



# Disability Rights online News

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## 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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## NEXT MULTI-FAMILY HOUSING ACCESS FORUM NOVEMBER 17<sup>TH</sup> IN KANSAS CITY, MISSOURI

The Department's next Multi-Family Housing Access Forum event will be held on Tuesday, November 17, 2009, at the Hyatt Regency Crown Center in Kansas City, Missouri. The Access Forum brings together developers, architects, civil engineers, government officials, and advocates for individuals with disabilities. People interested in attending 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 and other people who might be interested in this event, to [accessforum@usdoj.gov](mailto:accessforum@usdoj.gov).

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.

More than 100 people attended the Access Forum in Philadelphia in May 2009. Previous events were held in Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC.

## INDIANA RETIREMENT HOME WILL PERMIT USE OF MOTORIZED WHEELCHAIRS AND SCOOTERS

On August 13, 2009, the owners and manager of the Rathbone Retirement Community, an Evansville, Indiana, retirement home, entered into a consent decree with the Department resolving a lawsuit alleging that they violated the Fair Housing Act by prohibiting residents with disabilities from using motorized wheelchairs or scooters in their apartments and in the facility's dining room. The suit also alleged that

(Continued on page 2)

(Indiana Retirement Home, continued)

they forced out tenants who used motorized wheelchairs. (See previous article in issue # 28.) The consent decree was approved by the federal court in Evansville on August 19.

The consent decree requires the owners and manager to pay a total of \$70,000 to three former residents, establish a \$25,000 settlement fund for others who may have been injured by the policy, and pay a \$21,000 civil penalty. In addition, they must provide fair housing training for employees, adopt nondiscrimination and reasonable accommodation policies, and maintain and submit records to the United States for two years.

“Persons with disabilities who live in retirement communities are entitled to the protections of the Fair Housing Act,” said Loretta King, Acting Assistant Attorney General for the Civil Rights Division. “This agreement will ensure equal access to housing for those individuals who use mobility aids to move about independently in their daily lives.”

“This enforcement action provides yet another real-life example of our commitment to support the rights of persons with disabilities,” said U.S. Attorney Timothy M. Morrison for the Southern District of Indiana.

“Wheelchair access is vital for many seniors and people with disabilities. This settlement underscores the importance of that right and the government’s resolve to it,” stated John Trasviña, Assistant Secretary for Fair Housing & Equal Opportunity at the Department of Housing and Urban Development (HUD).

This case originated when two former residents filed separate complaints with HUD, which referred the matter to the Justice Department. The defendants are Charles

and Janet Ludwyck, owners of the property; Rathbone Retirement Community, Inc., the corporation through which they manage the property; and Norma Helm, the onsite administrator.

People with disabilities who believe they may have been discriminated against in connection with their dealings with the Rathbone Retirement Community should call 800-896-7743 and select menu option 94 to determine how they can make a claim for damages.

## **LANDLORDS IN MINNESOTA AND NEW YORK SUED FOR DISCRIMINATING AGAINST PEOPLE WHO USE SERVICE ANIMALS**

On July 30, 2009, the Department filed a lawsuit in federal court in Minneapolis, Minnesota, against Robert and Judith Lund, who own and manage a four-unit apartment building in Roseau, Minnesota. The suit alleges that the Lunds violated the Fair Housing Act by refusing to rent a unit to Michelle Swib because her daughter uses a service animal.

On September 9, 2009, the Department filed a lawsuit in federal court in Brooklyn, New York, against Sunrise Villas, LLC, Anna Maria Daniels, and Lisa Daniels, who own and manage a 100-unit apartment complex for individuals aged 55 and older in Lindenhurst, New York. The suit alleges that the defendants told fair housing testers retained by Long Island Housing Services that service animals are not permitted to live at the complex, in violation of the Fair Housing Act.

Both cases stem from complaints filed with HUD, which investigated the matters and referred them to the Justice Department. The lawsuits seek injunctive relief and monetary damages for the complainants.

