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Nancy J. Walder

Removing Barriers to Work

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mons to request a new date by which to satisfy the fine. However, he never received a response or notice and was later charged with bail jumping. He eventually paid the fine and resolved the matter but New York denied his license application. MFY represented him at a hearing and argued that bail jumping in this situation is classified as an offense and not a crime under New Jersey law. The Administrative Law Judge agreed and held that Carlos’ offense was a violation and not a crime under a similar New York law and granted his license. Carlos can now be considered for promotion at his current assignment and is able to apply for other security-related jobs in New York.

Dignity and a Fresh Start

“Although the work that many clients seek is not highly paid, getting a job as a security guard or taxi driver gets people off public assistance and gives them the dignity they deserve,” said Bernadette Jentsch, the attorney handling MFY’s re-entry work. Recent cases show potential earnings. A 44-year-old man who had collected \$1,644 per year in public as-

sistance can earn \$25,950 per year after getting a security guard license, and a 38-year old Latino secured a For Hire Vehicle license can earn \$25,620 a year. A 29-year-old African-American man who was supported by his mother became a Licensed Practical Nurse, a profession that pays \$41,170 per year, and a 46-year-old woman who was receiving \$7,728 per year in SSI and SSD benefits became eligible to earn \$20,700 per year after getting a security clearance to work as a home health aide.

MFY Expands Re-entry Work

MFY is collaborating with the Fortune Society, a major provider of re-entry services, to provide training to both staff and clients with criminal records on cleaning up rap sheets and documenting rehabilitation to facilitate re-entry into the workforce. MFY has been able to expand the number of clients served with help from Ropes & Gray LLP, whose associates are representing people with past criminal records in appeals of licensing denials.

MFY’s work has enabled scores of people with past criminal records to re-enter the workforce. The project receives generous support from the Bernard F. & Alva B. Gimbel Foundation, the New York City Council and the Fortune Society.

in brief

Chain Store Pays Damages after Breaching Reasonable Accommodation Settlement

In 2009, MFY negotiated a settlement between a major drugstore chain and an employee who suffered from plantar fasciitis, a painful foot ailment, which required the store to split the employee's duty evenly between working the cash register and working the store aisles, and to pay \$15,000 in damages. By alternating responsibilities throughout the workday, the employee was able to avoid the severe pain caused by standing behind the register for her entire eight-hour shift.

The store did not keep its end of the bargain, and continued to assign her overwhelmingly to the register. In 2011, MFY filed a discrimination charge with the New York State Department of Human Rights (DHR) and requested assistance to enforce the settlement. DHR issued a probable cause determination a few months later, which led to new negotiations and a settlement of \$35,000 in damages for the client, a letter attesting that she is a satisfactory employee, plus attorney's fees.



MFY's Carolyn Coffey Receives NYCLA's Public Service Award

Carolyn Coffey, Supervising Attorney of MFY's Consumer Rights Project and Low-Income Bankruptcy Project, was one of the attorneys who received the New York County Lawyers' Association Public Service Award on September 12, 2012. The award recognized her achievements in representing low-income consumers and in winning greater protections for all New York consumers. Her efforts included a 2008 report, *Justice Disserved*, which exposed rampant "sewer service" in the debt collec-

tion industry, and successful advocacy for city legislation to protect consumers from shoddy process serving.

MFY Settles Appeal of NYCHA's Refusal to Allow Tenant to Keep Emotional Support Dog

When the New York City Housing Authority (NYCHA) ordered Ms. K to remove her service dog from her apartment, she refused, stating that the dog is the only thing in her life that brings her joy and loves her unconditionally. Ms. K, who has had many setbacks in her life, relies heavily on the dog for emotional support.



The dog in question is a large, friendly and exuberant pit bull who accidentally nipped the hand of a neighbor who routinely gave the dog treats. MFY Attorney Dinah Luck focused on the Fair Housing Act and steps that the client was willing to take to mitigate any potential threat. After the judge indicated that she was inclined to reverse NYCHA's decision, she gave the agency the opportunity to settle the case. NYCHA agreed to allow Ms. K to keep the dog on the condition she muzzle the dog when taking her out of the apartment. Ms. K readily agreed.

