



# MFY Saves Housing for Tenants in Two Lower Manhattan Buildings

**TENANTS OF A SIX-STOREY WALK-UP ON ELIZABETH STREET** in lower Manhattan found themselves out on the street after an accidental fire damaged several front apartments in October 2008. Afraid that the landlord would try to keep them out permanently, the tenants came to MFY for help.

Their fears were well-founded. The landlord had already initiated eviction proceedings against three tenants, hoping to force them to accept modest buyouts. But tenants were not about to give up the homes most had lived in for more than 20 years. When the landlord's promise of timely repairs did not materialize, MFY initiated a Housing Part (HP) proceeding to force action. The landlord then began a series of maneuvers to delay the process, hoping that the tenants would get tired of living with friends and accept buyouts. First, the landlord moved to dismiss the HP case, challenging the standing of the tenants' organization. The judge denied this motion and set trial for January 15. The landlord then filed a new lawsuit in State Supreme Court against each tenant indi-

vidually and against MFY, alleging that our defense of the tenants' rights to repairs interfered with his right to buy out tenants. Patterson Belknap Webb & Tyler LLP represented MFY on a pro bono basis, arguing that the landlord's actions constituted a Strategic Lawsuit Against Public Participation (SLAPP). The landlord immediately withdrew the case.

Not willing to give up, on January 14 at 6 p.m., the landlord filed for bankruptcy, which generated an automatic stay of the HP case. MFY quickly filed a motion requesting the bankruptcy court lift the automatic stay and permit the housing court case to proceed. On February 17, MFY Staff Attorney Rachel Spector persuasively argued MFY's motion, and when the landlord's counsel insisted that the witnesses testify, she conducted impromptu direct and cross-examinations of them. The bankruptcy judge immediately lifted the stay, allowing the HP trial to proceed.



Elizabeth Street tenants meet at MFY with Attorneys Rachel Spector and Donna Chiu.

After settlement negotiations broke down, the landlord finally appeared in court on March 6. Staff Attorney Donna Chiu argued on behalf of the tenants. The judge struck nine of the landlord's ten affirmative defenses, and denied a series of oral motions made by the landlord, announcing that the time for delay was over. After further settlement negotiations, the landlord finally accepted a repair schedule that allows some tenants to return to their apartments in June and the remainder in November. Meanwhile, MFY went to court on behalf of two tenants with holdovers. One case was dismissed and the other is pending.

"The tenants were united and had deep roots in the community," said Elise Brown, supervising attorney for MFY's Lower Manhattan Justice Project. "For them, the issue was clear—if they lost their homes on Elizabeth Street, they would have nowhere to go."

**TENANTS OF THE SRO AT 81 BOWERY** have been battling their landlord for years. Two years ago, he attempted to evict the tenants, all immigrant workers from China who spoke little or no English, after receiving a violation for having fewer units than the number specified in the building's certificate of occupancy. Like many SRO owners, this landlord has been eliminating SRO units and creating rooms to rent at higher rates to transient tourists. In June 2008, MFY prevailed in court, preserving the tenancies of 30 residents. In November, however, the city suddenly issued a vacate order, citing illegally low ceilings that blocked the sprinkler system and problems with emergency exits. Tenants believe the landlord himself reported the violations to the Department of Buildings (DOB), knowing the tenants would be forced out. In fact, the tenants were relocated by the city to



Single-Room Occupancy hotel at 81 Bowery.

(continued on page 2)

## Appellate Court Rules DOE Acted Unfairly in Denying Employment

The Appellate Division of New York State Supreme Court reversed a lower court decision in May and ruled that the New York City Department of Education (DOE) acted in an arbitrary and capricious manner in denying employment to a 31-year-old administrative assistant because of a 15-year-old criminal conviction. The ruling rejects the DOE's practice of denying employment to ex-offenders without a specific basis for finding them to be a danger to the program or school involved.

Madeline Acosta, now 33, married and the mother of a four-year-old son, was employed by a non-profit organization that contracted with the DOE to provide special education services, as a part-time administrative assistant in 2006. After three months on the job, she disclosed her past record as part of the DOE's security clearance procedure. As a 17-year-old high school senior, Ms. Acosta was coerced by an abusive boyfriend to accompany him in several armed robberies. She was arrested and spent four years in prison.

