



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

October 2008
Issue Twenty Seven

Disability Rights Online News

is a bi-monthly update about the Civil Rights Division's activities in the area of disability rights. The Division enforces laws prohibiting discrimination based on disability in employment, housing, access to businesses serving the public, access to government programs and services, including voting and public transportation, and unconstitutional conditions in institutions of confinement.

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APPEALS COURT UPHOLDS USE OF TELECOMMUNICATIONS RELAY SERVICE

On September 12, 2008, the federal Court of Appeals in Chicago ruled in *Germano v. International Profit Association, Inc.* (IPA) that conversations conducted through the nationwide telecommunications relay service (TRS), between a person who uses a telephone and a person who uses a text telephone (TTY), are permitted as evidence in court on the same basis as conversations between two people speaking directly to each other by telephone. The case concerns a claim that, during a relay call, IPA offered to interview an applicant for a job but later withdrew the offer after realizing that he was deaf because

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NEXT MULTI-FAMILY HOUSING ACCESS FORUM TO BE HELD IN HOUSTON IN NOVEMBER

The Department's eighth Access Forum will be held on Tuesday morning, November 18, 2008, at the Crowne Plaza Houston Downtown in Houston, Texas. Launched in 2005 by the Assistant Attorney General for the Civil Rights Division, the Access Forum's objectives are to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and to highlight partnerships that have successfully produced accessible multi-family housing in which everyone profits – developers and consumers alike. The Access Forum brings together developers, architects, civil engineers, government officials, and advocates for individuals with disabilities. People interested in attending this event should send an email with their name, organization, and contact information, as well as the names and contact information for other attendees from their office or other people who might be interested in this event to accessforum@usdoj.gov. More than 100 people attended the Access Forum in Seattle in May 2008, and another large turnout is expected in Houston.

(Relay Service, continued)

he had communicated with IPA through the relay service. In court, IPA argued that the conversation was “hearsay” because it was communicated through an intermediary -- the TRS communications assistant.

The Court of Appeals firmly rejected this argument. Calling the communications assistant “no more than a language conduit,” the court recognized that denying the admissibility of statements made during a TRS conversation “would strip those with hearing disabilities of a vital source of evidence available to hearing people. Deaf persons could not conduct important day-to-day affairs over the phone, such as calling the bank or the doctor, with the same ability to rely on the statements made to them by the other party that is enjoyed by hearing persons. Such a result is at odds with Congress’s intent to make disabled persons full and equal participants in society.”

The Department had filed an *amicus*, or friend-of-the-court, brief supporting the position adopted by the Court of Appeals.

NEW HAMPSHIRE HOSPITAL TO PROVIDE EFFECTIVE COMMUNICATION FOR PEOPLE WHO ARE DEAF OR HARD OF HEARING

On September 18, 2008, Concord Hospital in Concord, New Hampshire, entered into a settlement agreement with the Department resolving multiple allegations that it had failed to provide appropriate auxiliary aids and services that were necessary to ensure effective communication for individuals who are deaf or hard of hearing. All seven of the complainants either sought treatment at Concord Hospital or accompanied a family member who was seeking treatment. All were denied qualified sign language interpreters and were required to use inadequate or inappropriate auxiliary aids and services to communicate with hospital staff and medical personnel. In some cases,

family members were required to interpret for the individuals. In some cases, hospital staff were unable to operate the Video Interpreting Services (VIS) equipment which the hospital had purchased. In one case, staff required a woman who is deaf and has a vision disability to use VIS, even though its use was ineffective because of her vision disability.

Under the settlement, Concord Hospital agreed to establish a comprehensive program to ensure that it provides effective communication in the future for patients and companions who are deaf or hard of hearing. The hospital also agreed to pay a total of \$100,000 in compensatory damages, to be divided among the seven complainants.

