



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

July 2016
Volume 203

Is Habitat for Humanity Liable for Building Inaccessible Home?

Habitat for Humanity builds affordable housing for low-income families. Habitat selects "partner families" to become homeowners. These families must contribute sweat equity hours building their own homes and other Habitat homes. Completed homes are sold to the families at cost and financed with zero-interest loans. Every Habitat mortgage requires that the partner family has to live in the home on a full-time basis and may not rent it out without Habitat's permission.

Al Davis and his sister Brittany Davis were approved as a partner family. Brittany is a hemiplegic who uses a wheelchair for mobility and needs 24-hour care, either from a family member or a professional caregiver. They fulfilled the sweat equity requirement (Brittany distributed food at building sites and served as a bell-ringer for Salvation Army) and Habitat designed a house for them.

Typically, Habitat builds a two-bedroom, one-bathroom house for a two-person family. But the agency agreed to build a three-bedroom house for Al and Brittany, as Brittany needs space for a caregiver and for her medical equipment. They wanted one and a half bathrooms, because Brittany's condition requires her to spend extensive time in the restroom, but Habitat did not agree to build the extra half-bath. Habitat worked with an architect to make sure the house would be accessible, but the architect did not meet with Brittany to

determine her specific needs.

After the floor plans were drawn up, Habitat met with Brittany, Al and their mother, and agreed to make several changes, including installing an accessible sink and grab bars in the bathroom.

As construction was underway, a woman who said she was Brittany's caregiver went to Habitat and said that Brittany and Al were not planning on living in the house. Habitat asked Brittany and Al to sign an affidavit affirming that they planned to live in the house. It's not typical for Habitat families to have to sign an affidavit, but this language is standard in Habitat mortgages that every family signs.

After construction was completed, more problems became apparent to the family. For one thing, the hallways were too narrow for Brittany to turn around; when she is in her wheelchair, one leg is extended at all times, meaning she needs additional space. There were several other problems. Habitat told the family they would have to pay for the changes. They refused. Habitat offered to build them a different home, but none of the locations Habitat offered were suitable for Brittany.

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Court to Decide Whether Job Requires Ability to Drive or the Ability to Travel

Whitney Stephenson worked for Pfizer as a sales representative for almost thirty years, focusing on the Winston-Salem area. She apparently was quite good at her job, winning a Rookie of the Year award when she began, earning recognition in national sales contests and being named a Pfizer master later in her career.

She did not have an office at Pfizer. Instead, she met with doctors in their offices, driving to their offices and spending a great deal of her day on the road. Her job description did not say that she needed to be able to drive for her job, but she did spend a lot of time driving.

In 2008, Stephenson developed an eye disorder in her left eye. She continued to work for Pfizer, and continued to drive on the job, until the disorder spread to her right eye. She could then no longer safely drive. She asked Pfizer for several accommodations, including magnifying software for her computer, magnifying tools to read printed documents and a

driver. She researched the costs of driving services and shuttle services and gave that information to Pfizer. Pfizer agreed to provide the magnifying equipment, but refused to provide her a driver. They said that driving was one of her essential job duties and if she were no longer able to do that with or without an accommodation, she was no longer qualified to do the job. Pfizer said that hiring a driver for her would be “inherently unreasonable” and would subject the company to significant increased risk and liability related to accidents, workers compensation and misappropriation of and/or lost drug samples. Stephenson said that her job did not require the ability to drive but just the ability to travel, which she could still do, if she had a driver.

Memos showed that the company was concerned not so much about providing an accommodation for a stellar performer such as Stephenson but about setting a precedent where they would have to provide the same type of accommodation for other employees.

Pfizer urged Stephenson to apply for other positions that did not require driving. She refused, believing her skills were best used at the job where she had excelled for decades. She went on disability and sued the company, alleging that they had discriminated against her on the basis of her disability in violation of the Americans with Disabilities Act (ADA) by not providing her a reasonable accommodation in the form of a driver.

The Trial Court ruled in Pfizer’s favor, granting them a summary judgment. But the Court of Appeals said that whether driving was an essential job requirement was a factual question that the jury, not the judge, should have resolved, and remanded the case back to the lower court.

The case is Stephenson v. Pfizer, Incorporated, 2016 WL 806071 (4th Cir. 2016).





Supreme Court Rules Against EEOC

If you file a complaint of employment discrimination with the Equal Employment Opportunity Commission, the EEOC investigates your allegations. If the EEOC finds probable cause to believe discrimination occurred, it has the statutory duty to “endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation and persuasion.” Only after it makes this informal attempt to settle may it take the matter to court.