Ms. Acosta presented abundant documentation of her rehabilitation. In prison, Ms. Acosta completed high school, took business classes, and taught other inmates. After her release at age 21, she attended

college at night while working and earned a B.S. in Legal Studies. She worked successfully at two environmental law firms before taking the part-time position at the non-profit so she could have more time with her young son. For years, she has volunteered with advocacy organizations, speaking to young people about her experiences and encouraging them to stay out of trouble. "I don't even remember who I was at 17," Ms. Acosta said, "I have given more than what I have taken."

Despite her exemplary work history and service to the community, and complying with every request for information from the DOE, the DOE denied Ms. Acosta's employment application, charging that she "will pose an unreasonable risk to the safety and welfare of the school community" and that she had failed to provide references from previous employers, even though no references were requested. The appellate court found that the DOE's denial of employment was unreasonable and made without regard to the facts and remanded the matter to the Supreme Court to fashion an appropriate remedy. Ms. Acosta is seeking reinstatement and back pay.

Ms. Acosta was represented by Jadhira

Rivera and Bernadette Jentsch, attorneys at MFY Legal Services. "We've had many people come to us with complaints about denials of employment by the DOE, and there appears to be a clear pattern of automatically denying employment to applicants with criminal conviction records seeking clerical and other non-teaching jobs," said Ms. Jentsch. Two years ago, MFY filed a Freedom of Information Law (FOIL) request, asking the DOE to document its procedures for reviewing the cases of applicants with criminal records. "They waited months and then gave us very little," said Jadhira Rivera. "We had to file a lawsuit to get them to comply. In court, the DOE was forced to acknowledge that it has no written policies that instruct staff on how to investigate cases and make determinations."

MFY has filed other lawsuits against the DOE challenging its denials of employment to people with past criminal records. "Most of our clients are women like Ms. Acosta," said Andrew Goldberg, supervising attorney for MFY's employment unit. "They got in trouble when they were young and now they're responsible adults trying to make a living and support their kids."

## MFY Saves Housing in Two Buildings

*(continued from page 1)*

a Bronx homeless shelter.

Like the Elizabeth Street landlord, the SRO operator promised to make repairs and then did nothing. MFY filed an HP action, and the landlord moved to dismiss, claiming the court has no jurisdiction over the Department of Buildings. MFY moved to add DOB to the suit. When the landlord did not appear for the hearing, the Court issued a default judgment on the original petition to make repairs, and the landlord then moved to vacate that judgment. The judge denied the motion to vacate the default judgment and granted the motion to add DOB to the case. Although the landlord appealed the judge's decisions and bureaucratic problems appeared for a time to block the issuance of any building permits, on June 18 the landlord signed a settlement agreement promising to repair the building so the tenants can return at the end of July. Staff from the offices of elected officials, including Assembly Speaker Sheldon Silver, Councilmember Alan Gerson, State Senator Daniel Squadron, Manhattan Borough President Scott Stringer, and the Mayor's office have given invaluable support to the tenants throughout the dispute.

## Thank You!

MFY acknowledges generous support from:

Lily Auchincloss Foundation, Inc.

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# from the docket

## MFY Sets Precedent in Medicaid Eligibility Cases

After representing a client fighting for Medicaid eligibility for over a year, MFY Staff Attorney Orier Okumpakpeyi was able to reopen a prior Administrative Law Judge (ALJ) decision, persuading the ALJ that he and the Human Resources Administration (HRA) had misread the regulations in rendering the original decision. Ms. Okumpakpeyi showed that HRA has consistently misapplied the rules in calculating the applicant's household income and incorrectly denied benefits. The error had caused eligibility denials for many MFY clients, and the ruling sets an important precedent for future eligibility cases.

## MFY Wins Chinatown Back Wage Claim

MFY's Lower Manhattan Justice Project, launched last year to improve access to justice for low-income residents and workers in Lower Manhattan on housing, consumer and employment issues, won a big victory in settling an unpaid wage claim case for a Chinese restaurant waiter, whose employer paid below minimum wage and no overtime over a four-year period. On average, the client worked 60 hours a week. While the exact amount of the settlement cannot be made public, it was one of the largest settlements for a single worker in MFY's history.

