



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

**December 2008
Issue Twenty Eight**

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.

In this Issue:

ADA	1, 4 - 5
Fair Housing	1 - 4
ADA Mediation	5 - 6
ADA Outreach	6 - 7

HISTORIC VIRGINIA THEATER MAKES ACCESS IMPROVEMENTS

On October 22, 2008, The Barter Foundation, Inc., in Adingdon, Virginia, entered into a settlement agreement with the Department resolving an investigation and compliance review of the historic Barter Theatre, the Barter Stage II, the Barter Café, and the parking area and pedestrian route serving these facilities. These facilities are located in the Town of Abingdon's Historic District, which itself is listed in the National Register of Historic Places. The review identified several problems in historic and newer areas of the complex including: a new exterior route between buildings that was not accessible; an inaccessible entry ramp to the Barter Theatre; entrances with thresholds that were too high; barriers limiting access to the accessible seating within the Barter Theatre; barriers at toilet facilities; and no accessible signage.

The Barter Foundation worked cooperatively with the Department throughout the review and promptly corrected all problems identified. The settlement documents the Foundation's ongoing commitment to comply with all requirements of the ADA.

MULTI-FAMILY HOUSING ACCESS FORUM IN HOUSTON DRAWS LARGE TURNOUT

On November 18, 2008, more than 100 developers and building professionals, government officials, and advocates for individuals with disabilities attended the Department's eighth Multi-Family Housing Access Forum, held in Houston, Texas. Hosted by Jessie K. Liu, Deputy Assistant Attorney General for the Civil Rights Division, and Michael S. Maurer, Deputy Chief of the Housing and Civil Enforcement Section, the event featured presentations by three prominent housing professionals followed by engaging questions from the audience.

(Continued on page 2)

(Access Forum, continued)

The theme of the Houston event was “Good Access is Good Business.” In her welcoming remarks, Ms. Liu encouraged the building professionals in attendance to comply with the Fair Housing Act’s accessibility requirements from the outset on their projects, rather than risking enforcement actions and expensive retrofits. She said, “[i]t pays to comply with the accessibility requirements not only because it is the law and the right thing to do, but because it is the right business choice as well.” Ms. Liu noted that, in the coming years, the Houston area will face growing challenges to keep up with the demand for accessible housing for the increasing numbers of individuals with physical disabilities.

Ms. Liu also spoke about the Department’s enforcement activities and emphasized that although the Civil Rights Division has obtained great results through litigation – over 14,500 housing units in 26 states have been made accessible as a result of the Department’s settlements since October 2004 – lawsuits cannot and should not be the only approach to Fair Housing Act enforcement. Achieving compliance at the design and planning stages is a more timely and cost-effective means of ensuring that the housing needs

of people with disabilities are met without costly retrofits and litigation.

The featured presenters were David Mintz, Director of Government Affairs for the Texas Apartment Association, based in Austin; Kristi J. Thomas, CEO and founder of Accessology, Inc., based in Flower Mound, Texas; and Jim Wallace, AIA, a principal of Wallace Garcia Wilson Architects, Inc., of Houston.

Mr. Mintz encouraged those involved in multi-family housing to be aware of the resources available to assist in creating accessible housing. He also discussed the positive effects that the availability of accessible housing can have in the rental business and urged those present to ensure that owners and managers are aware of the reasonable accommodation and reasonable modification requirements of the Fair Housing Act as well.

Ms. Thomas urged design professionals to see the accessibility requirements as an opportunity rather than a burden. She discussed the increasing need for accessible housing and the positive marketing opportunities available to those who make accessibility a priority. Ms. Thomas also discussed the need to ensure that the entire team – including owners, design professionals, and developers – is aware of

the accessibility requirements and the overall plan for meeting those requirements. She noted that the most successful projects are those in which the owner is committed to accessibility from the outset.



Speaker Jim Wallace at the Access Forum in Houston

Mr. Wallace discussed how his architectural firm, which has completed successful multi-family housing projects across the nation, ensures that its designs meet the accessibility requirements. He emphasized the importance of training to ensure that every employee is aware of the requirements. He also encouraged the professionals in attendance to remember that the requirements are not always a part of the building code, and compliance is the professionals’ responsibility. Mr. Wallace noted some of the common errors he has seen in

(Access Forum, continued)

various multi-family housing projects, such as lack of an accessible route to the public right-of-way, refrigerators that infringe on the required clear floor space in the kitchen, and toilets placed in inaccessible recessed areas.

Launched in 2005, the Access Forum's objective is to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and

to celebrate partnerships that have successfully produced accessible multi-family housing in which everyone profits – developers and consumers alike. Previous events were held in Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC.

For more information about the Fair Housing Act and the Department's enforcement activities, go to www.usdoj.gov/fairhousing.