CHILD CARE CENTER AGREES TO ADMIT CHILDREN WITH DISABILITIES

On August 14, 2008, Push My Swing, Inc., a child care center in Camden, South Carolina, entered into a settlement agreement with the Department to resolve a complaint alleging that it had refused to admit a child who has a mobility disability and wears leg braces on the grounds that its insurance company would not cover the center if the child fell down. In the agreement, Push My Swing agreed not to use insurance coverage or lack thereof to justify the exclusion of children with disabilities, unless it shows that such exclusion is based on legitimate safety concerns. The child enrolled in another child care center before this agreement was reached.

ADA BUSINESS CONNECTION HOLDS MEETING IN MONTANA

On September 24, 2008, the Department held its third “Accessible Neighborhood Businesses: Information Exchange” meeting in Great Falls, Montana. This series of meetings brings together local business and disability leaders in smaller communities around the country to discuss issues of common concern and propose ideas for a small-scale project that will improve neighborhood business accessibility and cement a long-term relationship among the participants. These meetings complement the “ADA Business Connection Leadership” meetings, which take place mainly in metropolitan areas. The event was co-hosted by Kim Thiel-Schaaf, Community Asset Director, Great Falls Development Authority; Tom Osborn, Executive Director, North Central Independent Living Services, Inc.; and Kay Sielstad, Disabilities Advocate, Center for Academic Excellence at the University of Great Falls, and was attended by 38 people from the local business, disability, and academic communities.

The meeting included co-host remarks, an information session on the ADA presented by Department staff, a discussion centered on ways that disability rights advocates and businesses can cooperate to welcome customers with disabilities, and a brainstorming session for a follow-up project to be implemented by the meeting participants.

DEVELOPER OF SEVEN NASHVILLE-AREA APARTMENT COMPLEXES CHARGED WITH DISABILITY-BASED HOUSING DISCRIMINATION

On September 29, 2008, Murphy Development, LLC, was sued by the Department in federal court in Nashville, Tennessee, for failing to provide required accessible features for people with disabilities at seven Nashville-area multi-family housing developments, as required by the federal Fair Housing Act. The complexes, which together have more than 375 ground floor units covered by the Fair Housing Act’s accessibility requirements, are Meadowcreek Apartments, Miller Town Apartments, 17th Street Apartments, Forest View Apartments, Swiss Ridge Apartments, Lakeside Apartments, and Stonebridge Apartments. “The Fair Housing Act requires multi-family housing

to be accessible to and usable by persons with disabilities,” said Grace Chung Becker, Acting Assistant Attorney General for the Civil Rights Division. “When design professionals and builders fail to design and construct homes without the required accessibility features, we will vigorously enforce the law.”

According to the complaint, these developments lack some walkways needed to connect covered dwelling units to public and common use areas, and, where walkways are provided, they are too steeply sloped to be accessible to people who have mobility disabilities. In addition, the exterior doors to covered dwellings have handles that require tight grasping and twisting of the wrist, making the apartments inaccessible to people who have limited dexterity or grasping ability, and the complexes have non-protected stairways and other protruding objects that pose a danger to people who are blind or have low vision.

The lawsuit seeks a court order requiring the defendants to modify the complexes to bring them into compliance with federal law and prohibiting future discrimination. It also seeks monetary damages to compensate victims of discrimination and a civil penalty to be paid to the government to vindicate the public interest.

DESIGNERS AND DEVELOPERS OF NEW YORK CITY APARTMENT COMPLEX SUED FOR FAIR HOUSING ACT VIOLATIONS

On August 13, 2008, the developers and architects of Avalon Chrystie Place, a 361-unit residential apartment complex in Manhattan, New York City, were sued by the Department in federal court in Manhattan for failing to design and construct Avalon Chrystie Place to be accessible to people with disabilities, as required by the federal Fair Housing Act. The complaint charges CVP I, LLC, Downtown Manhattan Residential LLC, Chrystie Venture Partners, LLC, Avalon Bay Communities, Inc., and SLCE Architects LLP with violations of the Act. This is the Department's first lawsuit in Manhattan alleging violations of the Fair Housing Act in the design and construction of multi-family housing.