## **TWO APARTMENT COMPLEXES IN IOWA SUED FOR DISABILITY DISCRIMINATION**

On September 30, 2009, the Department filed a lawsuit in federal court in Dubuque, Iowa, alleging that the designers, builder, and owners of two apartment complexes in Davenport, Iowa, violated the Fair Housing Act in designing and constructing the Jersey Ridge Manor and the Kimberly Ridge Manor. These two complexes were built without the required accessible features in these areas: parking, routes from the parking to building entrances, door hardware, kitchens and bathrooms, electrical outlets and temperature controls, laundry rooms, and laundry equipment. The lawsuit seeks monetary damages for victims and correction of the violations.

The defendants are Jerry L. Anderson (designer), Design Center Associates, Inc. (design firm), Portzen Construction, Inc. (builder), and GNZ Properties, Inc., and Sodarock Properties, LLC (owners).

The lawsuit arose from complaints filed with HUD by the Davenport Civil Rights Commission. HUD investigated the matter and referred it to the Justice Department.

## **IDAHO CONDOMINIUM DEVELOPER SUED FOR DISABILITY DISCRIMINATION**

On August 26, 2009, the Department filed a lawsuit in federal court in Boise, Idaho, against Riverwalk Condominiums LLC, the developer of the Riverwalk Condominiums, a 36-unit condominium complex in Post Falls, Idaho, a suburb of Coeur d'Alene. The suit alleges that the complex was built without accessible features in the complex's public and common use areas, kitchens and bathrooms, electrical outlets and environmental controls, and routes into the building, as required by the Fair Housing Act. The lawsuit seeks monetary damages for victims, civil penalties, and a court order requiring correction of the violations. The complex's condominium association was also named in the suit to ensure that the violations are corrected.

"Architectural barriers can be as big an obstacle to the housing rights of people with disabilities as an outright refusal to rent to them," said Acting Assistant Attorney General Loretta King. "Access to housing is a civil right, and the Justice Department is committed to correcting such violations of the Fair Housing Act."

The lawsuit arose from complaints filed with HUD by an apartment seeker and by the Intermountain Fair Housing Council, a private, non-profit fair housing organization based in Boise. After investigation, HUD referred the matter to the Justice Department.

## **DEPARTMENT SUES COLUMBUS, INDIANA, FOR ZONING DISCRIMINATION**

On September 30, 2009, the Department filed a lawsuit against the city of Columbus, Indiana, for violating the Fair Housing Act by refusing to grant a nonprofit organization a permit to operate a group home for eleven men recovering from drug and alcohol addiction. The lawsuit, filed in federal court in Indianapolis, charges that the Columbus Board of Zoning Appeals refused a permit because of discriminatory attitudes toward recovering addicts among neighboring property owners. The suit seeks a court order prohibiting future discrimination by the city and requiring the city to grant the requested permit, revise its procedures to assure fair treatment

(Columbus, Indiana, continued)

for future housing projects for people with disabilities, pay monetary damages to compensate victims, and pay a civil penalty.

“The Fair Housing Act guarantees individuals with disabilities the right to live in communities of their choice. We will continue to enforce the law vigorously to ensure the rights of persons with disabilities are protected,” said Acting Assistant Attorney General Loretta King.

“We must make sure that local zoning actions further fair housing and don’t impede it,” said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “Individuals struggling to put their lives together shouldn’t have that effort derailed by unlawful discrimination.”

This lawsuit arose as a result of complaints filed with HUD by Addiction Counseling Treatment Services, the agency that wanted to establish the group home, to be called Bethesda House. HUD referred the matter to the Justice Department after conducting an investigation.

## **SIX WENDY’S RESTAURANTS IN IOWA ARE MADE ACCESSIBLE**

On August 20, 2009, the owner of six Wendy’s Old Fashioned Hamburgers Restaurants in Cedar Rapids, Iowa, entered into an ADA settlement agreement with the Department to make the facilities accessible to people with disabilities. Under the agreement, the owner, Parco, Ltd., will correct 96 ADA violations in all areas of the facilities, including interior and exterior accessible routes, counter and self-service areas, parking spaces, and public restrooms. The agreement also requires the owner to pay a civil penalty of \$4,000 to the United States and \$7,000 to the complainant, Peer Action Disability Support of Cedar Rapids. All barriers were removed by September 30, 2009.