DEPARTMENT FILES TWO NEW CASES INVOLVING ASSISTANCE ANIMALS

The Department has filed two new lawsuits alleging that housing providers discriminated against people who use assistance animals. *United States v. Van Raden Properties, Inc.* was filed in the federal court in Minneapolis on October 29, 2008, alleging that the owner and management company of a 24-unit apartment building in Moorhead, Minnesota, violated the Fair Housing Act by prohibiting certain types and breeds of assistance animals and any that weigh 40 pounds or more. *United States v. Townsend House Corp.* was filed in the federal court in Manhattan on November 12, 2008, alleging that a 97-unit cooperative development in New York City delayed and placed unreasonable conditions on the granting of a request by a mother to allow her eleven year-old son, who has Asperger's Syndrome and Central Auditory Processing Disorder, to keep an assistance animal.

PENNSYLVANIA APARTMENT OWNER AND MANAGING AGENT SETTLE LAWSUIT CLAIMING DISCRIMINATION AGAINST PEOPLE WHO USE ASSISTANCE ANIMALS

On October 15, 2008, a federal court in Philadelphia approved the settlement of the Department's lawsuit alleging that the former owner and managing agent of the Barrcrest Manor Apartments in Lancaster, Pennsylvania, had violated the Fair Housing Act by refusing to rent an apartment to a man who is visually impaired and uses a guide dog. The lawsuit resulted from Operation Home Sweet Home, a fair housing testing program that employs individuals who pose as renters for purposes of gathering information about possible discriminatory apartment rental practices.

"I am pleased that the defendants have agreed to make reasonable accommodations for persons who use guide dogs," said Grace Chung Becker, Acting Assistant Attorney General for the Civil Rights Division. "Operation Home Sweet Home has helped to ensure that persons with disabilities are not discriminated against in their search for a place to call home."

Under the agreement, the defendants, National Properties Inc., NPI Management Corporation, Barrcrest Manor Associates, and the former apartment manager, Sandy Brown, will pay up to \$25,000 to compensate any victims of discrimination at Barrcrest Manor who may be identified. They will also pay \$35,500 in civil penalties to the United States, establish and follow non-discriminatory tenancy procedures, and undergo fair housing training.

DEPARTMENT SUES INDIANA RETIREMENT HOME FOR DISCRIMINATING AGAINST PEOPLE WHO USE MOTORIZED WHEELCHAIRS

On November 7, 2008, the Department sued the owners and managers of the Rathbone Retirement Community, an Evansville, Indiana, retirement home, for not allowing residents with disabilities to use motorized wheelchairs or scooters and for forcing out two tenants who used motorized wheelchairs.

“Persons with disabilities should not lose their rights to fair housing when they choose to make their homes in retirement communities,” said Grace Chung Becker, the Acting Assistant Attorney General for the Civil Rights Division. “I appreciate the hard work of our HUD partners who investigated this matter and share our commitment to enforcing the Fair Housing Act.”

The lawsuit, filed in the federal court in Evansville, alleges that the defendants discriminated against residents of the Rathbone Retirement Community by adopting and maintaining a policy prohibiting the use of motorized wheelchairs and scooters in residents’ apartments and in the facility’s

dining room during meals. The defendants in this suit include Charles and Janet Ludwyck, the owners of the Rathbone; Rathbone Retirement Community, Inc., the corporation through which they manage the property; and Norma Helm, the onsite administrator.

The complaint seeks an order requiring the defendants to stop discriminating against individuals on the basis of

disability, to pay monetary damages to those harmed by the defendants’ policy, and to pay a civil penalty to the United States.

The case originated when two individuals filed discrimination complaints with the U.S. Department of Housing and Urban Development (HUD). HUD investigated the complaints and referred the matters to the Justice Department.

CALIFORNIA MASSAGE COMPANY AGREES TO STOP DISCRIMINATING AGAINST PEOPLE WITH HIV

On October 10, 2008, The Massage Company in Los Angeles, California, signed a settlement agreement with the Department resolving a complaint alleging that the company had refused to provide a massage for a client after the client revealed on an intake form that he has HIV. This Los Angeles-based corporation, which currently operates six facilities in the Los Angeles area, provides therapeutic massage services on both reservation and walk-in bases. The agreement required the company to develop and adopt nondiscrimination policies and procedures; to designate an ADA compliance official to review all disability-related decisions; and to provide to all staff annual instruction on nondiscrimination policies, and in particular on the company’s policy of nondiscrimination on the basis of HIV. The company also agreed to pay \$10,000 in compensatory damages to the complainant.

NEW PROJECT CIVIC ACCESS SETTLEMENTS

Project Civic Access (PCA) is the Department's wide-ranging initiative to work cooperatively with local governments to ensure that their programs and activities comply with the ADA, allowing people with disabilities to participate more fully in the civic life of their communities.

On September 25, 2008, the Department signed a settlement agreement with Pike County, Kentucky, under which people with disabilities will be better able to attend community meetings, view government websites, enjoy local parks and recreational facilities, and vote at their local polling places. The Department previously signed PCA agreements with Pike County's Health Department and Public Library District.

