

Supreme Judicial Court of Massachusetts Upholds Rights of Tenants with Disabilities

The Fair Housing Amendments Act (FHAA) requires that a housing provider grant a request for reasonable accommodation to a qualified person with a disability.¹ However, the housing provider may be exempt from providing an accommodation if a tenant with a disability poses a “direct threat to the health or safety” of others,² and determining the boundaries of such an exemption has been a contentious area of law.³ The Supreme Judicial Court of Massachusetts recently addressed this issue in *Boston Housing Authority v. Bridgewater*,⁴ where it found in favor of a disabled tenant to whom the housing authority had refused to provide reasonable accommodation because of an alleged assault on his brother.⁵ Mr. Bridgewater was represented by Greater Boston Legal Services.

Factual Background

Emmitt Bridgewater lives in public housing administered by the Boston Housing Authority (BHA). Mr. Bridgewater is mentally disabled, living with bipolar disorder and borderline personality disorder. For a period of time, Mr. Bridgewater’s doctor took him off of his medication because of negative side effects. During that period, Mr. Bridgewater got into a fight with his twin brother, a resident in the same complex, which ended in a physical altercation. The brother was severely injured.⁶ At the time of the fight, Mr. Bridgewater had lived in BHA housing for thirty-eight years without incident. Mr. Bridgewater pleaded guilty to three assault charges. BHA subsequently initiated eviction proceedings.

¹42 U.S.C. § 3604. Although the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, and the Americans with Disabilities Act, 42 U.S.C.A. §§ 12131, *et seq.*, also require reasonable accommodation, this decision based its analysis on the FHAA.

²42 U.S.C. § 3604(f)(9).

³*Roe v. Sugar River Mills Assoc.*, 820 F.Supp. 636 (D. N.H. 1993) (finding that before a housing provider could proceed with an eviction, it had an obligation to determine if a reasonable accommodation would mitigate threat caused by tenant who had been convicted of disorderly conduct in the building); *Roe v. Hous. Auth. of the City of Boulder*, 909 F.Supp. 814 (D. Colo. 1995) (finding that a housing provider must make an accommodation to allow the continued tenancy where a tenant hit another and engaged in threatening behavior); *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007).

⁴898 N.E.2d 848 (Mass. 2009)(hereinafter *Bridgewater*).

⁵*Bridgewater* took guilty pleas to three assault charges for the incident. *Id.* at 850.

⁶*See Bridgewater* at 851-2. According to the factual record, Mr. Bridgewater assaulted his brother Eric inside Eric’s apartment during an altercation in which they were discussing negative childhood memories. The brother, who had been partially paralyzed since childhood, sustained severe injuries including temporary paralysis in one leg.

Procedural Background

Both the Housing Court and the Appeals Court of Massachusetts found in favor of the housing authority.⁷ At the trial court proceedings, Mr. Bridgewater represented himself. He repeatedly testified about his disabilities and the fact that he had been temporarily taken off of his medication and that he had since been put on a new regimen.⁸ Initially, the Housing Court asked whether the case needed to be referred to the Boston Tenancy Preservation Project, designed to help people with mental disabilities remain in their home. BHA rejected such a referral, saying that it was not interested in preserving the tenancy.⁹ The Housing Court found that Bridgewater “violated a provision of his lease by committing a crime on the public housing development grounds that threatened the health and safety of another resident” and therefore BHA had no obligation to provide him with a reasonable accommodation.¹⁰

The Appeals Court of Massachusetts (“the intermediate court”) upheld the Housing Court decision and ruled that Mr. Bridgewater was not a qualified person with a disability and the housing authority was under no obligation to provide reasonable accommodation prior to eviction. The court used three cases to support its reasoning—two of which dealt with reasonable accommodation in the employment context.¹¹ The two employment cases discussed whether or not a person’s “egregious workplace misconduct” prevented the person from being qualified for the position, whether or not a reasonable accommodation were granted.¹² As explained by the higher court below, under the FHAA’s legislative history and the regulations of the Department of Housing and Urban Development (HUD), this analysis is inapplicable to the housing context. The housing case to which the intermediate court pointed did not deal with direct threat at all, but rather whether or not a reasonable accommodation could in fact help the tenant conform to the requirements of the tenancy.¹³ The intermediate court ignored the decisions of other jurisdictions that have dealt with the direct threat issue by making the inaccurate distinction that those cases did not involve individuals who had pleaded guilty to criminal assault against a cotenant.¹⁴ Based on such reasoning, the intermediate court upheld the initial decision to evict Mr. Bridgewater.

