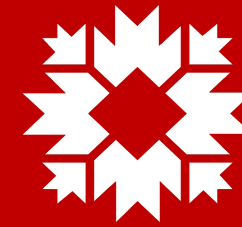


RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

BHRC, Friends Pick Up Trash



Top: From left, BHRC Assistant Nicole DeCriscio Bowe, Joshua Fix, BHRC Chair Ryne Shadday, BHRC Director Barbara E. McKinney, BHRC Secretary Carolyn Calloway-Thomas and Michael Shermis pose for a photo during the BHRC's trash clean-up day. The clean-up day was funded by the Lead Forward Community Grant from ICI and LSN.

Right: Ryne Shadday and Joshua Fix work together to pick up trash.



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Landlords Held Responsible for Agents

Stephen and Sheila Maulding own SSM Properties, which operates several apartment buildings in Louisiana. In 2016 and 2017, the Louisiana Fair Housing Action Center sent testers to one of their buildings. They sent in two testers, one white and one Black.

The Black tester called about an apartment and scheduled an appointment to see it. A man the court calls Roe met her and said, “You’re not what I expected. I don’t even know why you’re here, ma’am, to be honest with you.” He told her no apartments were available. She asked about another building, Pearl Manor. He told her, “I can’t put you at Pearl Manor. Them old men will have a heart attack. They’ll be thinking I done let the zoo out again.”

Later that day, Roe showed a white tester an apartment. He told her that the men at Pearl Manor “would love you to death” and that she “would fit in good over there with the other girls.” He said, “I have to be careful who I put in here” [Pearl Manor] because if “some of these people . . . ever move because of somebody, my boss would fire me.”

Perhaps not surprisingly, HUD investigated. During the investigation, Roe said that when he talked to the testers, he had overstepped his authority without the owners’ knowledge or direction. He said he had been joking and “I see now that my jokes were not funny to some if I actually said what is reported. I told some tenants looking for apartments I was the owner/manager just trying to act as a big

shot, knowing they would find out different if they leased the apartment.”

For unknown reasons, HUD found no reasonable cause, but the complainants sued.

The Mauldings asked the court to dismiss the case. They argued that Roe was not their agent and they should not be held responsible for his actions. They said he was not employed by them and did not receive a salary; he did only “very limited maintenance tasks” for minimal payment and had no authority over the operations. They said they had not authorized Roe to answer the phones or evaluate potential tenants. But they admitted that they gave him a master key and authority to give prospective tenants rental applications upon request. They allowed him to keep office space at one of his properties. During the tests, they called him their property manager. They authorized him to appear on their behalf in court.

The court said there was sufficient evidence for a jury to conclude that the Mauldings had placed Roe “in a position to commit violations of the FHA” (Fair Housing Act). The court said that the jury may reject Roe’s explanation that he was merely joking, concluding, “The joke may indeed be on him, and the jury may arrive at the conclusion that he apparently has now realized; his *jokes* were not funny.” (Emphasis in original.)

The case is United States v. SSM Properties, LLC, 2022 WL 1094655 (S.D. Miss 2022). If you have questions about fair housing, please contact the BHRC.

Sandra Keller Received Human Rights Award



Look for the Bloomington and Monroe County Human Rights Commissions in the Fourth of July Parade!

Reassignment Should Be Reasonable Accommodation of Last Resort

Michael Wirtes was a police officer with the Newport News, VA police department. As a police officer, he wore duty belts supporting pepper spray, a gun with ammunition, a taser, a baton, handcuffs, a flashlight, a radio and a body camera battery pack. He developed a condition called meralgia paresthetica that made it painful for him to wear the belt around his waist. As an accommodation for his medical issue, he was allowed to wear a shoulder holster instead of a full duty belt.

Then he became a detective and was no longer required to wear a duty belt. But when the department received a report that he had worn a belt around his waist at work, it scheduled him for a fitness for duty exam. The doctor said that Wirtes was “unable to perform unassigned duties as a police officer due to an inability to wear the uniformed required duty belt.” At about the same time, the assistant chief began requiring detectives under his command, including Wirtes, to wear their uniforms and take evening shifts. And the city change its job description for police officers, saying all police officers, including detectives, had to be able to wear a standard issue duty belt with all applicable gear. The department put Wirtes on light-duty for eight months due to his alleged “inability to meet the essential job functions” of a police officer.

