



Breathing Freely

Board and disabled resident tussle over an air conditioner.

January 19, 2012

Accommodations for the disabled are one of the perennial stress points where the power of co-op boards and the rights of tenants are pitted against one another. A recent noteworthy decision on this front was made in Queens Supreme Court on the matter of *Feldman v. The Cryder House Inc.*, a co-op in Whitestone, a case where a shareholder made an unapproved alteration to his apartment to accommodate a disabled resident and the board objected.

Attorney Dennis H. Greenstein, a partner at the firm Seyfarth Shaw discussed the case in a recent memo provided to *Habitat* and excerpted below for our *Habitat Weekly* subscribers.

Here's Greenstein:

FROM: Dennis H. Greenstein

DATE: January 5, 2012

RE: Two recent noteworthy cases decided in New York County and Queens County Supreme Courts; **The Cryder House** relating to granting an accommodation for a disability and **Connaught Tower** relating to secondhand smoke.

[Ed. note: the Connaught Tower case was discussed in the January 5 edition of Habitat Weekly. Only the discussion of the Cryder House case is included below.]

Background:

Feldman is the owner and proprietary lessee of an apartment in The Cryder House Inc. ("Corporation"). In 1997, Feldman purchased the apartment for use by his parents (co-plaintiffs, "Feldmans"), who moved in shortly thereafter.

In 2000, the Feldmans, by altering the exterior wall of the building, installed an air-conditioning unit in the apartment without seeking prior approval from the Corporation.

In 2006, the Corporation learned of the air conditioner and sent a letter to Feldman notifying him that he had breached the proprietary lease and violated the house rules. The letter notified him that if the alleged breach was not cured, the Corporation would terminate his tenancy and seek a judgment of ownership and possession of the apartment, and for an award of all sums due and owing.

The Feldmans sued the Corporation, alleging that Clara Feldman, one of the occupants of the apartment, suffers from a disability, an extremely allergic health problem, and has difficulty breathing and engaging in the activities of daily living requiring her to have purified air, necessitating use of an air conditioner.

Feldman asserted that the Corporation violated the federal Fair Housing Amendments Act of 1988 and committed an unfair housing practice by discriminating against Mrs. Feldman.

Decision:

The Feldmans were awarded judgment against the Corporation and as the prevailing parties within the meaning of the Fair Housing Amendment Act and in exercise of discretion may be awarded attorney's fees.

Significantly, the judge noted that, "It might well be argued that had a proper request to the board been made before installation accompanied by Clara's medical history that it would have been unreasonable for the board to withhold such permission."