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Landlord Temporarily Enjoined From Evicting Disabled Tenant

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Under the guise of the Fair Housing Amendments Act of 1988, or FHAA, the U.S. District Court for the Western District of Pennsylvania in *Milan v. Pyros* decided whether to temporarily enjoin a landlord from evicting tenants who suffered from physical disabilities.

The George Washington Hotel is a multi-unit apartment complex in Washington, Pa. Late last year, Robert Milan, a quadriplegic man, sought to rent an apartment unit at the hotel with the assistance of Kathleen Kleinmann, a disabled woman herself, an existing tenant at the hotel, and the chief executive officer of a nonprofit organization which promotes independent living through direct services to disabled persons. Her nonprofit organization also leased an apartment unit at the hotel for use as a transitional living space for disabled persons moving from institutional care to independent living.

With Kleinmann's assistance, the hotel eventually agreed to enter into a six-month lease with Milan. Milan moved into his unit without first executing a written lease agreement with the hotel.

Independent of these lease negotiations, Kleinmann requested from the hotel that her friend, who was suffering from cancer at the time, be allowed to temporarily stay in her apartment unit so she could serve as his caregiver.

All hell broke loose when Milan moved into his apartment unit with his service dog, Daisy.

Within days of his arrival, the hotel, which had a no pet policy, in no uncertain terms, expressed its unwillingness to continue the lease arrangement with Milan if the dog remained there. Kleinmann then received a letter from the hotel stating that she would be evicted from her apartment unit if her cancer-stricken friend did not leave the unit within a stated period of time.

After the hotel apparently began receiving complaints about Milan's dog, the hotel summoned the police in an attempt to forcibly evict Milan from the hotel as a squatter (as he had not signed the lease

agreement). The police explained to the hotel that they could not take any action against Milan without a court order.

The hotel then issued separate letters to Milan and Kleinmann. In its letter to Milan, the hotel directed him to leave voluntarily or face eviction proceedings as he was an unauthorized tenant. No mention was made in the letter about his dog.

In the letter to Kleinmann, the hotel claimed that she brought Milan into the hotel under the false pretense that her nonprofit organization would execute a lease for him. The hotel then expressed its dissatisfaction that Milan was unable to care for his dog.

Although Kleinmann's friend left her apartment unit within the time prescribed by the hotel, the hotel nevertheless filed a landlord-tenant complaint against her in district justice court based upon the friend's alleged illegal occupancy of the unit. The hotel also filed a landlord-tenant complaint against Milan because of his alleged violation of the hotel's no pet policy.

Milan and Kleinmann then removed their cases to federal district court, consolidated the cases together, filed a counterclaim against the hotel under the FHAA, and sought a preliminary injunction preventing the hotel from evicting them from their respective apartment units while the litigation was pending.

The federal district court's ruling in *Milan* centered upon whether Milan and Kleinmann should be allowed to remain in their respective apartment units in the meantime.

Four factors govern whether to issue a preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

The federal district court first focused on whether Milan and Kleinmann established a reasonable probability of success on the merits of their FHAA claim. Under the FHAA, it is illegal, in housing practices, to discriminate on the basis of a tenant's disability.

In order to make out a claim for a FHAA violation, the tenant must show: (i) that he is suffering from a disability as defined under the statute; (ii) that the landlord knew or reasonably should have been expected to know of the disability; (iii) that reasonable accommodation of the tenant's disability might be necessary to afford him an equal opportunity to use and enjoy his apartment unit; and (iv) that the landlord refused to make a reasonable accommodation.

The federal district court reasoned that both Milan and Kleinmann established a reasonable likelihood of success on the merits that the hotel violated the FHAA.

With respect to Milan, the federal district court noted that Milan was clearly disabled within the meaning of the FHAA and that Milan's dog was a service animal allowed under the statute. While acknowledging the existence of the hotel's no pet policy, the federal district court concluded that the

hotel violated the FHAA by nonetheless refusing to accommodate his disability.

As for Kleinmann, the federal district court pointed out that her FHAA claim was based upon retaliatory discrimination because she was the person who referred Milan to the hotel. In essence, the federal district court concluded that Kleinmann's alleged lease violation regarding her friend's temporary presence in her apartment unit was nothing than a pretext for the hotel's initial discriminatory decision.

The federal district court next decided whether Milan and Kleinmann would suffer irreparable harm if their requested injunctive relief were denied.

Unlike Kleinmann, the federal district court did not believe that Milan would suffer such harm if the injunctive relief were denied. The federal district court emphasized that Milan resided at the hotel only for a short period of time, had only a six-month lease to begin with, and was actively seeking new housing and did not desire to remain at the hotel for obvious reasons. The federal district court thus elected to summarily deny the injunctive relief requested by him on these grounds alone.

In contrast, the federal district court highlighted that Kleinmann had invested significant funds to modify her apartment unit in order to accommodate her disability and to promote independent living. The federal district court was also swayed by the strong likelihood that her unit would no longer be available if she ultimately succeeded through litigation.

On the flip side, the federal district court was unconvinced that the hotel would suffer greater harm by granting the injunctive relief sought by Kleinmann. The hotel explained its intention to convert her apartment unit to a hotel room. The federal district court pointed out that, if the hotel's early termination fell victim to the FHAA, Kleinmann would be able to remain in the unit until early 2009 and the hotel would thus be prohibited from converting the unit into a hotel room until then.

Finally, the federal district court stated the public interest favored the issuance of a preliminary injunction because the enforcement of the FHAA was at issue and since maintaining the status quo for Kleinmann promoted independent living for persons with disabilities.

LESSONS LEARNED

The federal district court's ruling in Milan illustrates the fine line between a court granting and denying preliminary relief in the real estate context. In contrast to Kleinmann, the federal district court refused to allow Milan to remain in his apartment unit until the underlying litigation concluded because he could not establish that he would suffer irreparable harm if he were evicted from the unit. Milan, unlike Kleinmann, had only resided in the hotel for a short period of time prior to the attempted eviction, had entered into a short-term lease, had not invested any of his own financial resources in the apartment unit, and was content to seek alternative living arrangements.

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