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DEVELOPMENTS IN HOUSING LAW AND REASONABLE ACCOMMODATIONS FOR NEW YORK CITY RESIDENTS WITH DISABILITIES

John P. Herrion

Persons with disabilities are forced to deal with many difficulties in their everyday life and unable to enjoy things ordinarily taken for granted. One example is the discrimination they face in their living conditions. Due to the way in which many buildings are constructed, persons with disabilities are prevented from freely using and enjoying their home. In an attempt to cure this problem, the New York Human Rights Law (the "NYC Law")¹ was enacted. The NYC Law prohibits discrimination in the sale or rental of a housing accommodation and provides persons with disabilities with the right to request and receive reasonable accommodations from their housing providers.² The law's complete scope and meaning have yet to be completely determined, though.

This Essay examines the NYC Law as well as its interpretation and enforcement by the New York City Commission on Human Rights (the "Commission"). More specifically, it focuses on specific rulings where housing providers were ordered to furnish reasonable accommodations for residents with disabilities. This Essay concludes that although certain matters about the NYC Law are still unsettled, the Commission's recent interpretation of it is a step in the right direction for persons with disabilities and toward removing unnecessary discrimination from their lives.

The NYC Law is similar to the Federal Fair Housing Act of 1968 (the "FHA")³ and the New York State Human Rights Law (the "State Law").⁴ The FHA and the State Law prohibit discrimination against people with disabilities in the sale or rental of a dwelling unit.⁵ They regulate application criteria, additional rental charges, security deposits, and many other areas in which people with disabilities are treated differently in their attempt to secure

1. N.Y.C. ADMIN. CODE §§ 8-101 to 8-131 (1996).

2. *See id.* § 8-107(5).

3. 42 U.S.C. § 3601 (1999).

4. N.Y. EXEC. LAW § 296 (McKinney 1998).

5. *See* 42 U.S.C. §3604(f)(1); N.Y. EXEC. LAW § 296(5).

housing.⁶ Both laws also prohibit a housing provider from refusing to permit reasonable modifications of existing premises, at the expense of the individual with a disability, where such modifications would be necessary to afford full use and enjoyment of the premises.⁷ The FHA and the State Law add, however, that when a lease is terminated, landlords of rental occupancies may require the interior of the premises to be restored to its original condition, at the expense of the tenant with a disability.⁸

The NYC Law also forbids housing providers from refusing to sell, rent or lease a housing accommodation, or otherwise deny or withhold an interest therein from any person or group of persons, based upon a disability.⁹ It prohibits discrimination against persons with disabilities in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation, or in the furnishing of facilities or services in connection therewith.¹⁰ The law's protection extends to privately-owned and publicly-funded housing including, but not limited to, condominiums, cooperatives and rental apartments.¹¹

In addition, the NYC Law requires housing providers to make reasonable accommodations to enable a person with a disability to enjoy the right or rights in question, provided that the disability is known or should have been known.¹² "Reasonable accommodation" is defined as that which can be made that shall not cause undue hardship in the conduct of the covered entity's business.¹³ The factors by which undue hardship is determined include the nature and cost of the accommodation, the overall financial resources of the facility involved, as well as the effect on the expenses, resources, and operation of the facility involved.¹⁴ The NYC Law includes an affirmative defense, however, when the housing provider can prove that the person aggrieved would not be able to use or enjoy the residence, regardless of any accommodations made.¹⁵

Conspicuously missing from the NYC Law is any requirement or obligation upon the person with a disability to pay for or provide

6. See *Cason v. Rochester Housing Authority*, 748 F. Supp 1002 (W.D.N.Y. 1990).

7. See 42 U.S.C. § 3604(f)(3)(A); N.Y. EXEC. LAW § 296(18).

8. See statutes cited *supra* note 7.

9. See N.Y.C. ADMIN. CODE § 8-107(5) (1998).

10. See *id.*

11. See *id.* § 8-102(10).

12. See *id.* § 8-107(15)(a).

13. See *id.* § 8-102(18).

14. See *id.* § 8-102(18)(a)-(b).

15. See *id.* § 8-107(15)(b).

the necessary accommodation. In fact, the statute is completely silent on the matter. This omission creates a large distinction between the provisions of the NYC Law and those of the FHA and the State Law,¹⁶ and has raised many questions as to who should actually bear the cost of providing the accommodation.

United Veterans Mutual Housing No. 2 Corp. v. New York City Commission on Human Rights,¹⁷ in which the Appellate Division upheld a determination by the Commission that compelled the implementation of a nondiscrimination policy in particular housing accommodations, tested the difference between the separate laws.¹⁸ The complainant in *United Veterans* required a ramp to get into and out of her cooperative.¹⁹ The respondents refused to provide one, however, contending that the FHA preempts local law from dealing with the issue of reasonable accommodations for persons with disabilities in their residences.²⁰ In a suit for discrimination, the court ordered the housing provider to abandon its policy of refusing to reasonably accommodate the needs of its disabled residents.