MFY Wins Decision in Non-Traditional Family Succession Case

After a three-day trial in Housing Court, MFY Attorney Scott Stamper won the right of his client, Mr. A, to succeed to the tenancy of the woman he considered "mom." Mr. A was a teenager when he first met Ms. V, with whom his father was living. They developed a close relationship and Mr. A began calling her "mom." Thirteen years later, in 2005, Ms. V's health declined and Mr. A agreed to move in and care for her. For the next five years, Mr. A and Ms. V shared their lives together. Mr. A contributed to the household expenses and, as Ms. V's health worsened, he helped Ms. V bathe and dress and performed all of the household tasks. After hearing the testimony of family members and friends, the judge concluded that they had "a loving, emotionally committed and financially interdependent relationship and were thus a family in every respect." The victory allows Mr. A to remain in the rent-stabilized, affordable apartment.

Justice Unsettled: MFY Presses for End to Foreclosure Shadow Docket

When Imogene Cole was injured in a work accident and waiting for Workers' Compensation, she called Citi Mortgage to get help with her payments. The bank set up a forbearance plan, allowing her to make a lower payment. When her Workers' Compensation benefits came through, she applied for and received a trial loan modification, faithfully making all payments. When no permanent modification came, the bank told her to keep paying and to reapply.

After 18 months of sending the same documents multiple times because the bank kept losing them, and never missing a payment, she was sued by the bank in November 2010. The bank never told her that by paying the lesser amount she was technically in default, even though it was the amount the bank told her to pay.

The bank's law firm in the foreclosure action never filed the paperwork (the Request for Judicial Intervention or RJI), needed to move the case into the settlement part, where affordable loan modifi-

cations are negotiated.

Ms. Cole's case was among those that MFY counted in August 2011 when we found that 87% of cases filed in Brooklyn and Queens in November 2010 and March 2011 were mired in the shadow docket. MFY's report, *Justice Deceived*, showed that while in the shadow docket, fees and interest accrued, adding to homeowners' debt and making it less likely they would qualify for an affordable loan modification.

In May 2012, MFY issued a follow-up report, *Justice Unsettled*, finding that 43% of the cases originally examined from November 2010 and March 2011 remained in the shadow docket. Moreover, for cases filed in October 2011, close to 75% were in the shadow docket seven months later. The report also found that 12% of the cases filed in November 2010

and March 2011 were discontinued with no reason given. Once discontinued, the homeowner must wait for the loan servicer to re-file the case in order for the court to oversee the loan modification application and evaluation process.

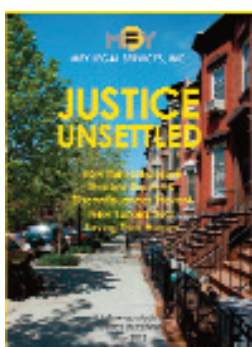
Ms. Cole attended a foreclosure prevention workshop conducted by MFY Attorney Elizabeth Lynch at a church in St. Albans, Queens and met with her afterward. With advice from MFY, Ms. Cole filed an RJI in March 2012 to get her case out of the shadow docket. At the first court date, the bank tried to discontinue the action for no reason. MFY challenged that position and the case moved to the settlement conference part where MFY negotiated an affordable loan modification that allows Ms. Cole to keep her home.

In *Justice Unsettled*, MFY made recommendations to address the prob-



Imogene Cole (seated) signs loan modification as her daughter, Tonya, looks on. MFY Attorneys Adam Cohen (left) and Elizabeth Lynch (right) handled the case.

lem, including allowing the courts to move cases into the settlement part even if an RJI is not filed. As a result of MFY's advocacy and exposure of the size of the shadow docket, the Office of Court Administration (OCA) has initiated a pilot project in Kings County Supreme Court to move cases out of the shadow docket, and OCA has proposed legislation to address the growing problem.



pro bono news

MFY Honors Cleary Gottlieb and Willkie Farr for Commitment to Externship Program



Tamara Britt, Cleary extern, and Kennon Scott, Willkie extern, read a thank you note from a grateful client.

MFY honored Cleary Gottlieb Steen & Hamilton LLP and Willkie Farr & Gallagher LLP at its annual benefit on June 13, 2012 for their outstanding commitment to pro bono service through their externship programs with MFY.

Cleary Gottlieb was the first law firm in the United States to provide public interest externships, a commitment it has continued for the past four decades. Cleary has been involved

with MFY since the late 1960s and established a formal externship program in 1975. Willkie Farr & Gallagher launched its externship program with MFY in 1989.

Guests at the benefit watched a short video in which externs spoke of their experiences. “On a day-to-day basis I was in control of my caseload, I was in control of my schedule. More practically, going into court with witnesses and cross-examining people on the stand is normally not something I get to do on a day to day basis,” said Anna Burns, a former Willkie extern.

“There is really no better feeling than having a client who literally would be homeless if you weren’t able to assist them . . . to prevent that is really an amazing feeling,” said Lauren Handelsman, a former Cleary extern.