When his light-duty assignment ended, the city told Wirtes he

would have to wear a duty belt if he returned to police officer duties. It asked him for a list of potential accommodations he might need. He said he still could not wear the belt around his waist, and asked that he be allowed to relocate his equipment to a shoulder holster, as he had been doing for years at this point. He also suggested he could add a holster to his ballistic vest for high risk assignments. Or, he said, the city could accommodate him by exempting him from the requirement that he wear a standard uniform and from patrol duties.

The city rejected his proposal to wear a shoulder or vest holster, citing “the need to be in full police uniform” and safety concerns. It rejected his proposal to be exempt from performing patrol duties and from wearing the full uniform, saying that was essentially asking for permanent light-duty work. Instead, the city offered him a job as logistics manager in charge of procuring supplies and vehicles. He briefly accepted the job, but then resigned, which he said was “forced under medical reasons” and complained that the city had refused to provide him with the reasonable accommodations he had requested. He sued.

The court of appeals said that reassignment as a reasonable accommodation is acceptable only if the employee voluntarily accepts reassignment, or if “there are no effective accommodations that will enable the employee to perform the essential functions of

his/her current position,” or if “all other reasonable accommodations would impose an undue hardship on the employer.” In this case, the district court had not decided whether Wirtes’ requested accommodations were effective or would be an undue burden to the city. The court of appeals remanded the case to the trial court for further proceedings.

The case is Wirtes v. City of Newport News, 996 F.3d 234 (4th Cir. 2021). If you have questions about fair employment practices, please contact the BHRC.

Apply to Serve on the Bloomington Human Rights Commission

Are you a Bloomington resident who is passionate about human rights issues?

The BHRC currently has one vacancy.

Those interested should apply at: <https://bloomington.in.gov/onboard/applicants/apply>

Couple Wins Right to Pursue Lawsuit Against Insurance Company

Terrie Sullivan and her wife, Veronica Rodriguez, bought a home together. Sullivan is Black and Rodriguez is Latina. Shortly after they moved in, their toilet overflowed, contaminating the floors, cabinets, drywall, furniture and personal belongings.

Their plumber told them that tree roots had clogged the drain, causing the toilet to back up. Their general contractor investigated further and found that the hardwood floors were warped, the walls were contaminated, the front door was damaged and there was mold in the vents.

So the couple filed a claim for insurance coverage with Liberty Mutual to recover for their significant losses. Eight days later, the insurance adjuster denied the claim, saying the damage was caused by a faulty basement sump pump.

The couple said their home included neither a basement nor a sump pump.

After they complained about that decision, the adjuster said their losses would be covered after he confirmed a few details. But weeks went by with no further word from the adjuster. They called the company again and learned their adjuster was no longer with the company.

The new adjuster said he would have to do a physical inspection of the property. Since this happened in March of 2021,

during one of COVID's surges, the couple resisted that approach. The next month, the new adjuster denied the claim, identifying "sewer backup" as his reason. They complained again, and agreed to a physical inspection.

The company agreed to cover the losses, but paid only a fraction of the loss. They complained again; the company denied a majority of their claim, saying the couple had not complied with the terms of their policy. The couple said they had.

Then, they learned from their contractor that the first adjuster had called Sullivan a "nigger" and had called Rodriguez a "dumb Puerto Rican bitch." He made other disparaging comments about their race and sexual orientation.

They sued, alleging discrimination in housing on the basis of sexual orientation and/or race.

Liberty Mutual asked the court to dismiss the case, but the court rejected that motion. The court said that the comments that the couple attributed to their adjuster were evidence of animus based on their race and/or sexual orientation. And his finding that the damage was caused by a faulty sump pump in the basement, when the home allegedly had no basement and no sump pump, could show that his stated reason for denying the claim was a pretext for illegal discrimination.



The case will now go to trial unless the parties settle.

The case is Sullivan v. Liberty Mutual Insurance Company, 2022 WL 2105904 (N.D. Ill. 2022). If you have questions about fair housing rights and responsibilities, please contact the BHRC.

The next BHRC meeting will take place at 5:30 p.m. July 25, 2022, in McCloskey Room 135, in Shower's City Hall and online.

Visit our website or Facebook page for the most up-to-date meeting information.