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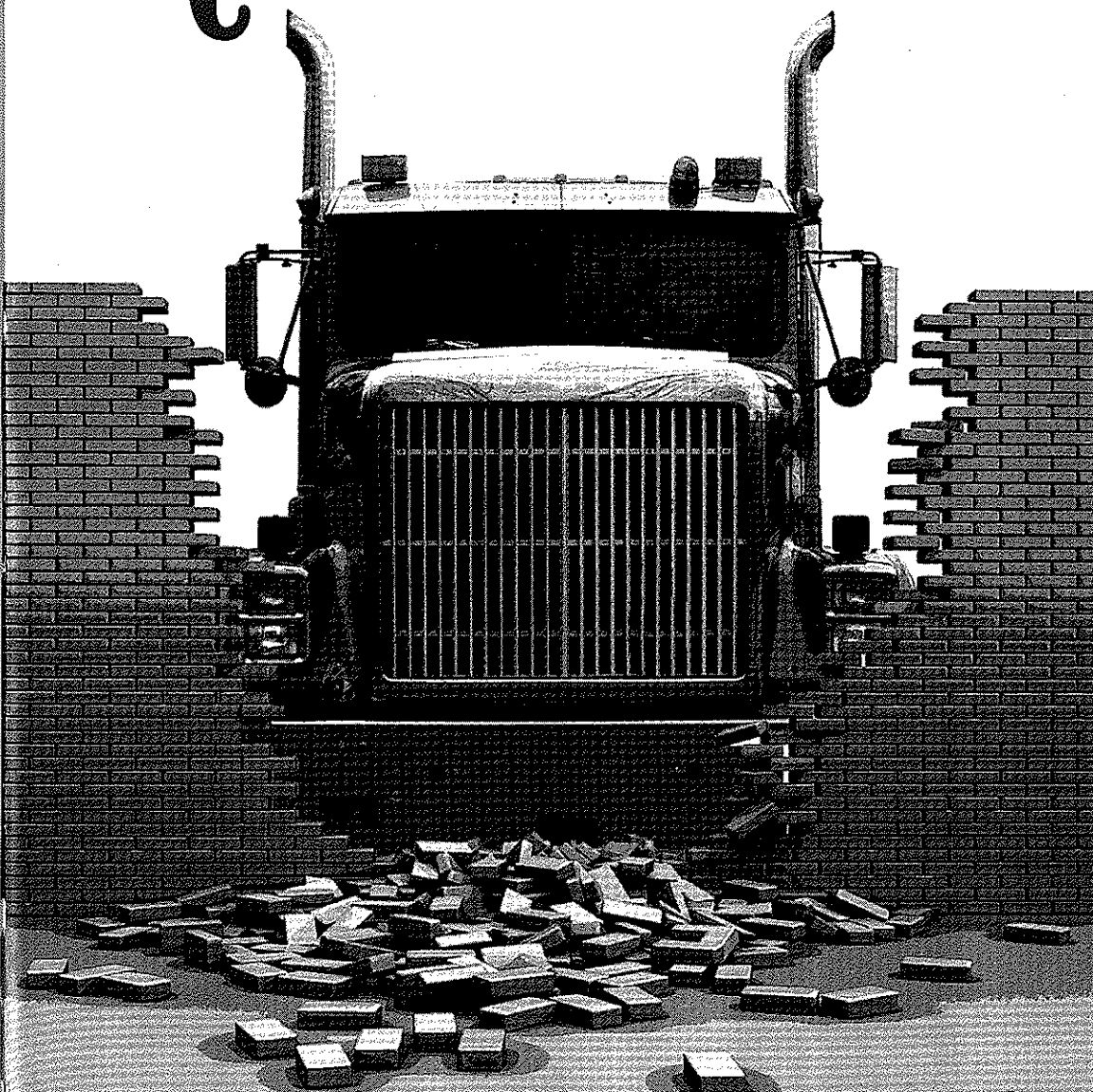
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Domestic Violence Survivor Achieves Policy Changes at Michigan Management Company

In recent years Congress and a small number of states have begun to recognize and codify housing rights for domestic violence victims. However, most tenants in the United States are not covered by laws or policies that expressly prohibit eviction based on violence perpetrated against them. The case of Tanica Lewis, a domestic violence survivor, illustrates how fair housing laws can be used to create new policies that overcome these statutory gaps. The settlement of her case compelled the adoption of a housing policy that incorporates protections beyond those in federal and state law and that affirmatively supports housing stability for victims of violence.