In its decision, the court also clarified the relationship between the NYC Law and the FHA by explaining that the FHA does not preempt local law from dealing with the issue of reasonable accommodations for disabled individuals in their residences.²¹ Furthermore, the court stated that the provisions of the NYC Law do not conflict with the FHA because both make it unlawful for any person or entity to refuse to make reasonable accommodations to provide a person with a disability equal opportunity to use and enjoy a dwelling unit.²² Therefore, the court found that the cooperative's policy of "refusing to expend corporate funds to construct, modify, maintain or insure any improvements to the common grounds or other common areas" at issue to accommodate the needs of its residents with disabilities violated both the FHA and the NYC Law.²³

In addition to its other claims, the respondents in *United Veterans* argued that forcing them to pay for modifications to the building that would solely benefit one resident violated the Due Process

16. See 42 U.S.C. § 3604 (f)(3)(A); N.Y. EXEC. LAW § 296(18) (McKinney 1999).

17. 616 N.Y.S.2d 84 (App. Div. 1994).

18. See *id.* at 85.

19. See *id.*

20. See *id.*

21. See *id.*

22. See *id.*

23. *Id.*

and Equal Protection clauses of the United States Constitution.²⁴ The court denied this contention, however, by explaining that “[l]egislation which is designed to prevent discrimination in general and protect the disabled in particular is intended to promote the general welfare of the community.”²⁵ The court continued to say that “legislation designed to promote the general welfare commonly burdens some more than others.”²⁶

In 1997, the Commission upheld the ruling in *United Veterans in Torres v. Prince Management Corporation*.²⁷ The complainant in that case was the mother of two disabled children, neither of whom could use the primary entrance of their building because the steps prohibited access for wheelchairs.²⁸ The basement door had a ramped entrance, but it was locked between the hours of 5:00 PM and 8:00 AM and the respondents refused to provide the mother with a key.²⁹ Therefore, she and her children were prevented from independently entering or exiting their home.³⁰ Even if they were given a key, the basement ramp was not compliant with regulations for wheelchair accessibility.³¹

The Commission ordered that a wheelchair accessible ramp be installed at the basement entrance, and that respondents provide twenty-four hour access to the building be made to the Torres family.³² In addition, the judge found that Mrs. Torres and her children suffered mental anguish as a result of the unlawful refusal to provide reasonable access by the respondent, and awarded them \$70,000.³³ This decision represents the level to which the Commission would rise in ensuring that housing providers be accountable for their discriminatory actions against people with disabilities. The ruling also continues to set a precedent that such actions would not be tolerated under the NYC Law.³⁴

24. *See id.* at 86.

25. *Id.*

26. *Id.* (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 133 (1978)); *see also* *Goldblatt v. Hempstead*, 369 U.S. 590 (1962); *Atchison T & S.F.R. Co. v. Public Utilities Comm'n*, 346 U.S. 346 (1953).

27. OATH Index #301/98 (Aug. 14, 1997), *aff'd sub nom.* *Prince Management Corp v. Varela*, N.Y. L.J., July 29, 1998, at 22 (Sup. Ct. N.Y. Co.).

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

Recently, the Commission again placed New York City housing providers on notice that they are not insulated from the obligations of the NYC Law. In *Raymond v. 325 Cooperative, Inc.*,³⁵ the Commission ordered a cooperative to pay for and provide a ramp to the primary entrance of the building, and to install automatic door openers for the front entrance and the elevator.³⁶ The exterior design of the building in that case was not uncommon for New York City.³⁷ It featured a short bridge that was constructed over a moat, which had two exterior steps leading to the lobby door.³⁸ In 1995, the cooperative was aware that the bridge needed structural repair work and started securing bids and designs for the construction.³⁹ At that time, Ms. Raymond requested that the Board also consider building a ramp for the entranceway.⁴⁰ Initially, the Board was agreeable and hired an architect to provide designs for an accessible entranceway.⁴¹ For two years, the cooperative reviewed plans and bids for the work, entertaining designs for both the reconstruction of the bridge and stairs, and for a ramped entranceway.⁴²

At a shareholders meeting held in 1997, however, shareholders raised several objections to the ramp design.⁴³ These objections ranged from cost concerns to certain shareholders' desire to not have their building "look like a hospital."⁴⁴ As a result, the Board and the shareholders voted against the ramp design and approved the reconstruction of the bridge and stairs to the entrance of the building.⁴⁵ Despite Ms. Raymond's offers to pay for the ramp herself, the Board disregarded her requests and decided to proceed with the construction without installing a ramp.⁴⁶

Ms. Raymond filed a complaint with the Commission, which subsequently found probable cause by crediting Ms. Raymond's allegations that the cooperative was discriminating against her.⁴⁷ Following the probable cause determination the Board reconvened

35. 1999 WL 156021 (N.Y.C. Com. Hum. Rts. Jan. 12, 1999), *aff'd* 1999 WL 152526 (N.Y.C. Com. Hum. Rts.).

36. *See id.* at *1.

37. *See id.* at *1.

38. *See id.* at *2.

39. *See id.*

40. *See id.*

41. *See id.* at *3.

42. *See id.*

43. *See id.* at *1.

44. *See id.* at *4.