## **BALTIMORE RESTAURANT WILL BECOME ACCESSIBLE**

On September 17, 2009, the owner and landlord of Donna’s, a café and restaurant in the Mt. Vernon neighborhood of Baltimore, entered into an ADA settlement agreement with the Department to make the facility accessible to people with disabilities. Under the agreement, the landlord will install an inclined platform lift on the stairs between the first floor lobby and the street level, which will provide access to Donna’s and another restaurant located on the first floor. In addition, the restrooms, entrance signage, and certain elements within Donna’s will be modified to comply with the ADA.

“The Civil Rights Division of the Justice Department is committed to the full and fair enforcement of the Americans with Disabilities Act,” said Acting Assistant Attorney General Loretta King. “We all want to be able to go out for a cup of coffee or a meal, all Americans should have access to civic life. Removing architectural barriers is critical so that people with disabilities can enjoy access to restaurants and businesses and be fully integrated in their communities.”

The settlement involves the Palamino Corporation, which owns Donna’s, and the 800 North Charles Street Limited Partnership LLLP, which owns the building.

## **CLOTHING STORE IN TENNESSEE WILL BECOME ACCESSIBLE**

On September 14, 2009, in the federal court in Memphis, Tennessee, the Department asked to intervene in *Jones v. Holliday's General Serv. Corp. And Dudley Properties, LLC.*, an ADA lawsuit alleging that Holliday's Fashions, a women's clothing store in Memphis, had discriminated against a customer who uses a wheelchair. The Department also filed a consent decree negotiated with the parties that resolved the issues in the case.

The plaintiff, Ms. Fay Jones, had alleged that, because the front door was inaccessible, on her first two visits she had to wait in an alley next to the trash dumpster until a sales person cleared a way for her to enter the store through the service door. On a subsequent visit, the store supervisor refused to allow her into the store.

The consent decree requires Holliday's Fashions to provide access to the store by installing a ramp at the main entrance, providing an accessible route from the parking to the main entrance, modifying the entrance, lowering the counter at the register, and modifying the dressing rooms and restrooms. The consent decree also requires the defendants to pay \$20,000 in damages to Ms. Jones and pay a \$1,000 civil penalty to the United States.

## **NEUROLOGIST WILL PROVIDE EFFECTIVE COMMUNICATION FOR PATIENTS WITH DISABILITIES**

On September 14, 2009, a neurologist in Nashville, Tennessee, entered into a settlement agreement with the Department resolving a complaint alleging that he and his neurology practice had refused to pay a qualified sign language interpreter who was provided on three occasions by the League for the Deaf and Hard of Hearing and E.A.R. Foundation for a patient who is deaf.

Under the agreement, William Strickland, M.D., and William Garrison Strickland, M.D., Ph.D., P.C., will adopt and implement policies regarding effective communication with individuals with disabilities, including paying for interpreters when needed, post conspicuous notice of the new policies, train all employees regarding their responsibilities under the ADA, pay the outstanding interpreter bill and an additional \$500 in damages to the League, and pay a \$500 civil penalty to the United States.

## **CALIFORNIA COUNTY SUED FOR EMPLOYMENT DISCRIMINATION**

On September 3, 2009, the Department filed an ADA lawsuit in the federal court in Los Angeles against the County of Ventura, California, alleging that the County had discriminated against a woman who is deaf who applied for a position as a children's social service worker. The woman, Lee Anne Unchangco, is an experienced child social services worker who has worked successfully for Los Angeles County for ten years. The suit seeks a court order requiring the County to offer Ms. Unchangco the position for which she applied, retroactive seniority, payment of back pay with interest, and pension and related benefits.

This is the Department's first lawsuit alleging that a job applicant who is deaf was rejected based on unfounded assumptions about her ability to perform the job and her need for reasonable accommodation. The case was referred to the Department from the Equal Employment Opportunity Commission after unsuccessful attempts to conciliate the matter.