⁷*Boston Hous. Auth. v. Bridgewater*, 871 N.E.2d 1107 (Mass. App. Ct. 2007).

⁸*Bridgewater* at 852.

⁹*Id.* at 857.

¹⁰*Boston Hous. Auth. v. Bridgewater*, 871 N.E.2d 1107, 1111 (Mass. App. Ct. 2007).

¹¹*Id.* at 1112-3.

¹²*Id.* at 1113, citing *Garrity v. United Airlines, Inc.* 653 N.E.2d 173 (Mass. 1995) and *Mammone v. President & Fellows of Harvard Coll.*, 847 N.E.2d 276 (Mass. 2006).

¹³*Andover Hous. Auth. v. Shkolnik*, 820 N.E.2d 815 (2005).

¹⁴*See, e.g., Roe v. Sugar River Mills Assoc.* at 638, a case cited by the intermediate court in *Bridgewater*, where the tenant had been convicted of disorderly conduct.

The Supreme Judicial Court, Massachusetts' highest court, reversed the lower court's decision. The court held that BHA must consider whether or not a reasonable accommodation could mitigate the likelihood that a tenant creates a direct threat to the health and safety of others, that BHA had notice that Mr. Bridgewaters had a mental disability, and that he had in fact made a reasonable accommodation request.

With regard to the issue of how a direct threat should be analyzed, the court pointed to the federal scheme apparent in the FHAA and HUD regulations, as well as BHA's policies. The legislative history in the FHAA demonstrates that Congress meant to adopt the more exacting standard that had been applied in Section 504 employment cases¹⁵—that a tenant would not qualify for a reasonable accommodation if “he or she would pose a threat to the safety of others, unless such threat can be eliminated by reasonable accommodation.”¹⁶ Furthermore, HUD regulations provide guidance on determining whether or not a person poses a direct threat:

“(c) . . . the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.”¹⁷

Thus, the direct threat inquiry must be an individualized one that considers whether or not a reasonable accommodation would mitigate or eliminate the threat. If the threat cannot be mitigated, then the housing provider may evict the tenant.

In addition to federal rules and regulations, BHA policy itself lays out the process by which it may evict a disabled tenant who may pose a direct threat. It reinforces that the housing authority must determine if a reasonable accommodation could “lessen the risk of harm.”¹⁸ The policy also states that the burden is on the housing authority to demonstrate that no reasonable accommodation could be made. Thus, based on federal law, HUD regulations, and BHA policy, BHA was obligated to consider a reasonable accommodation request by Mr. Bridgewaters to determine if a reasonable accommodation could mitigate any threat he presented to the health and safety of others.

Additional Holdings

In addition to ruling that the housing authority must in fact consider reasonable accommodation prior to evicting a tenant on the basis that he is a direct threat to the health and safety of others, the court made two other significant rulings. The court found that BHA did have knowledge of Mr. Bridgewaters' disability—it knew that the Housing Court had referred the tenant to the Boston Tenancy Preservation Project, designed for people with mental disabilities; that he received Social Security disability benefits; and that he lived in housing designated for elderly and disabled individuals, as a thirty-nine-year-old.¹⁹ Bridgewaters made clear his desire for a reasonable accommodation when, during trial, he repeatedly explained his disability and that he was back on medication and would thus like to remain in his unit. Bridgewaters never explicitly characterized his request as a reasonable accommodation, but the law does not require that. The law simply requires that a tenant make his disability known and that he would like a change in policy that would accommodate that disability.

Finally, the court held that Bridgewaters implicitly demonstrated the link between his disability and the requested accommodation. If he had not, BHA was under obligation, in accordance with its own policy, both to accept the nexus unless specific reasons to do otherwise exist, and to notify Bridgewaters of the need for more information if necessary.²⁰

Conclusion

Bridgewaters reinforces the fair housing obligation of housing providers to consider reasonable accommodation even when a serious breach, including violence, is involved. Such rulings are vital to ensuring that people with disabilities have equal access to housing. ■

¹⁵See, e.g., *School Board of Nassau Cty. v. Arline*, 480 U.S. 273 (1987).

¹⁶*Bridgewaters* at 853, citing H.R. Rep. No. 100-711, 28 (1988).

¹⁷24 C.F.R. § 9.131(b) (2009).

¹⁸*Bridgewaters* at 856.

¹⁹*Id.* at 857-8.

²⁰*Id.* at 859.