A woman filed a complaint alleging that Mach Mining, LLC, had refused to hire her because of her sex. The EEOC found probable cause. It sent the parties a letter, explaining it had found probable cause, and invited them to participate in informal methods of dispute resolution. It's not clear what happened next, but a year later, the EEOC sent Mach Mining another letter, saying its efforts

to conciliate had been unsuccessful and that it would be filing a lawsuit.

When it was sued, Mach Mining said that the EEOC had failed to try to conciliate the matter in good faith before filing suit. The Seventh Circuit Court of Appeals held that the “statutory directive to attempt conciliation” is “not subject to judicial review.” In other words, courts do not have the legal authority to decide if the EEOC tried hard enough to settle the matter before going to court. This ruling was based in part on another part of the statute, which says that all conciliation discussions will remain confidential unless the parties agree to release them. If those discussions are confidential, the Seventh Circuit said, it would be hard for a court to review the EEOC's conciliation efforts. In a ruling issued in late April, 2015, the Supreme Court unanimously disagreed.

The Supreme Court said that the

EEOC has wide latitude in the conciliation process. Normally it will be sufficient if the EEOC files a sworn affidavit with its lawsuits saying that it had attempted to conciliate the matter but that its efforts had failed. But if the employer provides credible evidence of its own that the “EEOC did not provide the requisite information about the charge or attempt to engage in a discussion about the charge or attempt to engage in a discussion about conciliating the claim, a court must conduct the fact finding necessary to obtain voluntary compliance.” The reviewing court will be looking “only to whether the Equal Employment Opportunity Commission attempted to confer about a charge, and not to what happened (i.e., statements made or positions taken) during those discussions.”

The case is Mach Mining, LLC v. EEOC, 135 S. Ct. 1645 (2015).

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A different partner family bought the home, and the siblings sued, alleging discrimination in housing on the basis of disability. They lost.

Mr. and Ms. Davis argued that Habitat's policy of “not permitting homes to be customized caused Habitat not to provide equal access” to people with

disabilities. The Court agreed that if Habitat refused to build accessible homes, or refused to allow people with disabilities to be part of their program, that might be a violation of the Fair Housing Act. But that was not the case here. Habitat made extensive changes to the house to accommodate Brittany's disabilities. The Court said it was clear that communications

between Mr. and Ms. Davis and Habitat broke down along the way. Habitat attempted to accommodate Ms. Davis's needs, and the law does not require it to incorporate every single change requested by Mr. and Ms. Davis. The case is Davis v. Habitat for Humanity of Bay County, 2013 WL 1788221 (N.D. Fl. 2013).



Familial Status Discrimination in Housing is Against the Law

It's long been illegal to refuse to rent to people because they have children (called familial status discrimination), but apparently not all landlords have gotten the message.

In May, the U.S. Department of Justice announced that it had settled a lawsuit alleging such discrimination against Betty and Hughston Brinson, landlords in Carson City, Nevada. The DOJ press release said the Brinsons ran ads for rental homes that indicated a preference for adult tenants, and that they refused to rent to a family with three children because they did not want children living on the property. It said that Betty Brinson placed similar

discriminatory ads for another property she owns, a 36-unit apartment complex in Carson City.

Under the terms of the settlement agreement, the Brinsons will pay \$14,000 to the family that filed the complaint, \$10,000 into a victim fund to compensate other aggrieved families and \$12,000 to the U.S. as a civil penalty. In addition, the Brinsons agreed not to discriminate in the future against families with children, agreed to receive training on the requirements of the Fair Housing Act and agreed to provide periodic reports to DOJ.

In announcing the settlement,

Gustavo Velasquez, assistant secretary for Housing and Urban Development's Fair Housing and Equal Opportunity Office, said, "A family's search for housing that fits their needs shouldn't be limited by discriminatory practices that violate the Fair Housing Act. Today's settlement is a victory for families with children and reaffirms HUD and the Justice Department's commitment to ensuring that the owners of rental properties understand their obligations under the law and take steps to meet that obligation."

Some housing that meets the requirements for senior citizen housing is exempt from the familial status law.



Mayor Hamilton attended the May BHRC meeting. From left, front row: Beth Applegate, Valeri Haughton-Motley and Drew Larabee. From left, back row: William Morris, Mayor John Hamilton, Pete Giordano and Byron Bangert.