Domestic Violence and Homelessness

Domestic violence leads to homelessness. In 2008 twenty-two of twenty-five surveyed U.S. cities reported that approximately 15 percent of homeless persons were victims of domestic violence.¹ Preserving rental opportunities for domestic violence survivors is especially crucial because women living in rental housing experience intimate partner violence at three times the rate of women who own their homes.² Victims of violence

¹U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* 18 (2008), http://usmayors.org/pressreleases/documents/hungerhomelessnessreport_121208.pdf.

²Callie Marie Rennison & Sarah Welchans, U.S. Department of Justice, Bureau of Justice Statistics Special Report: *Intimate Partner Violence* 5 (2000), www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf.

report that they have remained in abusive relationships because they did not have access to alternative housing.³ Many tenants who have been subjected to violence are revictimized when their landlords seek to evict them based on their abusers' criminal conduct or the damage and noise disturbance they caused.⁴ When a woman who rents her home experiences violence, she may choose to endure abuse unless she is able to access new housing, free from the violence of her batterer and discrimination by a landlord.

Statutory Protections

As part of their efforts to end domestic violence and homelessness, Congress and state legislatures have passed laws that provide some measure of housing protection for many abuse survivors. The 2005 reauthorization of the federal Violence Against Women Act (VAWA), which was signed by the president in 2006, included important new housing provisions.⁵ Public housing authorities and Section 8 owners may not deny admission to or (with very narrow exceptions) evict victims of domestic violence, dating violence, and stalking because of the abuse they have suffered.⁶ Under VAWA, public housing authorities and Section 8 owners may bifurcate leases to remove batterers from tenancy while allowing victims to remain.⁷ VAWA authorizes public housing authorities to permit victims to move with their voucher before the end of a lease if they need to leave the unit for safety reasons.⁸ The law creates a procedure by which survivors can certify their eligibility for VAWA protection.⁹ The law mandates that their information be kept confidential with certain specified exceptions.¹⁰

Several states have enacted laws that protect the rights of abuse survivors and apply to all housing, including private housing. Many have created an early lease termination option for abuse survivors so that they may leave their homes for safety reasons without the continuing financial obligation of the lease.¹¹ Others have prohibited housing discrimination against abuse survivors, with some states including victims of sexual assault as a protected class.¹²

While federal and state statutes extend significant protections to survivors, they are limited in scope. For example, VAWA 2005 applies only to public and Section 8 housing, does not specifically include sexual assault victims as a protected class, and does not require public housing authorities to provide emergency transfers to abuse survivors who need to flee their homes. Only a few states have filled in some of these gaps.

Factual Background

Tanica Lewis and her two young daughters lived in a rental apartment at a privately owned and managed complex funded by the Low Income Housing Tax Credit (LIHTC) program. Located in Detroit, Michigan, the complex was called North End Village. In February 2006 Lewis obtained a personal protection order against Reuben Thomas, her former partner and the father of her children, after he threatened and stalked her. The order required Thomas (who had never been a tenant in the apartment) to stay away from her home. A few weeks later, however, while Lewis was at work, Thomas came to her home, smashed the window, and kicked in the door. Lewis reported the incident to the police as well as to the residential manager of the property, and Thomas ultimately was convicted of home invasion.

Nevertheless, based on this incident, Management Systems, the property management company, issued Lewis a thirty-day eviction notice stating that under her lease she was responsible for any damage resulting from "lack of proper supervision" of her "guests." As a result of the eviction, Lewis and her two young daughters could not return home and lived in a shelter. After some time, they found another apartment but at a higher rent and farther from her workplace and child care provider.

Legal Claims

Because Lewis did not live in public housing or Section 8-subsidized housing and because Michigan does not have a state law prohibiting discrimination against domestic violence

³See, e.g., Wilder Research, Overview of Homelessness in Minnesota 2006: Key Facts from the Statewide Survey 16 (March 2007), www.wilder.org/download.0.html?report=1963 (45 percent of homeless women reported staying in an abusive relationship because they had nowhere else to live); see generally Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 24 CLEARINGHOUSE REVIEW 420 (1991) (special issue on "Poverty Comes Home").

