



# HDLI MESSENGER

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## **RUCKER OFFICIALLY ON THE BOOKS IN MASSACHUSETTS: State Highest Court Determines That Rucker Preempts State Law Providing an "Innocent Tenant" Defense**

Massachusetts is one of the jurisdictions that still has on the books a statutory "special circumstances" a/k/a "innocent tenant" defense that conflicts with the U.S. Supreme Court's ruling in *HUD v. Rucker*.<sup>1</sup> An "innocent tenant" defense is one whereby a tenant would be able to defeat a lease termination based on the acts of a household member in cases where the tenant could not have foreseen or prevented the misconduct.

In contrast, in its 2002 *Rucker* decision, the U.S. Supreme Court interpreted federal law and HUD's implementing regulations to require that housing authorities use clauses in their leases that give PHAs the discretion to terminate tenant leases for the criminal activity of household members, even where a tenant had no knowledge of, and was not at fault for, that conduct. Thus, the *Rucker* decision eliminated the "innocent tenant" defense. Many PHAs have struggled with local laws that conflict with *Rucker*.

On August 17, 2007, Massachusetts' highest court upheld a trial court decision firmly establishing that *Rucker* preempts a state-created innocent tenant defense. In *Boston Housing Authority v. Garcia*, No. SJC-09753 (Massachusetts Supreme Judicial Court, Aug. 17, 2007), a state statute, as interpreted by the court in *Spence v. Gormley*, 387 Mass. 258 (1982), provided what was tantamount to an "innocent tenant" defense. In accordance with *Rucker*, a housing court judge ruled that the innocent tenant defense was no longer available under Massachusetts law. In doing so, the housing court declined to admit evidence concerning the tenant's control over, or knowledge of, the drug-related criminal conduct her two adult sons.

In upholding the housing court's ruling, the state's highest court specifically held that *Rucker* preempts Massachusetts law. Indeed, the court held that the "special circumstances" defense would run

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<sup>1</sup> *HUD v. Rucker*, 535 U.S. 125 (2002) (holding that 42 U.S.C. § 1437d (l)(6) (2000) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity).

afoul of, and substantially interfere with, Congress' objective to housing authority discretion. The court noted that PHAs are in the best position to take account of, among other things, the degree to which the housing project suffers from rampant drug-related or violent crime, the seriousness of the offending action, and the extent to which the tenant has taken all reasonable steps to prevent or mitigate the offending action.

The court noted that Massachusetts law still requires "cause" before a public housing tenancy may be terminated, and a housing authority's decision to terminate a tenant's lease is not beyond challenge in the Housing Court, based on the claim that the decision was made "without cause," or otherwise constituted an unlawful abuse of discretion (because, for example, it was unsupported by sufficient facts or carried out in violation of due process).

The case is a huge win for PHAs in Massachusetts and beyond. [BHA Senior Attorney Helene Maichle](#) said: "Since shortly after *Rucker* was decided, we have argued that preemption applies in these very serious eviction cases involving drugs or violence, and, fortunately, our local housing court has agreed with us. But this decision by our highest appellate court now makes it clear that federal public housing tenants cannot keep their tenancies by showing that they had no way of foreseeing or preventing their household members' or guests' misconduct, or that they did all they could but the misconduct still occurred. This ruling will help us make public housing safer for the true innocent tenants — those people who do not engage in drug or violent activity and whose household members and guests do not. We are grateful to the United States Attorney's Office, the Department of Justice, HUD, and the Cambridge Housing Authority for their support and thank them for the excellent *amicus* briefs they filed."