## 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.

People with mobility disabilities experience a wide range of barriers. In this issue, we highlight complaints from people with mobility disabilities that have been successfully mediated.

- In California, a couple, both of whom have mobility disabilities, complained that a fairgrounds parking lot was inaccessible. The fairgrounds installed 26 additional accessible parking spaces in a lot where there were already 35, paved a previously unpaved parking area, and installed 27 accessible spaces in that area.

The fairground will monitor the use of the spaces in both lots.

- An individual with a mobility disability complained that a New Jersey city failed to provide an accessible path of travel to a city-owned beach area. The city constructed an accessible ramp to the beach from the parking area. The city also appointed an ADA coordinator, adopted an ADA grievance procedure, and published this information on its website.

- In California, an individual who uses a power wheelchair complained that a department store had insufficient space between clothing racks. The store increased space between the racks, conducted employee training to ensure that merchandise is not stored in the aisles, and paid the complainant \$500.

- In Illinois, a person who uses a wheelchair complained that the restrooms at a restaurant where a family wedding reception was held were inaccessible, causing her great embarrassment as she had to be carried into and out of the restroom. The restaurant installed accessible stalls with

grab bars in the men's and women's restrooms, installed accessible paper towel dispensers and sinks, and paid the complainant \$1,000.

- In California, a person who uses a wheelchair complained that a 149-room hotel failed to provide her an accessible guest room despite her reservation. The complainant also alleged that hotel staff suggested that she shower on the bathroom floor of the inaccessible room and that the hotel would clean it up. The hotel agreed to renovate six guest rooms to provide accessible bathrooms, including two rooms with roll-in showers. The hotel also agreed to reduce the opening force of all public restroom doors to less than five pounds.

- In Oklahoma, a person who uses a wheelchair complained that five convenience stores in a nationwide chain had inaccessible parking spaces and entrances. The owner of the five franchises agreed to provide accessible parking spaces and accessible entrance ramps at each of the stores.

- In California, a person with a mobility disability complained that a car rental company failed to provide

(Mediation, continued)

hand controls, even though he had requested them in advance. After waiting 90 minutes, the complainant had to rent a car with no hand controls, causing his wife to do all the driving and inconveniencing both of them. The company trained the agent who took the reservation to properly record hand control requests and instituted annual training for reservations personnel worldwide to process requests for hand controls and other disability accommodations. The company also conducted disability awareness and customer service training at the branch the complainant had visited. In addition, the company agreed to publish one article about ADA compliance each year for three years in an employee publication distributed worldwide. Lastly, the company provided the complainant with a letter of apology and paid him \$2,750.

■ In Kansas, a couple complained that a funeral home was inaccessible to their relative who uses a wheelchair. The funeral home installed a wheelchair lift to provide access to the ground floor of the building where funeral services take place. Additionally, the funeral home developed materials and agreed to meet with disabled clients making funeral arrangements at home because the display room is inaccessible.

■ In Illinois, a person who uses a wheelchair complained that the weight room in a public exercise facility was located on the inaccessible second floor. The facility moved the entire weight room to an accessible first floor space and also acquired a cardiovascular machine specifically for upper body strengthening.

■ In Idaho, a person who uses a wheelchair complained that a bowling alley's entrance and restroom were inaccessible. The bowling alley installed a ramp at the entrance and constructed an accessible unisex restroom.

## RECENT OUTREACH ACTIVITIES

■ On August 20, staff participated in the National Disaster Housing Task Force meeting at FEMA headquarters in Washington, DC. The meeting included a discussion about accessible disaster housing and services for individuals with disabilities. Attendees included representatives from other federal agencies and the Red Cross.

■ From August 24-26, representatives staffed a booth at the 31st Annual Blacks In Government (BIG) National Training Conference in Baltimore, Maryland, to answer questions and disseminate ADA information. Approximately 10,000 attended the conference.

■ On September 3, staff gave a presentation and answered questions about the ADA for the ACES for Multiple Sclerosis Support Group in Zephyrhills,

Florida. Approximately 20 people attended the meeting.

