



# HDLI MESSENGER

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## TENANT'S VIOLENT CONDUCT RELIEVED PHA OF ORDINARY DUTY TO CONSIDER REASONABLE ACCOMMODATION

In *Boston Housing Authority v. Bridgewater*, No. 06-P-145, (Mass. Jud. S. Ct. Aug. 20, 2007), a tenant (Bridgewater) with bipolar disorder and manic depression viciously assaulted his physically disabled twin brother, who also was a BHA tenant. Bridgewater claimed that his illness was controllable by medication and that he had not taken his medication at the time of the assault. Although Bridgewater had not asked before or during the trial for a "reasonable accommodation," at trial he argued that he was entitled to a reasonable accommodation in the application of BHA rules and procedures, and that his eviction without an attempt to accommodate his disability constituted discrimination in violation of the various federal fair housing, disability, and state civil rights statutes. Bridgewater also challenged the notice of termination, arguing that it was defective because it required that he vacate immediately and did not provide 30 days as ordinarily required by law.

After a series of post-trial motions, the trial court ultimately held that the tenant violated his lease by committing a crime on BHA property that threatened the health and safety of another resident and granted BHA possession of the apartment. On appeal, the tenant argued that BHA's failure to investigate the viability of his proposed reasonable accommodation violated fair housing and antidiscrimination laws. He argued that he asserted an affirmative defense at trial based on his

handicap and that the trial judge erred in failing to consider it.

The intermediate appeals court in Massachusetts upheld the eviction, finding that **Bridgewater's conduct rendered him not qualified as a disabled person and was of a kind and quality that relieved the BHA of its customary obligation to explore reasonable accommodations.** Borrowing from analogous cases involving disabled employees holding that egregious workplace misconduct disqualifies an employee from protection of the statute without regard to whether that employee could at some future date conform her behavior to acceptable standards, the court held that **fair housing laws were not designed to insulate disabled tenants from the consequences of activities that would be grounds for termination of nondisabled tenants.** Finally, the court did not address the notice issue, finding that the issue had been waived and that, given the passage of time, the tenant received the full benefit of the thirty-day notice to vacate period anyway. **Counsel for BHA, Jay Koplove**, had the following comment: "This case demonstrates once again that courts will not allow the failure to accommodate/disability discrimination defense when a tenant clearly poses a risk to others. My opponents tried to submit reams of medical evidence (post-trial) to show that he no longer posed a threat but the law is clear (at least in Massachusetts) that requests for second chances are not viable as reasonable accommodations."