"Housing must be available to all Americans without regard to disability," said Michael J. Garcia, the U.S. Attorney for the Southern District of New York. "We will continue to pursue those who fail to design and construct accessible housing as required by federal law."

According to the complaint, Avalon Chrystie Place, located at 229 Chrystie Place just below Houston Street in Manhattan, has public and common areas which are not readily accessible to and usable by people with disabilities. The complex also lacks accessible routes into and through dwellings, lacks reinforcements in bathroom walls to allow the installation of grab bars, and has kitchens and bathrooms that are not usable by a person who uses a wheelchair.

The complaint seeks a court order requiring the defendants to bring the complex into compliance with the Fair Housing Act and prohibiting them from designing or constructing multi-family housing in the future that does not contain the accessibility features required by federal law. It also seeks monetary damages to compensate victims of discrimination and a civil penalty to be paid to the government to vindicate the public interest.

FEDERAL COURT IN CALIFORNIA UPHOLDS DISABILITY COMPLAINT

On September 22, 2008, a federal court in Oakland, California, issued a ruling in *National Fair Housing Alliance v. A.G. Spanos* permitting the plaintiffs to continue their lawsuit seeking, among other things, a court order requiring that 82 allegedly inaccessible apartment complexes nationwide be brought into compliance with the accessibility requirements of the federal Fair Housing Act. The court had previously ruled that the plaintiffs' claims against more than 70 of these complexes were not barred by the Act's statute of limitations -- even though those complexes were completed more than two years before the plaintiffs filed their lawsuit -- because the plaintiffs were alleging that all of the properties were part of an identical pattern or practice and at least eight of them were completed within the two-year statute of limitations period. The defendants asked the court to reconsider this earlier ruling

(Disability Complaint, continued)

in light of *Garcia v. Brockway*, a decision by the full Ninth Circuit Court of Appeals interpreting the FHA's statute of limitations in the context of a single apartment complex. In denying the defendants' motion for reconsideration, the court found that in *Garcia* the Ninth Circuit had not "done away with the continuing violations doctrine in all design and construction cases under the Act," and ruled that the plaintiffs' complaint was timely.

The Department had filed an *amicus*, or friend-of-the-court, brief supporting this position. Specifically, the Department argued that the court's original decision remained correct because *Garcia's* interpretation of the statute of limitations did not apply to this case. The issue in this case is similar to an issue in a Maryland case that was reported in issue # 26 of this newsletter.

with appropriate signage, including two van-accessible spaces, at locations around the mall. They also removed a "reserved" sign from an accessible parking space that had previously been restricted to use by patients of a doctor's office, making it available to all customers with disabilities. The owners also installed curb ramps in the parking lot and a ramp with handrails to provide access from the parking lot to businesses located in the interior area of the mall.

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

In many localities, finding a parking space can be a hassle for anyone. In this issue, we highlight complaints about

inadequate parking for people with disabilities that have been successfully mediated.

- In the states of Washington, Texas, New Jersey, and Pennsylvania, people who use wheelchairs complained that a variety of businesses did not have enough accessible parking spaces. In each case, the business agreed to create additional accessible spaces in compliance with the ADA.

- In Texas, a person who uses a wheelchair complained that a mall parking lot did not have enough accessible parking spaces or an accessible route to some businesses in the inner area of the mall. The property owners installed five new accessible parking spaces

- An individual with severe emphysema who is unable to walk long distances complained that a New York drug store's designated accessible parking spaces were too far from the store. The parties agreed to expand the scope of the mediation to include five additional stores in the drug store chain. The company relocated the accessible spaces on the shortest accessible route to the entrance at all six locations and paid the complainant \$7,500.

- In Maryland, a person with a disability alleged that an underground parking garage did not have any accessible parking spaces, that only one of the two banks of elevators was accessible, and that it was locked after 7 p.m. while the inaccessible bank remained

(Mediation, continued)

open 24 hours a day. The garage agreed to install a ramp to the inaccessible elevators, to keep both banks of elevators open 24 hours a day, to install signage at existing accessible and van-accessible parking spaces, to add signage at the entrance identifying the locations of the accessible parking spaces, and to provide valet parking service for customers with disabilities in the event that all accessible parking spaces were legally occupied.

