RECENT DEVELOPMENTS

LANDLORD TENANT

APARTMENT OWNER CAN BE SUED UNDER FAIR HOUSING ACT AMENDMENTS FOR NOT WAIVING NO-COSIGNER POLICY

Giebeler v. M&B Associates, 343 F.3d 1143 (9th Cir. 2003)

FACTS: John Giebeler, disabled and unemployed due to the AIDS virus, sought to move from an expensive apartment to a less expensive unit closer to his mother at the Park Branham Apartments ("Branham"). M&B Associates ("M&B") owned Branham. Branham informed Giebeler, who was unable to work due to his disability, that he did not meet the minimum gross income requirements. Giebeler then asked his mother to help him rent the apartment. Branham rejected the application because M&B had a policy against cosigners and considered Giebeler's mother a cosigner. Giebeler informed Branham of his disability and of the Fair Housing Amendments Act ("FHAA") requirement that reasonable accommodations in rules, policies, practices or services be used when such accommodations may be necessary to afford disabled persons' use and enjoyment of the unit. 42 U.S.C. § 3604(f)(3)(B). Giebeler then filed suit under the FHAA for failure to reasonably accommodate his disability through Branham's refusal to waive the no-cosigner policy. The district court granted summary judgment for M&B on the reasonable accommodation claim because an accommodation, which remedies the economic status of a disabled person, is not an "accommodation" as contemplated by the FHAA.

HOLDING: Reversed and Remanded.

REASONING: The FHAA imposes an affirmative duty upon landlords to reasonably accommodate disabled persons' physical and administrative needs. *United States v. California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994), 42 U.S.C. § 3604(f)(3)(A), (C). Branham did not dispute that Giebeler suffered from AIDS nor that Branham was aware of the disability and refused to accommodate Giebeler. The Supreme Court has held that accommodation requirements: 1) occasionally require preferring disabled individuals over others who are otherwise similarly situated but are not disabled; and 2) are not limited only to lowering barriers created by the disability itself. *U.S. Airways v. Barnett*, 535 U.S. 391 (2002). Under the FHAA only *reasonable* accommodations that do not cause undue hardship or mandate fundamental changes in a program are required. But a discriminatory rule, policy, practice, or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. The FHAA would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling. Giebeler's request that he be permitted to live in an unit rented by his financially qualified mother was a request for accommodation that he was entitled to receive *if* the adjustment both "may be necessary to afford [him] equal opportunity to use and enjoy a dwelling" and was "reasonable" within the meaning of the statute. 42 U.S.C. § 3604 (f)(3)(B). An accommodation is reasonable under the FHAA "when it imposes no 'fundamental alteration in the nature of the program' or 'undue financial or administrative burdens.'"

To prove that the accommodation was necessary, Giebeler had to demonstrate that but for the accommodation, he was denied an equal opportunity to enjoy the unit. Financial policies can interfere with disabled persons' right to use the facilities thus necessitating accommodation. Due to his disability related poverty, Giebeler was denied an equal opportunity to enjoy the unit. M&B's relaxation of their no-cosigner policy was necessary to afford Giebeler equal opportunity to use and enjoy the unit at Branham. Giebeler met his burden of demonstrating and producing evidence that a reasonable accommodation was possible. The burden then shifted to Branham to produce evidence that the requested accommodation was not reasonable. Branham failed to meet its burden. This court held Giebeler's request that his financially qualified mother be allowed to rent an apartment for him, affording him the opportunity to live in a suitable unit despite his disability, was a request for a reasonable accommodation within the intent of the FHAA and should have been honored

MISCELLANEOUS

ARBITRATION PROVISION IN A CONTRACT A HUSBAND SIGNED WHEN HIS WIFE WAS ADMITTED TO A NURSING HOME IS UNCONSCIONABLE

Romano v. Manor Care, Inc., ____ So. 2d ____ (Fla. App. 4th Dist. 2003).

FACTS: Lawrence and Josephine Romano agreed for Josephine to enter a nursing home for rehabilitation after she suffered a fall in their home. The day after she was admitted Lawrence was given several documents to sign, including one that was an arbitration agreement. This arbitration agreement provided for arbitration of all disputes, including those brought pursuant to statute. It stated that neither party was entitled to attorney's fees and contained a limitation of liability provision which excluded punitive damages and limited non-economic damages. The administrator who supervised the signing of the "admissions packet" did not attempt to explain any of the terms of the documents. Lawrence was told only that the papers he signed were his wife's admission papers.

Josephine resided in the home for one month. During that time, her condition deteriorated rapidly. After leaving the home, the Romanos filed suit alleging that the nursing home deprived Josephine of her rights pursuant to sections 400.022 and 400.023 of the Nursing Home residents Rights Act. The trial court determined that the parties had entered into a valid arbitration agreement and compelled arbitration.