## MFY Defends Rights of Inmates and Ex-Offenders in Housing Cases

Staff Attorney Runa Rajagopal won a summary judgment motion in favor of a client who faced a nonprimary holdover because he is serving a two-year prison sentence. The court accepted MFY's argument that the client's prison sentence constitutes a temporary absence that does not vitiate his tenancy. When Staff Attorney Brian Sullivan's client was denied a Section 8 voucher because of his previous criminal conviction even though he showed rehabilitation, Sullivan filed an Article 78 lawsuit, after which Section 8 agreed to grant a new interview at which the client's conviction cannot be considered as a reason for denial. In a similar case, Staff Attorney Jennifer Cheung convinced Section 8 to reverse its denial of the subsidy after convincing the judge that the client had rehabilitated himself.

## MFY Foils Stimulus Check Scam

When MFY Staff Attorney Shelly Weizman went to the New Broadview Manor Adult Home to train residents on their rights, residents complained that an employee of the home illegally took a \$25 "processing fee" from each resident's \$300 federal stimulus check payment. Residents of adult homes receive an allowance of about \$6 per day, which they use to cover transportation, telephone calls, air conditioning, clothing, furnishings, and personal items, such as soap, shampoo and over-the-counter medication. Twenty-five dollars is, therefore, a significant amount of money for these residents to lose. MFY contacted the home's owner, informing him that this "fee" is prohibited under the adult home regulations and demanding reimbursement. The home promptly refunded the money, a total of \$5,000, to the residents.

## MFY's New Foreclosure Prevention Project Saves Home for 92-Year-Old Staten Island Widow

When MFY launched its Foreclosure Prevention Project in September 2008, the intake line was flooded with calls. Many callers had been duped by mortgage brokers who promised better terms and cash for signing a new loan agreement.

Among the Project's first clients was Mrs. J, a 92-year-old widow, who agreed to re-finance her mortgage loan, believing the broker's claims that the new loan would lower her monthly payments and give her \$30,000 cash out of the equity in the property. The opposite occurred: the new loan significantly increased her monthly payment and she received less cash at the closing than promised. Unknown to Mrs. J, the broker misrepresented her income on the application, claiming she received ten times her monthly income of \$1,474. Mrs. J made a single payment on the unaffordable loan before defaulting. MFY successfully vacated a default judgment and added new parties, claims and counterclaims. The judge has chastised the lender for its irresponsible practices and made it clear that she will not eject the defendant from her home. The parties are negotiating a forbearance agreement, which will allow Mrs. J to remain in her home for the remainder of her life.

The Foreclosure Prevention Project, funded by a grant from the New York State Department of Housing & Community Renewal, is focusing on serving homeowners in hard-hit areas of Queens and Staten Island.

## MFY Defends the Rights of Tenants to Keep Pets

MFY Staff Attorney Dinah Luck, known affectionately as MFY's "Lawyer for the Dog (or Cat or Bird)," is battling 1000 when it comes to defending pet owners from eviction. In their efforts to remove residents from rent-regulated apartments, landlords often improperly invoke lease provisions against pets.

For the elderly and people with mental disabilities who rely on pets for emotional support and companionship, the idea of losing a pet can cause extreme emotional distress. To ensure that tenants know their rights, MFY and Community Access, an advocacy organization for people with mental disabilities, joined forces to produce and disseminate *A Tenant's Guide to New York City's Pet Laws*, a user-friendly, illustrated booklet that explains tenants' rights. The guide has been widely disseminated by tenants' organizations and animal rescue groups and is also available online at [www.mfy.org](http://www.mfy.org).



# Una Perkins: 40 Years at MFY and Going Strong

In her 40 years as a paralegal at MFY, Una Perkins has zealously represented thousands of clients in SSI and SSD hearings. She recently received an Administrative Law Judge decision ordering the Social Security Administration to waive an overpayment claim of more than \$190,000 against her client and to return \$2,400, which had already been taken from him. Each year, Una skillfully manages to win hundreds of thousands of dollars in disability benefits for clients.

Una may be the only paralegal in New York City with a case that went to the highest court. John Kelly, whose suit resulted in the seminal U.S. Supreme Court decision, *Goldberg v. Kelly*, establishing due process protections for welfare recipients, was one of Una's early clients.