■ In California, two people who use wheelchairs complained about a number of accessibility issues at a jointly owned parking lot serving a city, a college, and several businesses. The multiple owners involved in the mediation agreed to install two curb cuts and two ramps, renovate a third ramp, install four van-accessible spaces and two additional universal design parking spaces, and create several marked crossings.

■ From September 12-14, representatives staffed a booth at the 2008 Abilities Expo in Minneapolis, Minnesota, to answer questions and disseminate ADA information to the estimated 3,000 people who attended the expo.

■ On September 16, staff gave a presentation in Baltimore, Maryland, for staff of the state Department of Health & Mental Hygiene, Office of Equal Opportunity Programs. The presentation focused on explaining the “mitigating measures” and “substantially limits” provisions of the ADA. Attendees of this event included ADA coordinators, personnel workers, general office workers, and occupational therapists.

■ On September 17, staff gave a presentation at the 2008 National Association for State Relay Administration (NASRA) Conference in Lowell, Massachusetts. The presentation addressed equivalent access to emergency services for people who are deaf and hard of hearing. Attendees of this event are members of NASRA.

■ On September 19, staff participated on a panel at the 2008 Annual Maryland ADA Conference in Baltimore, Maryland, sponsored by

RECENT OUTREACH ACTIVITIES

■ On August 29, staff served as the keynote speaker at the DC Center for Independent Living’s annual conference in Washington, DC. The presentation provided an overview of the ADA and an update on the Department’s compliance and technical assistance activities.

■ From September 4-6, representatives staffed a booth at the 2008 Life @ 50+/AARP National Event and Expo in Washington, DC, to answer questions and disseminate ADA information to the estimated 28,000 conference attendees.

■ On September 9, staff participated in a panel discussion at the American Association of State Highway

Transportation Officials (AASHTO) in Anchorage, Alaska. Staff provided an update on ADA activities and answered questions about the ADA rulemaking described in issue # 26 of this newsletter.

■ On September 11, staff delivered a presentation by teleconference for a continuing education seminar, “ADA Challenges for Building Officials,” sponsored by the Metropolitan Kansas City Chapter of the International Code Council. The presentation, attended by fifty-five code officials and architects, covered the current ADA requirements and the changes being adopted in the ADA rulemaking described in issue # 26 of this newsletter.

(Outreach, continued)

the DBTAC Mid-Atlantic ADA Center. The panel also included representatives from the Equal Employment Opportunity Commission, the Access Board, and the Department of Transportation. The presentation provided an update on the Department's ADA enforcement and technical assistance activities and was followed by a facilitated audience question-and-answer session.

■ On September 24, staff co-presented a full-day training in Chicago, Illinois, for staff of agencies that operate public transportation services as well as rider and disability advocates. The training focused on the ADA's

accessibility requirements for public transportation. It was part of a three-day workshop sponsored by the U.S. Department of Transportation, Federal Transit Administration, Office of Civil Rights, that also addressed Title VI of the Civil Rights Act of 1964 and the Department of Transportation's Disadvantaged Business Enterprise Program.

■ From September 25-27, representatives staffed a booth at the 38th Annual Legislative Conference of the Congressional Black Caucus Foundation, Inc., in Washington, DC, to answer questions and disseminate ADA information to the estimated 18,000 people who attended the conference.

■ On October 1, staff gave an update on the ADA at the Open Doors Organization, Universal Access In Airports 2008 Conference in Rosemont, Illinois. Attendees of this conference included airport administrators, airport facilities managers, airline executives, disability service coordinators, airport safety and standards officials, airport architects, and transportation-related government agencies.

■ On October 16, staff gave a keynote address and two presentations on ADA design issues at the 2008 Disability Access Conference in Honolulu, Hawaii.