⁴National Law Center on Homelessness and Poverty & National Network to End Domestic Violence, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country 7-9* (2007), www.nlchp.org/content/pubs/NNEDV-NLCHP_Joint_Stories%20_February_20072.pdf.

⁵Violence Against Women Act and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, §§ 606, 607, 119 Stat. 2960 (codified at 42 U.S.C. §§ 1437d, 1437f).

⁶42 U.S.C. §§ 1437d(c)(3), 1437f(c)(9)(A), 1437f(d)(1)(A), 1437f(o)(B).

⁷*Id.* §§ 1437d(l)(6)(B), 1437f(o)(7)(D), 1437f(o)(20)(D).

⁸*Id.* § 1437f(r)(5), 1437f(ee).

⁹*Id.* §§ 1437d(u)(l), 1437f(ee).

¹⁰*Id.* §§ 1437d(u)(2)(A), 1437f(ee)(2)(A).

¹¹See, e.g., ARIZ. REV. STAT. ANN. § 33-1318 (2009); CAL. CIV. CODE § 1946.7 (West 2009); DEL. CODE ANN. tit. 25, § 5314(b)(6) (2009); D.C. CODE § 42-3505.07 (2009); 765 ILL. COMP. STAT. 750/15 (2009) (does not apply to public housing); IND. CODE ANN. § 32-31-9-12 (West 2009); N.Y. REAL PROP. LAW § 227-c (McKinney 2009); N.C. GEN. STAT. ANN. § 42-45.1 (West 2009); OR. REV. STAT. ANN. § 90.453 (West 2009); TEX. PROP. CODE ANN. § 92.016 (Vernon 2009); WASH. REV. CODE ANN. § 59.18.575 (West 2009); WIS. STAT. ANN. § 704.16 (West 2009).

¹²See, e.g., D.C. CODE § 2-1402.21 (2009); IND. CODE ANN. § 32-31-9-8 (West 2009) (sexual assault specified); N.C. GEN. STAT. ANN. § 42-42.2 (West 2009) (sexual assault specified); OR. REV. STAT. ANN. § 90.449 (West 2009) (sexual assault specified); R.I. GEN. LAWS § 34-37-2.4 (2009); WASH. REV. CODE ANN. § 59.18.580 (West 2009) (sexual assault specified).

survivors, neither VAWA nor a state domestic violence law explicitly barred her eviction. Instead she turned to federal and state fair housing laws. The American Civil Liberties Union (ACLU) and other advocates argue, and, as discussed below, a few courts and agencies hold, that housing actions or policies that discriminate against domestic violence survivors may constitute illegal sex discrimination under the federal Fair Housing Act when they are based on gender stereotypes or have a disparate impact on women.¹³

In Lewis's situation we contended that the property owner and management company engaged in gender stereotyping by treating her batterer as her guest. Despite the history of abuse and the protective order, the owner and management company acted on an assumption that domestic violence victims are responsible for the actions of their batterers and punished Lewis for Thomas's crimes. We asserted that the property owner and management company also adopted a practice that has a disparate impact on women by interpreting the term "guests" as used in their lease to reach individuals barred from the property by personal protection orders. Domestic violence is a crime that is committed disproportionately against women.¹⁴ Accordingly we argued that evicting tenants based on the domestic violence that they had experienced disproportionately affected women tenants and resulted in discrimination based on sex.

Federal laws governing the LIHTC program offered an additional legal argument. As an LIHTC-funded property, North End Village was subject to a restrictive covenant reflecting the extended low-income housing commitment, which permits termination of a tenancy only with good cause.¹⁵ In Lewis's case we asserted a novel application of the good-cause requirement: property damage caused by a batterer may not qualify as good cause to end the tenancy of the batterer's victim.

The national ACLU Women's Rights Project and the ACLU of Michigan sent a demand letter to the property owner and management company on behalf of Lewis and her children in January 2007. The letter described the harms that Lewis had suffered as well as the legal authorities supporting her claims that the conduct of the management company and landlord constituted sex discrimination. Neither the property owner nor the management company responded.