From Una's point of view, however, her *piece de resistance* was the case of Mr. W, whose SSI was cut off years ago when he failed to appear in court after an arrest in Massachusetts because he had no representation and feared he would go to jail for something he didn't do. A Chinese immigrant with psychiatric disabilities who spoke little English, Mr. W, then in his 20s, had fallen in with the wrong crowd.

Determined to help him, Una worked the phones until she persuaded Kelli Porges, a public defender in Worcester, to take the case. The DA refused to even consider a deal unless Mr. W appeared in court. Mr. W refused, fearing that he would be arrested and sent to jail.

Mr. W spent many years in and out of psychiatric facilities and rehabilitation programs. During that time, Una visited him frequently at Bellevue and stayed in touch with him, his mother, and caseworkers, always encouraging him and expressing confidence that he would overcome his challenges.

Her persistence paid off. Earlier this year Mr. W walked proudly into Una's office and announced he would go to Massachusetts and "stand up like a man." Upon arriving in Massachusetts, he was immediately arrested, and then released on bail. After a second appearance a month later, the warrant was cancelled and he received probation. Una immediately had his SSI benefits reinstated.

When asked why she stayed with the case for so long, Una said, "There was something about him that made me believe in him. I knew he would be able to get his life together if he had some support."

Luckily for Mr. W, Una was there to give him the support he needed. After 40 years on the job, Una is still there, ready for the next client who needs legal help and someone who takes the time to believe in them.



*Una Perkins accepts the Legal Services Award from New York County Lawyers Association at a ceremony on May 15, 2009.*

## pro bono news

### MFY Projects Get Big Boost from On-Site Pro Bono Attorneys

After retiring from American Express in 2007, **BRUCE COGAN** swore he would never again pick up a law book. However, after six months in "legal detox", he sought to re-engage as a lawyer on a pro bono basis. "As a tax lawyer, my one and only client was the company's financial statement. I needed some flesh and blood clients," Bruce noted. MFY's Kinship Caregiver Law Project gave him that opportunity. Since beginning work with the Project in March 2008, he has prepared a new comprehensive custody/guardianship manual for pro bono lawyers, has participated in training sessions, and has represented a number of clients in family court, the first time he has appeared in court in 28 years. In April he finalized his first adoption in Kings County Family Court for a grandmother and her four-year old granddaughter. "It's great to get positive results that can't be measured in dollars and cents," Bruce said.



**IRV SCHWARTZ** made a major life change several years ago when he decided to leave his successful career as a talent and literary agent and pursue a legal degree. He graduated from Cardozo Law School in May 2008 and received a ten-week postgraduate fellowship in public interest law, which brought him to MFY last October. He worked first in MFY's Workplace Justice Project, handling discrimination cases, and stayed on as a volunteer in the Foreclosure Prevention Project, where he represents several foreclosure clients and ferries to Staten Island each week to assist homeowners in mandated settlement conferences. Irv's well-honed negotiating and counseling skills have been put to good use as he works to save the homes of MFY's clients, many of whom have been victims of various foreclosure rescue scams.

**LARS HANSEN** found out about MFY while researching problems with shoddy process service in an effort to help his sister who had fallen victim to debt collection abuse. Impressed with MFY's *Justice Disserved* report, Lars was convinced MFY would be a good place to do pro bono work while searching for a new position. An accomplished insurance defense trial attorney, Lars moved from California to Hoboken last October to be with his fiancée. Since February, he has worked 20 hours a week or more representing clients in complex foreclosure matters in Queens and Staten Island. His work has earned the respect of the Attorney General's office, which recently asked MFY for suggestions on what to look for when investigating abusive loan servicing companies.



# in brief

## MFY's Advocacy Brings \$40 Converter Box Coupon to Adult Home Residents

MFY submitted extensive comments to the National Telecommunications and Information Administration (NTIA) on the need to extend eligibility for the \$40 coupon to defray the cost of a digital-to-analog converter box to residents of facilities such as adult homes and had numerous discussions with agency representatives to press for changes in the rules. Most adult home residents have very old TVs. This advocacy resulted in NTIA modifying the rules to extend eligibility to residents of adult homes, nursing homes and other similar facilities. In its formal regulation, NTIA repeatedly cited the MFY Adult Home Advocacy Project's recommendations as the basis for its decision. As a result of the rule change, approximately 35,000 adult home residents in New York State alone are now eligible for the \$40 converter box coupon.

