

Litigation: When the Denial of a Reasonable Accommodation Leads to Tragedy

By: Matthew Dietz

Most times when a person requests a reasonable accommodation or a modification because of a disability, the accommodation or modification assists a person to live independently or lessens the effect of a disability. This includes a closer parking space, or grab bars in the bathroom, or an assistance animal. However, there are many times when a need for an accommodation is a matter of life and death. In a recent case filed by DIG and Belvin Perry of Morgan & Morgan, the denial of a reasonable accommodation led to Samuel Rosario's death at his apartment at the Logan Heights Apartments in Sanford Florida.



Sammy Rosario had four adult children, two boys and two girls, and many grandchildren, but he valued his stubborn independence and insisted on living on his own. Sammy lived at Redding Gardens, a Public Housing Property where only elderly and disabled individuals were admitted. He was admitted to this specific property because he lived with numerous medical conditions, including memory loss, seizure disorder, and mobility impairments.

In October 2011, Orlando Housing Authority (OHA) assisted in the relocation of residents that lived at Redding Gardens, and Sammy was moved by OHA to Logan Heights Apartments, a privately owned, tax credit, multi-family development. Sammy was relocated to a one bedroom apartment on the third story, with access by three flights of stairs. However, on the same day of the move, the OHA Relocation Specialist telephoned Sammy's daughter, Stephanie Fernandez, to tell her that her father could barely make it to his second floor apartment at Redding Gardens and OHA refused to allow Sammy into the moving truck to the new apartment.

Stephanie frantically searched for her dad and could not find him at either development, so the entire family conducted a dragnet for Sammy Rosario. Sammy Rosario was found lost, delirious and bleeding close to a major highway. An ambulance was called



and he was taken to the hospital. Once released, Sammy could not see. He was legally blind. Stephanie called the relocation specialist, informed of her dad's condition, his inability to live independently or on the third floor, and requested assistance for her father to live on a first floor apartment and to be allowed to live with an aid. No action was taken on their request.

For the next two years, Sammy, and his daughters Stephanie and Stacie provided asked and pleaded for a first floor apartment and the ability to have a live in aide for Sammy, so he could live as independently as possible. They provided doctors notes, and were given various excuses by OHA including the lack of adequate funding for relocation.



In the Fall of 2012, the Social Security Administration denied Sammy Rosario's application for Social Security Disability. Because Mr. Rosario's disability was so obvious, Mr. Rosario appealed the decision. However, notwithstanding the determination of Mr. Rosario's doctors of his disability, OHA decided that Mr. Rosario was now not considered "disabled". This was due to a finding of the Social Security Administration that Mr. Rosario was not classified as disabled and Mr. Rosario and his daughters were advised that no accommodation would be provided and Mr. Rosario was now not even entitled to a rent subsidy based upon his disability.

Stephanie did not accept this determination, reviewed the Department of Housing and Urban Development (HUD) regulations on her own, and advised the housing authority that the denial of an accommodation was contrary to HUD's own regulations, as the HUD regulations specifically permit a finding of disability on factors other than a finding from social security. It just did not make sense as if the Social Security Administration was wrong in its determination, Sammy would be entitled to retroactive payments; however, if the housing authority was wrong, it could not retroactively give Sammy his accommodation his needs to live independently. In August of 2013, Sammy Rosario and Stephanie had enough, and they filed a Fair Housing Claim against OHA. Even after the filing, the OHA affirmed their denial, but advised Ms. Fernandez that "Should Mr. Rosario win his appeal to the Social Security Administration's denial, please contact our office and we will reconsider our decision."

Social Security reversed its decision and granted Sammy Rosario benefits back to September 2011 - less than three months after the filing of the fair housing complaint - but OHA did not reconsider, but instead advised that Ms. Fernandez would need to go through the entire reasonable accommodation process again. Instead of allowing Mr. Rosario the accommodation he needed, the OHA decided to use the accommodation as a negotiating point in the fair housing investigative process instead of immediately providing the necessary accommodation.

On March 19, 2015, Samuel Rosario had an accident where he fell causing injury to his head and bruising to his eyes. He was admitted into the hospital for nine days, where he received needed physical therapy. Soon after arriving back home on May 29th, 2015 Mr. Rosario was found dead in the kitchen of his apartment. After an investigation and autopsy, it was determined that the cause of Mr. Rosario's death was an unwitnessed fall causing head injury. After completing the investigation, the Sanford Police Department determined that Samuel Rosario was injured while experiencing an unwitnessed seizure and was desperately seeking help. The evidence of the trail blood went from his bedroom to the bathroom, where there was a considerable amount of blood. The blood trail continued into the kitchen where Samuel Rosario experienced another seizure or fainted and hit his head, which was ultimately determined as the cause of his death.

On August 29, 2014, the Florida Commission on Human Relations determined that there was cause to believe that Samuel Rosario was denied a reasonable accommodation under the Fair Housing Act. However, unlike the reversal of the Social Security Disability determination, the denial of an accommodation cannot be granted retroactively, and Stephanie and her brothers and sister cannot bring their father back.

If Sammy Rosario had a live in aide, he would not have died. He would not have fallen, and if he had fallen, he would not have bled to death alone in his home. Over fifty percent of all fair housing complaints filed against housing providers in the United States are as a result of a denial of a reasonable accommodation or a reasonable modification in a home. Most of these accommodations cost nothing to a provider, yet may mean the difference between living independently and living in an assisted living facility or nursing home, or as in this case, the difference between life and death. For a federally subsidized housing provider, such as the Orlando Housing Authority, the subsidized housing provider has the obligation to pay for and provide a modification to the premises (such as a roll in shower or permanent ramp), or an accommodation by a change in a rule, such as a larger apartment to accommodate a live in aide, or relocation to a first floor apartment.

Disability Independence Group and Morgan & Morgan is pleased to represent the family of Samuel Rosario to ensure that a housing provider cannot ignore the needs of their residents with disabilities, and that accommodations are essential to independent living.