■ On September 11, staff gave a presentation on ADA requirements for public park and recreation systems at the National Institute of Recreation Inclusion (NISI) conference in San Antonio, Texas.

■ On September 16, staff participated in one-day training on architectural access issues for employees of the U.S. Patent and Trademark Office and EEO employees from other agencies in the Washington, DC area. The program was sponsored by the Patent Office's Office of Civil Rights.

■ On September 23, staff provided ADA training at the Bureau of Prison's National Institute of Corrections biennial meeting in Aurora, Colorado, for administrators

(Outreach, continued)

and operators of large county jail facilities with 1000 beds or more.

■ On September 29, staff gave a presentation for 25 graduate students in George Washington University's School of Business, Department of Tourism and Hospitality Management, in Washington, DC. The topic explained the ADA requirements that apply to temporary events and provided practical ways to ensure that meetings and events are accessible.

■ On September 30, staff conducted training in Scottsdale, Arizona, on the requirements of the ADA, the role of ADA Coordinators, and how to build institutional commitment to improve accessibility for approximately 100 people including municipal managers, other officials, and ADA Coordinators for the City of Scottsdale and surrounding municipalities.

■ On October 1, staff conducted several presentations at the first annual Arizona ADA Coordinators Conference in Phoenix, Arizona. The presentations provided an overview of the Division's ADA responsibilities and an update on enforcement and technical assistance efforts; the role of an ADA coordinator; title II's

requirements for state and local governments; and a question and answer panel session. The conference was attended by approximately 150 ADA coordinators, local government officials, and individuals with disabilities.

■ On October 9, staff participated on a panel and question and answer session and conducted a breakout session at the 2009 Annual Maryland ADA Update Conference in Baltimore, Maryland, sponsored by the DBTAC Mid-Atlantic ADA Center. The panel presentation, which included representatives from the EEOC, the Access Board, and the Department of Transportation, provided an update and overview of the Division's enforcement and technical assistance activities, followed by a facilitated audience question and answer session. An afternoon breakout session on the requirements of title II of the ADA was also conducted. Approximately 100 ADA coordinators and local government officials attended the conference.

■ October 14, staff participated in a "webinar" sponsored by the California State Independent Living Council to discuss how the ADA applies to homeless shelters and other shelter facilities.

■ On October 15, staff gave a presentation in Washington, DC, for the U.S. Department of Agriculture, Foreign Agricultural Service's Disability Employment Awareness Month program. The theme of the program was "Expectation + Opportunity = Full Participation."

■ On October 19, Deputy Assistant Attorney General Sam Bagenstos delivered the opening keynote address at the conference of the National Association of ADA Coordinators in San Diego, California. In addition, staff gave presentations at two plenary sessions and presented at 20 break-out sessions over the three-day conference, covering such topics as employment, program access, physical access, effective communication, policy modifications, and law enforcement and corrections. Approximately 50 ADA coordinators attended the conference.

■ On October 20, staff gave an ADA training in Washington, DC, for approximately 50 disability services coordinators, administrators, educators, and project directors responsible for the development and implementation of accessibility initiatives funded through grants from the U.S.



(Outreach, continued)

Department of Education. The participants represented twenty-three public and private colleges and universities from around the country.

■ On October 21, staff gave a presentation entitled “ADA and Corrections: Legal Requirements Translated Into Practice,” at a National Conference on Correctional Health Care held in Orlando, Florida. The audience included approximately 200 state, county, and local administrators, medical and mental health professionals, and corrections’ officials and staff.

■ On October 30, staff gave a presentation on the effective communication requirements of the ADA at Hear Indiana’s 27th Annual Education Conference in Indianapolis. Hear Indiana is the state chapter of the Alexander Graham Bell Association for the Deaf and Hard of Hearing, which supports oral education for deaf children. The audience included medical care providers, attorneys, and parents of children with disabilities.

■ On October 30, staff conducted a four-hour seminar at the Department of Homeland Security (DHS) in Washington, DC, on disability laws and requirements that apply to DHS programs and the organizations that receive financial assistance from DHS. The seminar was attended by approximately 100 people from components throughout DHS.