## MFY's Consumer Rights Project Promotes New Consumer Protection Laws

MFY took a leading role in efforts by a coalition of advocacy organizations across New York State to press for passage of the Exempt Income Protection Act, which shields elderly, disabled, veteran and lower income New Yorkers from unlawful practices by debt collectors and took effect January 1, 2009. The new law closes a loophole that has allowed debt collectors and credit card companies to use "restraining notices" to freeze the bank accounts of New Yorkers who receive income that is exempt from debt collection under federal and



MFY Staff Attorney Caroline Coffey addresses a press conference at City Hall advocating for the Consumer Credit Fairness Act.

state law, such as Social Security, veterans', disability, and pension benefits. The law ensures that the first \$2,500 in an account which contains directly deposited exempt income cannot be restrained.

MFY's Consumer Rights Project also supported a City Council law to expand the definition of "debt collection agency" to cover buyers of consumer debt who hire third parties, including attorneys, for collection. The law, approved in May, requires debt buyers to be licensed by the NYC Department of Consumer Affairs. Most recently, the Consumer Rights Project has taken a leadership role in New Yorkers for Responsible Lending (NYRL), a statewide coalition that is supporting the Consumer Credit Fairness Act. The Act would provide greater protections for consumers against lawsuits brought by third-party debt buyers by tightening notification requirements, reducing the statute of limitations on debt lawsuits, and requiring that court papers include basic information about the debt so that defendants can identify the debt or account on which they are being sued. In June 2008, MFY's report, *Justice Disserved*, exposed shoddy process serving practices throughout the debt collection industry.

## Adult Home Residents Press Claim against Segregated Housing

A trial began on Monday, May 11, 2009 in federal court to determine whether New York State's policy of housing people with psychiatric disabilities in large adult homes violates the Americans with Disabilities Act (ADA). Adult home residents and their advocates contend that many adult home residents who are qualified and able to live in "supported housing" have been re-institutionalized in adult homes in violation of federal law.

The case, *Disability Advocates v. Paterson*, was filed in 2003 after The New York Times 2002 series, "Broken Homes," exposed horrific conditions in the homes, including widespread violence, neglect, and abuse that led to the deaths of scores of residents. The Pulitzer Prize-winning series

fueled public outrage and demands for reform.

"While the state has closed some of the most abusive homes, the root of the problem remains," said Jeanette Zelhof, head of MFY Legal Services' Adult Home Advocacy Project, which advocates for adult home residents in the city. "Although people with psychiatric disabilities are capable of living in less restrictive, supportive settings, the state continues to isolate them in adult homes, effectively re-institutionalizing people who should be part of the community."

The trial lasted five weeks and plaintiffs presented testimony from expert witnesses, advocates, and residents themselves. If successful, the state will be required to secure supported housing for residents who are

qualified to live in a less restrictive community setting. Currently, there are some 4,000 people with mental disabilities living in 21 adult homes in New York City.

In February, Eastern District Judge Nicholas G. Garaufis denied the state's motion for summary judgment, rejecting claims that adult homes are not subject to the ADA and that Disability Advocates lacked standing. In addition to MFY Legal Services, attorneys from the Bazelon Center, New York Lawyers for the Public Interest, the Urban Justice Center and Paul, Weiss, Rifkind, Wharton & Garrison have joined forces to represent the rights of adult home residents.

The trial concluded on June 18, and a decision is likely before the end of the year.



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Spring-Summer 2009



### MFY's 2009 Dinner- Theatre Benefit Honors Eric Roth and Wachtell, Lipton, Rosen & Katz

Over 475 attorneys and guests from 60 law firms and corporations came together on June 11 to honor MFY Board Member Eric Roth and his firm, Wachtell, Lipton, Rosen & Katz, for their commitment to equal access to justice for all. After the dinner, guests enjoyed a spirited performance of *Hair*. Above, Chris Lamb, MFY Executive Director; Eric Roth; and Ariana Tadler, MFY Board Chair.

### MFY Legal Services, Inc.

Christopher D. Lamb, *Executive Director*  
Jeanette Zehlf, *Deputy Director*

Elise Brown, Ramonita Cordero, Sara Fulton,  
Andrew Goldberg, Kenneth Lau, Christopher Schwartz  
*Supervising Attorneys*

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