



Housing and Development Law Institute
Legal Resource For Public Agencies

HDLI MESSENGER

A monthly electronic publication of the
Housing and Development Law Institute
JANUARY 2005 EDITION

WHAT'S HAPPENING AT HDLI?

HDLI's next **SPRING CONFERENCE** entitled "**Current Disability, Accessibility and Reasonable Accommodations Issues Affecting PHA Applicants, Residents, and Employees**" takes place May 5 and 6, 2005 in Washington. Register now! Come to the Spring Conference a day early on **May 4, 2005** and participate in another HDLI **EMPLOYMENT LAW TRAINING** conducted by the law firm of Epstein, Becker & Green. You may register separately on the Spring Conference registration form.

ON-SITE CUSTOMIZED FAIR HOUSING TRAINING! No traveling necessary! Contact HDLI at (202) 289-3400 for more details on fair housing training on-site at your agency. See attached flyer.

The newest edition of the **INDEX TO HUD REGULATIONS** through 12/31/04 is available for purchase! Order now!

WITHDRAWING OR DELAYING EVICTION NOT CONSIDERED A "REASONABLE ACCOMMODATION"

On January 14, 2005, the highest court in Massachusetts rendered a favorable decision encompassing a number of disability-related issues that PHAs will have to face as their tenant populations age and live longer. *Andover Housing Auth. v. Shkolnik et al.* involved fair housing challenges by an octogenarian couple after their PHA initiated eviction proceedings based on severe and excessive noise from their unit that violated the quiet enjoyment terms of their lease. The PHA demonstrated yeoman's efforts, pre-eviction, to meet with the couple and to provide medical and social services interventions. The tenants repeatedly denied causing the noise until suit was filed when, for the first time, they claimed that the wife suffered from disabilities and, as an accommodation, requested that the PHA withdraw or delay eviction and make a number of physical modifications to the unit. The PHA decided to proceed with eviction, and the tenants filed a counterclaim for discrimination. The trial court granted possession to the PHA and dismissed the tenants' counterclaim. At the tenant's request, the Massachusetts Supreme Judicial Court accepted direct review. In affirming the judgment of the trial court, the appellate court made a number of important holdings.

Interactive Process. First, the court found that the requirement in employment cases that there be a flexible, "interactive process" between the parties to determine a reasonable accommodation also applies in the public housing context, even though no such requirement explicitly exists in the applicable statutes or HUD regulations. The court found that the PHA made every effort to satisfy this requirement.

Qualified Handicapped Persons. Second, the court addressed Section 504's requirement that the tenant be a "qualified" handicapped person, i.e., able to comply with the lease after an accommodation is made. The court found that such a showing is necessary in fair housing cases, even though the term "qualified" handicapped person is lacking in the

Fair Housing Act or regulations. The court went on to find that the couple had not shown that they could comply with the lease if the requested accommodations were made.

Reasonableness of Request for Withdrawal or Delay of Eviction.

Finally, the court considered the reasonableness of the tenants' request that the eviction be withdrawn or delayed as an "accommodation" for the wife's medical conditions. In doing so, the court noted that "indefinite requests for 'more time' to address a disabling condition" are not reasonable." The court went on to find, as did the trial court, that withdrawal or delay of the eviction would serve no useful purpose given the circumstances of the case. However, the court noted that such might be reasonable in cases where no neighbors were seriously disturbed by the noise.

As disability issues continue to be refined in the public housing context, this decision provides PHAs (albeit only binding in Massachusetts) with further direction as to how to address disabilities issues. It applies well-recognized employment standards to the housing context, but also makes clear that the sky is not the limit for disability claims, and that PHAs need not be intimidated by persons claiming disabilities and wanting unreasonable accommodations. **Mark your calendar for HDLI's next conference that focusses on important disability-related issues. See the enclosed registration form or call HDLI for more details.** The full decision is reported online at <http://www.mass.gov/courts/courtsandjudges/courts/supremejudicialcourt/> (click on Opinions, then click on the first decision).

Special cudos to HDLI member Martin J. Rooney, Esq. who defended the housing authority and got this terrific result!