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LANDLORD WINS REASONABLE ACCOMMODATION CASE

In an important decision, the Massachusetts Supreme Judicial Court decided in January that a landlord acted properly and was not liable for handicap discrimination when it evicted two elderly disabled tenants for excessive noise.

In 1999, the landlord, Andover Housing Authority, began receiving complaints about loud arguing, yelling and excessive radio and television volume late at night coming from the tenants' unit. The Authority reminded the tenants of their lease obligation to respect their neighbors' rights to "privacy and quiet." In the succeeding three years, the noise problems continued and intensified. The Authority continued to remind the tenants of their lease obligations, and also notified them of the availability of free counseling services. The Authority later held a meeting with the tenants to discuss ways of resolving the noise problem, and notified the tenants' son about the ongoing problems. Despite these measures, the landlord continued to receive complaints from other residents about excessive noise.

In November 2002, the Authority served a notice to quit on the tenants for excessive noise. After more meetings and other communication between the parties, in February 2003 the Authority filed a summary process action. The tenants argued that the eviction violated their rights under the Fair Housing Act, the Rehabilitation Act and G.L. c. 151B, and they requested various reasonable accommodations including cessation of the eviction proceedings.

The landlord investigated the feasibility of the requested accommodations and set up another meeting with the tenants to discuss a resolution of the noise problem, but the meeting was cancelled by the tenants' attorney.

Following a trial, the Northeast Housing Court found that the tenants' noise was severe and recurring, and unless it stopped, the Authority would be entitled to possession of the apartment. The judge also dismissed the handicap discrimination complaints. The judge stayed the judgment to provide the parties one more opportunity to resolve the problems, but after further efforts failed, judgment was entered for the Authority for possession of the unit. The tenants appealed to the Supreme Judicial Court, which affirmed the judgment of the Housing Court in favor of the landlord.

The Court made several important points in its decision.

- First, the law requires a landlord to grant reasonable, not onerous, accommodations. In deciding what is reasonable, the law balances the rights of the handicapped tenant against the rights of the landlord.
- Second, the Court reviewed a landlord's obligation to engage in an "interactive process." When a landlord receives an initial request for an accommodation, that triggers an obligation to participate in an interactive process to determine an appropriate accommodation. The Court noted that the interactive process can only work effectively when the landlord is made aware of a tenant's physical or mental disability at the earliest opportunity. The Court stated that the Authority had made significant efforts to engage in this interactive process to ascertain and accommodate the tenants' conditions, and had communicated with the tenants and their son on numerous occasions about ways to resolve the noise problem.
- Third, the Court noted that the requested accommodation, not evicting the tenants, was unreasonable in light of the efforts made by the landlord to address the problem and the repeated interference with the rights of the other residents.

This Advisory was prepared by Daniel O'Connor, Esq., a Senior Associate with Shaevel & Krems who concentrates his practice in the areas of Employment and Discrimination Law. Dan has extensive experience in the area of Housing Discrimination law.

As always, please feel free to call Dan or any member of the Shaevel & Krems Real Estate Management Team with any questions that you may have.

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