In February 2007 Lewis filed a case in a Michigan district court against the owner, the management company, and its residential manager on behalf of herself and her children.¹⁶ The complaint alleged that the defendants had discriminated on the basis of sex by engaging in intentional discrimination and adopting a practice that had a disparate impact on women in violation of the Fair Housing Act and the Michigan Elliott-Larsen Civil Rights Act.¹⁷ The plaintiffs also charged the de-

endants with violating the restrictive covenant reflecting the federal extended low-income housing commitment.¹⁸ The complaint sought declaratory and injunctive relief, compensatory and punitive damages, and attorney fees.

Settlement Agreement

In February 2008 the court approved a final settlement of the case. Most of the settlement negotiations revolved around the adoption of a new domestic violence, dating violence, sexual assault, and stalking policy by the property owner and management company. The final policy provides that they will not discriminate against or evict housing applicants or tenants because the housing applicants or tenants have been the victims of domestic violence, dating violence, sexual assault, or stalking whether or not the abuser is residing in the tenant's household. The management company will offer early lease termination or relocation to another unit managed by the company or both to tenants who have been the victims of such abuse and need to leave their homes to ensure their safety. Other provisions mandate that the management company keep victims' information confidential, give notice of the policy to tenants, applicants, and employees, and accept complaints regarding any violations of the policy.

The settlement order had most of the provisions of the settlement agreement, and the text of the new policy, the Request for Relocation and Early Lease Termination Form, the Complaint Form, the Disclosure to Housing Applicants, and the Amendment to Employee Manual were attached as exhibits. For seven years, counsel for the plaintiffs may request copies of the Request for Relocation and Complaint Forms as well as the management company's responses. Lewis received a monetary settlement and attorney fees.

The settlement put into place new protections, such as the promise of early lease revocation or relocation, that would otherwise be unavailable to tenants of the covered properties given VAWA's inapplicability and the absence of Michigan state law. It also built on the baseline safeguards that VAWA instituted for public and Section 8 housing. Unlike VAWA, the policy (1) applies to victims of violence whether or not they receive a government subsidy, (2) provides for transfers to another unit when victims must flee their homes, and (3) protects victims of sexual assault. The management company agreed to implement the early lease termination and relocation provisions at other properties it manages, subject to owner consent, so as to develop a larger pool of available units for relocation. The management company last reported that ten Detroit housing complexes, consisting of nearly 550 units, were participating.

¹³Fair Housing Act, 42 U.S.C. § 3604 (2009).

¹⁴Rennison & Welchans, *supra* note 2, at 5 tbl.3.

¹⁵26 U.S.C. § 42(h)(6)(B), (E) (2009).

¹⁶*Lewis v. North End Village*, No. 07 Civ. 10757 (E.D. Mich. filed Feb. 21, 2007).

¹⁷Fair Housing Act, 42 U.S.C. § 3604(a)-(b) (2009); Michigan Elliott-Larsen Civil Rights Act, MICH. COMP. LAWS § 37.2502(1) (2009).

¹⁸26 U.S.C. § 42(h)(6)(B), (E) (2009).

Implications and Commentary

The *Lewis* case illustrates how attorneys can use fair housing law to establish housing policies that address abuse, confront sex discrimination faced by domestic violence survivors, and engage the media effectively.

Advocate a Comprehensive Housing Policy that Protects Victims of Violence. While the settlement agreement will be most helpful to violence survivors who apply for or live in housing operated by the management company and owner sued in the case, it can serve as a model for a housing policy that could be adopted more widely. The *Lewis* policy is significant in that it both bans discrimination and affirmatively furthers safe housing for survivors of violence. By requiring the management company to offer early lease termination and relocation, the settlement agreement produced protections beyond what could have been achieved even if the plaintiffs in this case had won at trial.

Housing policies that tackle intimate partner abuse and other forms of violence are vital in giving housing options to victims who might otherwise be forced to remain in abusive situations or return to batterers. While many private employers have developed policies relating to employees who experience domestic violence, few housing providers have done so. In the absence of such policies, victims are more likely to stay silent about the abuse, and the violence could escalate. When landlords punish tenants for the violence in their lives or refuse to accommodate requests that would enhance safety, they contribute to the cycle of violence and homelessness.

