

LEGAL NEWS

Residents win housing accommodation suit

Top court: Defendants must show request was unreasonable

By KRISTI TOUSIGNANT

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The condominium board and property managers of a Prince George's County development failed to prove that two disabled residents' requests for side- and back-door keys were unreasonable, and must pay \$40,000 as a result, the state's highest court held.

In an opinion issued last week, the **Court of Appeals** said it was the responsibility of **Cameron Grove Condominium II**, defendants in the housing discrimination case, to prove why the requests were not a reasonable accommodation to the plaintiffs' disabilities.

Rejecting a rule adopted in 1997 by the federal 4th U.S. **Circuit Court of Appeals**, the state's highest court said the burden shifts to the defendant once the complaining party makes a *prima facie* case that an accommodation request is necessary and reasonable.

"Fair housing is the law and it sends a strong message to housing providers, whether it be landlords, property management companies, or whoever the housing provider may be, that you must follow the law," said Terrence Artis, assistant general counsel for the **Maryland Commission on Civil Rights**, which brought the case. "In this particular decision, the court said once a complainant has made a case of needing a reasonable accommodation, the burden is on the housing provider to

show why it's not reasonable."

An attorney for Cameron Grove, David C. Gardner of the **Gardner Law Firm P.C.** in Rockville, did not respond to a request for comment.

In 2006, Peggy Daniel and Albert Doby filed complaints with the Maryland Commission on Human Relations against Cameron Grove, a community for those 55 and older. They claimed the board of directors and property management company discriminated against them by not giving them keys to the side and back doors.

Both claimed access to these entrances would decrease the distance they had to travel when moving around the community, which they said was painful due to their disabilities.

Cameron Grove, however, said giving them keys would pose a security threat and a safety hazard, since the doors were heavy, and would require installing a passcard system at a cost of nearly \$19,000, the Court of Appeals opinion said.

A passcard system was, in fact, installed in 2008.

An administrative law judge from the **Maryland Office of Administrative Hearings** ruled in favor of Cameron Grove in October 2008. Relying on the 4th Circuit's ruling in *Bryant Woods Inn Inc. v. Howard County*, the ALJ ruled that Daniel and Doby failed to prove that access to alternative entrances was necessary.

The case, however, went to the commission's Appeal Board, which disagreed, saying Cameron Grove needed to prove why supplying the keys was an "undue burden" and had failed to do so, last week's opinion said.



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WHAT THE COURT HELD

Case: *Board of Directors of Cameron Grove Condominium, II, et al. v. State of Maryland Commission on Human Relations*. No. 47. September Term 2012. Argued Feb. 8, 2013. Decided March 28, 2013. Opinion by Battaglia, J.

Issue: Do defendants or complainants have to prove a request is unreasonable in a housing discrimination lawsuit?

Holding: Once the complainants make a *prima facie* case in a housing discrimination lawsuit, the burden shifts to the defendants to prove the complainants' requested accommodation is unreasonable.

Counsel: David C. Gardner of Gardner Law Firm P.C. in Rockville, for petitioner; Terrence Artis, assistant general counsel for the Maryland Commission on Civil Rights, for respondent.

RecordFax 13-0328-20 (26 pages).

"The Board determined ... the security and passcard systems were not requests made by the complainants; rather, Ms. Daniel and Mr. Doby had requested only keys to the side and back doors, the cost of which would have been insubstantial," Judge Lynne A. Battaglia wrote for the unanimous Court of Appeals.

The Appeal Board also said side-door access would not be a safety hazard and that there was little concern for security breaches at the complex.

The Appeal Board then ordered Cameron Grove to pay \$25,000 to Daniel and \$10,000 to Doby for pain and suffering and a \$5,000 civil penalty.

A Prince George's County Circuit Court judge disagreed and remanded the case back to the Appeal Board. However, the Court of Special Appeals vacated the circuit court's decision before the board could take action.

The Court of Appeals then considered which party was required to prove the request was unreasonable.

Instead of adopting the rule set forth by the 4th Circuit (which decides federal cases in Maryland), the Maryland Court of Appeals adopted the burden-shifting scheme used by other federal appellate courts.

"Complainants alleging housing discrimination will rarely, if ever, have the financial information to prove that the defending party has the resources to afford an accommodation," the Court of Appeals concluded. "Because of this asymmetry of information, we hold that a complainant must make a *prima facie* showing that the requested accommodation is generally reasonable, but that the defending party must ultimately prove that the accommodation is unreasonable, given its cost and the financial status of the defending party."