45. *See id.*

46. *See id.* Other than the date that Ms. Raymond requested the accommodation, the facts were not in dispute. *See id.* at *7.

47. *See id.* at *7.

to address the issue of access for their building.⁴⁸ The Board offered to accommodate Ms. Raymond by providing an exterior lift that would lower her and her wheelchair into the moat by the basement entrance, where Ms. Raymond could then navigate her way to the building's interior elevator.⁴⁹ The Commission found this offer disingenuous, however, and increased the award of damages to Ms. Raymond by \$5000.⁵⁰

Aside from punishing the housing providers, the increased amount of damages represented the Commission's intent to assure that Ms. Raymond's access to the building was equal to her neighbors.⁵¹ Under the NYC Law, the Commission is given the authority to require respondents to take affirmative action including the extension of "full, equal and unsegregated accommodations, advantages, facilities and privileges."⁵² It recognized that having to be lowered into the moat and only gaining access through the basement door was more disheartening to Ms. Raymond than having to rely on the assistance of others to climb the stairs and get into her building as it was presently constructed.⁵³ The Commission found the cooperative's offer of an exterior lift to be unequal and segregated for Ms. Raymond and, therefore, increased the compensatory damages.

The *Raymond* case was reported in the *New York Times* as a "wake up call" to New York City building owners, cooperative boards and condominium boards.⁵⁴ It served as a warning that they will be held accountable for their actions should they discriminate against any tenants and shareholders with disabilities.⁵⁵

This type of wake up call should not be necessary though. The NYC Law has prohibited discrimination against people with disabilities for over twenty-five years. What has changed, however, is that the Commission has distinguished New York City from the rest of the country in its attack on unlawful discrimination against

48. *See id.*

49. *See id.* at *5.

50. The Administrative Law Judge initially recommended \$10,000 damages to compensate Ms. Raymond for her pain and suffering. *See id.* at *12. Upon review of the record and considering Ms. Raymond's testimony with regard to the Board's offer, the Commission raised the amount to \$15,000.00. *See* 1999 WL 152526, at *2.

51. *See id.* at *7-8.

52. N.Y.C. ADMIN. CODE § 8-120(a)(5) (1999).

53. *See* 1999 WL 156021, at *11.

54. *See* Jay Romano, *Your Home; A Ruling on Co-ops and Disability*, N.Y. TIMES, May 23, 1999 at 3.

55. *See id.*

people with disabilities. Similar to other federal⁵⁶ and state laws⁵⁷ that require covered entities to reasonable accommodate the needs of persons with disabilities, the NYC Law's obligation to provide reasonable accommodations is balanced by the undue hardship test.⁵⁸ If the requested accommodation creates an undue hardship, whether it be financial or otherwise, it is not considered reasonable and is no longer required by law.⁵⁹ Where, however, the accommodation does not result in an undue hardship, the Commission has made it compellingly clear that under the NYC Law, the housing provider is responsible for paying for and providing the accommodation.⁶⁰

The case law discussed in this Essay presents the Commission's interpretation of the reasonable accommodation provision of the NYC Law.⁶¹ While housing providers have been obligated to pay for and provide reasonable accommodations for persons with disabilities in common areas of housing premises in New York City, case law has not addressed who is responsible for paying for and providing similar accommodations in the interior of these people's homes. A continued effort on behalf of the Commission will be necessary to expand upon the scope of protections afforded to persons with disabilities to ensure that interior modifications are provided, enabling access to the entire home.

Progress has been made with respect to this effort in a case that was recently mediated by the Commission, where the housing provider agreed to pay for modifications to the complainant's bathroom and bedroom. These modifications enabled the complainant's disabled son to use the bathroom and bedroom facilities.⁶² One mediated case, however, remains insufficient to clearly define overall obligations of housing providers with respect to accommodations in the interior of the home. The hope, therefore, is that one day soon, case law will be developed to construct this defi-

56. See, e.g., Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (1999); Workforce Investment Act of 1998, 29 U.S.C. § 701 (1999).

57. See N.Y. EXEC. LAW § 296(3)(a) (McKinney 1999).

58. See *id.* § 296(3)(b).

59. See *id.*

60. See, e.g., *Raymond v. 325 Cooperative*, 1999 WL 156021, at *2 (N.Y.C. Com. Hum. Rts. Jan. 12, 1999).

61. See, e.g., *id.*; *Torres v. Prince Management Corp.*, OATH Index #301/98 (Aug. 14, 1997), *aff'd sub nom.* *Prince Management Corp. v. Varela*, N.Y.L.J., July 29, 1998 at 22, col. 5 (Sup. Ct. N.Y. Co.); *United Veterans Mutual Housing No. 2 Corp. v. New York City Comm'n on Human Rights*, 616 N.Y.S.2d 84 (App. Div. 2d Dep't 1994).

62. See *Ilana Sheinman v. One Lincoln Plaza Condominium Board of Managers*, Conciliation Agreement, M-H-D-99-1006751 (Sept. 2, 1999).

dition, and to enable persons with disabilities to have the reasonable accommodations necessary for the complete use and enjoyment of their homes.