Externs handle cases from intake through disposition, engage in motion practice, make decisions on cases, a regularly appear in court where they gain valuable litigation experience. Together, these two firms have contributed 60 years of service, providing advice, counsel and representation to more than 12,500 clients.

Ropes & Gray Begins New Externship at MFY to Help Seniors to Avoid Eviction

On July 9, 2012, Bharathi Pillai became the first Ropes & Gray associate to join MFY’s staff as an extern. A second year associate who worked on government enforcement matters, she is now working in the MFY’s Seniors Project, helping older adults age in place with dignity in their own homes. The Project provides representation in housing court to Manhattan residents over age 60 who are facing eviction, and helps seniors with Medicare, Medicaid, Social Security and public benefits problems, consumer issues, and access to health care.

“I’m really proud to be the first Ropes & Gray extern at MFY. The firm has a strong commitment to pro bono work and this experience

is giving me the opportunity to work directly with clients and manage a large caseload. I’m dealing with a lot of issues at once, and I’m much more confident going to court. There are great people to learn from here, and everyone is always willing to help, no matter how busy they are. I will definitely recommend this externship to my colleagues.”



Bharathi Pillai interviewing client.

MFY Awards Breakfast Honors 350 Volunteers

MFY honored 350 pro bono attorneys from 48 firms at its Pro Bono Recognition and Awards Breakfast in April. Among those specially honored for outstanding service were **Keith D. Marlowe**, an associate at **Paul Hastings LLP**, for representing kinship caregivers in adoption cases and supervising some 60 associates at the firm who are also participating in the project. **Richard L. Levine**, a partner at **Weil, Gotshal & Manges LLP** received MFY’s Partner in Justice Award for leading a team from his firm that is pursuing a class action lawsuit against a three-quarter house operator and substance abuse program that exploit tenants.

Also receiving the Partner in Justice Award was a team from **Patterson Belknap Webb & Tyler LLP** that is litigating a class action law-



The Patterson team: Jim Kerwin, Lisa Cleary, Kelly Maurceri, Marla Dunn, and Adam Blumenkrantz.

suit against several three-quarter house operators for deceptive practices and violation of housing laws.

City Councilmember Daniel J. Garodnick received MFY’s Champion of Justice Award for his leadership in passing city legislation to provide greater protections for consumers.

THANK YOU

MFY thanks the following foundations and businesses for support in 2012:

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Greenberg Traurig LLP
Hyde & Watson Foundation
Milberg LLP
Ambrose Monell Foundation
New York Community Trust
New York Bar Foundation
New York Foundation
New York Health Foundation
NYS IOLA Fund
NYS Office of Court Administration
Patterson Belknap Webb & Tyler LLP
Pfizer Inc
Rudin Management
Scherman Foundation
Skadden Fellowship Foundation
van Ameringen Foundation
Wachtell, Lipton, Rosen & Katz

Pfizer Helps MFY Launch Nursing Home Residents Project

With generous seed money from Pfizer, Inc., MFY launched the Nursing Home Residents Project (NHRP) in February to enable nursing home residents and their families to get legal help. The project continues the work of Friends and Relatives of the Institutionalized Aged (FRIA), which suspended operations in 2011.

The NHRP is modeled on MFY’s groundbreaking Adult Home Advocacy Project, which provides trainings, advice, and legal representation that have resulted in systemic reforms that have benefited thousands of adult home residents.

“In the 20 years since we launched our Adult Home Advocacy Project, MFY has helped countless adult home residents to assert their rights to dignity, respect, and care in more integrated settings,” said MFY’s Executive Director, Jeanette Zelhof. “We are now undertaking a similar initiative to provide those essential services for the over 40,000 New Yorkers who live in nursing homes.”

The project began by operating a toll-free helpline and will soon hire a full-time attorney to address a range of issues, including abuse and neglect, civil rights violations, improper discharge planning, and unfair consumer practices. The NHRP helpline at 855-444-6477 is open Tuesdays (10 am-1 pm) and Thursdays (2 pm-5 pm); beginning October 1, it will operate Monday through Friday, 10 am-5 pm.

“We have already seen cases in which a person entered a nursing home for rehabilitation but no steps were taken to ensure that his affordable apartment would be there when he got out,” said Kevin Cremin, MFY’s Director of Litigation for Aging and Disability Rights. “If someone loses an affordable apartment, it is unlikely that he will find another one. He’s stuck in a nursing home, when he is capable of living independently and wants to return to his home.”