Housing policies dealing with violence provide crucial guidance to individuals responsible for managing rental complexes. Many landlords and housing managers are unaware that evicting victims based on the abuse that the victims have suffered may constitute discrimination under the Fair Housing Act, state laws, or VAWA. The defendants in this case were open to discussing a comprehensive housing policy because they recognized that their staff members had acted according to protocol but still might have violated the law. Adoption of affirmative housing policies that protect victims of domestic violence, dating violence, stalking, and sexual assault both shields landlords from potential liability and gives women the security of stable housing, free from violence.

Consider Filing Fair Housing Act Sex Discrimination Claims on Behalf of Domestic Violence Survivors. Relying on the Fair Housing Act, the ACLU successfully challenged other discriminatory evictions across the country. A federal court in Vermont ruled that when a landlord sought to evict a tenant immediately after she had been the victim of a domestic assault, the Fair Housing Act's prohibition on sex discrimination applied.¹⁹ The U.S. Department of Housing and Urban Development concluded that application of the one-

strike criminal activity rule to domestic violence victims had a disparate impact on women.²⁰

Fair housing laws were invoked in noneviction contexts as well. A Wisconsin state court and the New York attorney general concluded that denying housing to applicants because they experienced domestic abuse constituted discrimination based on sex.²¹ In a case filed before VAWA 2005, Legal Momentum challenged the refusal of a Section 8 housing provider to transfer a domestic violence victim to another unit despite the provider's policy of providing transfers in "special circumstances."²²

Although Fair Housing Act claims on behalf of domestic violence survivors have achieved favorable settlements, they should be brought after careful analysis. Only a few courts have examined the question of whether discrimination against domestic violence survivors is sex discrimination. One court, concluding that a public housing authority could not be required to provide emergency transfers to domestic violence survivors, held that the public housing authority's policy of giving transfers only to victims of hate crimes or extreme harassment did not discriminate against women.²³ Many of the adverse housing situations that domestic violence survivors confront have yet to be litigated.

Fair housing claims could be helpful as part of an overall litigation strategy, even where VAWA applies. The affirmative enforcement of VAWA via Section 1983 or a federal preemption theory has not yet been tested in courts. Affirmative Fair Housing Act claims provide greater opportunity to pursue policy changes and allow for monetary damages and attorney fees.

Engage the Media Early. Survivors of violence who face dire housing consequences as a result of the abuse often are treated sympathetically by the press. *Lewis* wanted others to learn about her experiences and was willing to speak openly about the housing discrimination that she faced. We reached out to the media at an early stage by issuing press releases regarding both the demand letter and the filing of the complaint. Newspapers, radio, and other outlets reported on the case. The news coverage was noticed by the defendants and helped lead to a favorable settlement.



Further information about the housing rights of survivors of domestic violence, the settlement in the *Lewis* case, and other ACLU litigation is available at www.aclu.org/fairhousingforwomen. Fact sheets and a know-your-rights brochure can be downloaded in English and Spanish. The ACLU Women's Rights Project is available to consult with attorneys on housing litigation involving domestic violence, dating violence, and sexual assault.

¹⁹*Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005), www.aclu.org/womensrights/violence/33569res20050418.html.

²⁰*Alvera v. CBM Group Incorporated*, No. 10-99-0538-8 (U.S. Department of Housing and Urban Development April 16, 2001), www.aclu.org/images/asset_upload_file37_33994.pdf (consent decree dated Nov. 5, 2001, in subsequent district court case available at www.aclu.org/womensrights/violence/33582res20010601.html).

²¹*Winsor v. Regency Property Management*, No. 94CV2349 (Wis. Cir. Ct. Oct. 2, 1995); 1985 N.Y. Op. Att'y Gen. 45, Formal Op. No. 85-F15 (Nov. 22, 1985).

²²*Blackwell v. H.A. Housing*, No. 05 Civ. 1225 (D. Colo. filed July 1, 2005) (settled in 2007).

²³*Robinson v. Cincinnati Metropolitan Housing Authority*, No. 08 Civ. 238, 2008 WL 1924255 (S.D. Ohio April 29, 2008).

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