On September 26, 2008, the City Council of Gadsden, Alabama, entered into a settlement agreement with the Department under which the city will implement a grievance procedure, comply with ADA requirements for effective communication, and improve access to sidewalks and numerous municipal facilities including government office buildings, parks and recreational centers,

community centers, and the police department. City officials worked cooperatively with the Department throughout the investigation in order to reach this agreement.

On September 30, 2008, the Department entered into a settlement agreement with the Town of Vian, Oklahoma, under which the town agreed to: post a model ADA Notice; provide auxiliary aids and services necessary for effective communication with persons who have sensory disabilities; amend its employment policies to comply with ADA guidance issued by the U.S. Equal Employment Opportunity Commission; implement emergency management policies and procedures to ensure that people with disabilities have equal access to emergency notice, evacuation, and response services; ensure website accessibility; maintain accessible features; make modifications necessary to sidewalks and curb ramps to provide accessible routes; and make modifications to parking, entrances, routes, toilet rooms, courtroom/assembly areas, and other elements to provide access to the town hall, police station, nutrition center, town parks, and other facilities.

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 this issue, we highlight complaints involving places where people go for fun, entertainment, and exercise.

- A person who uses a wheelchair complained that a Texas gym did not provide sufficient accessible parking, restrooms, or exercise equipment. The gym installed a van-accessible parking space, remodeled the bathroom to make it accessible, and installed a hand-operated exercise bike.

- An individual with a mobility disability complained that a Massachusetts country

club was inaccessible. The country club installed a lift at the entrance, an accessible restroom, accessible parking, and outside lighting.

- In California, a person with low vision complained that a golf course refused to allow his aide to stay with him unless he paid a fee, even though the aide was not playing. The golf course agreed not to charge individuals assisting golfers with disabilities and also developed additional policies, including allowing off-path travel for golfers using carts because of their disabilities. The golf course also developed an ADA pocket guide, trained all staff on the policies, and agreed that senior staff would be available onsite to resolve any complaints that might arise.

- In West Virginia, a person with a mobility disability complained that a golf course refused to allow golfers with disabilities to take golf carts off the path. The club agreed to modify the policy to allow golfers with disabilities to take golf carts off the path. The complainant and resident golf pro worked together to identify areas that would be unsafe for cart travel in wet conditions and developed a brochure about the off-path policy.

- In North Carolina, a golfer with a mobility disability complained that a course did not allow off-path travel for golf carts used by people with disabilities. The parties agreed that the golf course did have a policy allowing off-path travel in appropriate circumstances but that the policy was not adequately communicated to golfers. The course agreed to institute ongoing training for all employees on course policies and the ADA and issued a written apology to the complainant.

- In Indiana, an individual filed a complaint on behalf of his mother-in-law, who was unable to access the women's restroom at a local fraternal organization building because she uses a wheelchair. In

mediation, the complainant learned that the building did have an accessible public unisex restroom but that there was no signage directing the general public to it. The organization agreed to place signage at the inaccessible restrooms directing the public to the accessible restroom.

- A parent with Chronic Fatigue Syndrome complained that a California youth sports organization refused to modify its policy requiring every parent to volunteer at the team snack stand during the season. The organization modified its policy to allow parents with disabilities to volunteer for tasks other than the snack stand, such as assisting in making phone calls and completing paperwork.

RECENT OUTREACH ACTIVITIES

- On October 22, staff gave a presentation at the National Commission on Correctional Healthcare meeting in Chicago, Illinois. The presentation addressed "The Americans with Disabilities Act and Corrections: Legal Requirements Translated Into Practice."

- On October 22-23, staff attended the Participatory Action Research Meeting on

Universal Design in Atlanta, Georgia, hosted by Global Universal Design Commission, Inc., and sponsored by the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the IDEA Center at the University at Buffalo.

- On October 27, staff participated in a telephone conference with the Art Education for the Blind's Art Beyond

(Outreach, continued)

Sight Awareness Month celebration. Staff discussed the history of the ADA, the proposed changes in ADA regulations and design standards, and various aspects of making art and visual culture accessible to children and adults with vision loss. Participants included museum educators, special-education graduate students, and teachers.

■ From October 27 - 30, staff gave numerous presentations at the National Association of ADA Coordinators

conference in Las Vegas, Nevada. Staff addressed two plenary sessions and gave presentations at approximately 25 break-out sessions covering such topics as employment, title II basics, accessibility, effective communication, policy modifications, ADA's applicability to law enforcement, ADA's applicability to corrections, and emergency preparedness in higher education.

■ On October 29 and 30, staff gave three presentations

at the Women, Infants, and Children (WIC) 2008 conference in Des Moines, Iowa, on the topics of ADA program accessibility and communicating with people who are deaf or hard of hearing. Attendees of this conference included over 350 WIC staff that serve 99 counties in Iowa.

■ On November 12, staff participated in a Westlaw Webcast Conference to provide an update on the Department's recent ADA activities.